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

notice to members 83-42

August 5, 1983

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

RE: 100 Securities Scheduled to Join NMS in August and September

An additional 50 issues will voluntarily join NASDAQ's National Market System on August 23 and another 50 will join September 20. This will bring the total number of NMS securities to 522. (An additional 43 securities are mandated to join NMS on August 9.) These 100 securities meet the SEC's criteria for voluntary designation, which include average monthly trading volume of 100,000 shares and a minimum bid price of $5.

The 50 securities scheduled to join NMS on Tuesday, August 23, are:

ALOG	Analogic Corporation	Wakefield, MA
AMSY	American Management Systems, Incorporated	Arlington, VA
ATTC	Auto-Trol Technology Corporation	Denver, CO
BANG	Bangor Hydro-Electric Company	Bangor, ME
BGBT	Big Bite, Inc.	Columbus, OH
BKFS	Brooks Fashion Stores, Inc.	New York, NY
CACH	Cache, Inc.	Miami, FL
CRIV	Charles River Breeding Laboratories, Inc.	Wilmington, MA
CITUA	Citizens Utilities Company	Stamford, CT
DEBS	Deb Shops, Inc.	Philadelphia, PA
DLTA	Delta Drilling Company	Tyler, TX
DOYL	Doyle Dane Bernbach International, Inc.	New York, NY
DURI	Duriron Company (The), Inc.	Dayton, OH
EDCC	Educational Computer Corp.	Stafford, PA
EHIL	E-H International, Inc.	San Jose, CA
ERES	Energy Reserve, Inc.	Phoenix, AZ
FOIL	Forest Oil Corporation	Bradford, PA
HONI	HON INDUSTRIES, Inc.	Muscatine, IA

HAML	Hamilton Brothers Petroleum Corporation	Denver, CO
HECH	Hechinger Company	Landover, MD
HTEK	Hytek Microsystems, Inc.	Los Gatos, CA
ITSI	International Totalizator Systems, Inc.	San Diego, CA
ITSIW	International Totalizator Systems, Inc. (Warrants)	SanDiego, CA
JACK	Jackpot Enterprises, Inc.	Las Vegas, NV
KOSS	Koss Corporation	Milwaukee, WI
KRUE	Krueger (W.A.) Company	Scottsdale, AZ
LWSI	Laidlaw Industries, Inc.	Hinsdale, IL
LIZC	Liz Claiborne, Inc.	New York, NY
LMAR	Lorimar	Culver City, CA
MIDL	Midlantic Banks, Inc.	Edison, NJ
MECC	Miller Technology & Communications Corporation	Phoenix, AZ
MCCAA	Mobile Communications Corporation of America	Jackson, MS
NMSI	NMS Pharmaceuticals, Inc.	Newport Beach, CA
NLCS	National Computer Systems, Inc.	Edina, MN
NTSC	National Technical Systems	Woodland Hills, CA
NICLF	Ni-Cal Developments Ltd.	Vancouver, BC
NUMS	Nu-Med Systems, Inc.	Encino, CA
ODEX	Odetics, Inc.	Anaheim, CA
ORBT	Orbit Instrument Corp.	Hauppauge, NY
PTIX	Patient Technology, Inc.	Hauppauge, NY
PMSC	Policy Management Systems Corporation	Columbia, SC
RGIS	Regis Corporation	Edina, MN
SMAS	ServiceMaster Industries Inc.	Downers Grove, IL
SIZZ	Sizzler Restaurants International,Inc.	Los Angeles, CA
STTG	Statesman Group, Inc. (The)	Des Moines, IA
SBRU	Subaru of America, Inc.	Pennsauken, NJ
USTC	U.S. Trust Corporation	New York, NY
UESS	United Education & Software	Encino, CA
UNIR	United-Guardian, Inc.	Smithtown, NY
VIKG	Viking Freight System, Inc.	Santa Clara, CA

The 50 securities scheduled to join NMS on Tuesday, September 20, are:

ACRA	AccuRay Corporation	Columbus, OH
ARGI	ARGOSystems, Inc.	Sunnyvale, CA
ADGE	Adage, Inc.	Billerica, MA
AGNC	Agency Rent-A-Car, Inc.	Bedford, OH
BRHF	BR Communications	Sunnyvale, CA
BIEN	Billings Corporation	Independence, MO
BGENF	Biogen N.V.	Cambridge, MA
BMAC	Business Men's Assurance Company of America	Kansas City, MO
CBCT	CBT Corporation	Hartford, CT
CLBR	Calibre Corp.	Worthington, OH
CHEM	ChemLawn Corporation	Columbus, OH
CESI	Cogenic Energy Systems, Inc.	New York, NY
CSHP	CompuShop Inc.	Richardson, TX
CASI	Computer Associates International, Inc.	Jericho, NY
CRNS	Cronus Industries, Inc.	Dallas, TX
CULL	Cullum Companies, Inc.	Dallas, TX
WDHD	Daniel Woodhead, Inc.	Northbrook, IL
DNEX	Dionex Corporation	Sunnyvale, CA
ELAN	Elan Pharmaceutical Research Corp.	Gainesville, GA
FUNC	First Union Corporation	Charlotte, NC
BNTA	George Banta Company, Inc.	Menasha, WI
HBAN	Huntington Bancshares Incorporated	Columbus, OH
IRIS	International Remote Imaging Systems, Inc.	Chatsworth, CA
KLAC	KLA Instruments Corporation	Santa Clara, CA
MSREF	MSR Exploration Ltd.	Cut Bank, MT
MRDN	Meridian Bancorp, Inc.	Reading, PA
MORF	Mor-Flo Industries, Inc.	Cleveland, OH
MMED	Multimedia, Inc.	Greenville, SC
OBOD	Owens & Minor, Inc.	Richmond, VA
PTCM	Pacific Telecom, Inc.	Vancouver, WA
QCHM	Quaker Chemical Corporation	Conshohocken, PA
SCON	SYSCON Corporation	Washington, D.C.
STAG	Security Tag Systems, Inc.	St. Petersburg, FL
SILN	Silicon General, Inc.	Concord, CA
SILI	Siliconix Incorporated	Santa Clara, CA
SOSI	Sippican Ocean Systems, Inc.	Marion, MA

SWTN	Swanton Corporation	New York, NY
SMBL	Symbol Technologies, Inc.	Hauppauge, NY
TACO	Good Taco Corporation (The)	Pompano Beach, FL
THFR	Thetford Corporation	Ann Arbor, MI
TJCO	Trus Joist Corporation	Boise, ID
TRGA	Trust Company of Georgia	Atlanta, GA
UBKS	United Banks of Colorado, Inc.	Denver, CO
USAC	United States Antimony Corporation	Thompson Falls, MT
USHC	United States Health Care Systems, Inc.	Willow Grove, PA
VTRX	Ventrex Laboratories, Inc.	Portland, ME
WTEL	Walker Telecommunications Corp.	Hauppauge, NY
WBBC	Webb Company (The)	St. Paul, MN
WCTV	Wometco Cable TV, Inc.	Miami, FL
WYMN	Wyman-Gordon Company	Worcester, MA

Applications are being accepted for the NMS phase-in scheduled for October.

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 83-43

August 17, 1983

TO: All NASD Members and Other Interested Persons

RE: Rescission of Venture Capital Policy and Adoption of New Requirement

On May 31, 1983, the Securities and Exchange Commission ("SEC") approved an amendment to the Association's rules rescinding the Policy of the Board of Governors — Venture Capital and Other Investments by Broker/Dealers Prior to Public Offerings ("Venture Capital Policy"). Simultaneously, the SEC approved an amendment to the Interpretation of the Board of Governors — Review of Corporate Financing under Article III, Section 1 of the Rules of Fair Practice ("Corporate Financing Interpretation") requiring that certain investments by members in private companies be restricted in connection with an initial public offering.

The Association's decision to rescind the Venture Capital Policy recognizes the significantly changed conditions of the securities industry which have evolved since its adoption in the late 1960's. The Policy was originally intended to be temporary pending further study of the practice of venture capital investments prior to initial public offerings. With the adoption of other Association rules on self-underwriting and certain SEC rules on sales of securities held by affiliates, the Association concluded that the Venture Capital Policy was no longer necessary to assure investor protection.

In the course of SEC review of the Association's proposal to rescind the Venture Capital Policy, it was determined that a restriction should be added to the Corporate Financing Interpretation relating to situations in which members and certain control persons propose to sell their holdings in companies at the time the member participates in an initial public offering of the company. It was concluded that this situation can present certain conflicts of interest with respect to the establishment of a public offering price and the assurance of full disclosure. Accordingly, it was agreed that members and specifically enumerated control persons of members be restricted from selling their holdings during an initial public offering of a company and for a 12 month period following the effective date, if the member participates in the distribution of the offering.

Language to implement this restriction has been added to the Corporate Financing Interpretation and became effective upon approval by the SEC on May 31, 1983. The restriction is applicable to all offerings filed with the Association after May 31, 1983.

A copy of the text of the new provision as approved by the SEC is attached. Questions regarding this notice may be directed to Dennis C. Hensley at (202) 728-8258.

Sincerely,

Gordon S. Macklin
President

VENTURE CAPITAL RESTRICTIONS

No member or officer, director, general partner or controlling shareholder of a member which participates in the initial 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.

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

notice to members 83-44

August 17, 1983

TO: All NASD Members and Other Interested Persons

RE: Change of Policy on Overallotment Options

The National Association of Securities Dealers, Inc. ("NASD" or "Association") is announcing a change in its policy with respect to overallotment options for firm commitment offerings. On August 4, 1983, the Securities and Exchange Commission ("SEC") approved an amendment to the Interpretation of the Board of Governors — Review of Corporate Financing under Article III, Section 1 of the Rules of Fair Practice (NASD Manual (CCH) para. 2151) ("Interpretation"). Effective immediately, the new policy changes the size of an overallotment option which is presumptively reasonable from ten to fifteen percent of the amount of securities being offered. Background information and an explanation of the new policy are set forth below.

Background

The new provision amends the longstanding policy of the Association which established as presumptively unfair and unreasonable the granting to underwriters or related persons of an overallotment option of more than ten percent of the amount of securities in a public offering. The Association determined that this policy was no longer an appropriate response to market forces as they presently exist.

The Association's policy on overallotment options has not been previously codified into the Interpretation, although the policy has been consistently applied from the 1960's and has been periodically reviewed by the Corporate Financing Committee ("Committee"). The ten percent limitation had been retained based upon the belief that an underwriter should be able to measure demand for a new issue within a ten percent range. There was an additional concern that large overallotment options can alter the underwriter's obligation such that a "firm commitment" offering becomes more akin to a "best efforts" undertaking.

Over the past several months, it has become apparent that the increased volatility of prices and trading volume in the securities markets has made it more difficult for underwriters to accurately judge demand or to achieve an orderly

distribution of an issuer's securities. These problems are exacerbated by the increasingly large size of public offerings, especially initial public offerings. In view of these factors, the Committee determined that the ten percent policy should be reviewed to ascertain its viability under current market conditions.

In reviewing the ten percent policy, the need for any Association regulation of overallotment options was considered. It was concluded that it is in issuers' and investors' interest for the Association to place reasonable restrictions upon overallotment options. Such restrictions assist in assuring that the size of an offering does not become distorted from that originally described to investors and help to achieve a more orderly distribution. Recognizing that price and volume volatility has changed dramatically since the adoption of the ten percent policy, it was concluded that greater flexibility in determining the size of an offering may be necessary for some offerings in the present market environment.

Giving effect to all of these considerations, it was concluded that the Association's policy on overallotment options should be revised and that overallotment options which do not exceed fifteen percent of the offering should be presumed to be reasonable. The Association anticipates, however, that the size of the overallotment option in any offering will be determined by negotiation between the issuer and underwriter, and that many offerings will be made with overallotment options of less than fifteen percent.

New Policy on Overallotment Options

Effective August 4, 1983, the Association's policy on overallotment options is changed and any arrangements for such an option in a registration statement filed after that date will be presumed to be fair and reasonable if the amount of the option does not exceed fifteen percent of the amount of securities being offered. The policy applies to any public offering, including an initial public offering, which is underwritten on a "firm commitment" basis and in which any NASD member participates.

The amount of an overallotment option is calculated by the Association as a percentage of the amount of securities being offered. Securities received as underwriting compensation and securities to be issued as part of the option are not included in calculating the option.

A copy of the text of the new provision, which will be added to the Interpretation, is attached.

* * * * *

Questions regarding this notice may be directed to Dennis C. Hensley, Harry E. Tutwiler or Daniel P. Weitzel of the Corporate Financing Department at (202) 728-8258.

Sincerely,

Gordon S. Macklin
President

OVERALLOTMENT OPTIONS

When proposed in connection with the distribution of a public offering of securities on a "firm commitment" basis, any option to be granted to an underwriter or related person for an overallotment of more than fifteen percent of the amount of securities being offered (computed excluding any securities offered pursuant to the option) shall be presumed to be unfair and unreasonable.

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

notice to members 83-45

August 17, 1983

TO: All NASD Members and Other Interested Persons

RE: Adoption of Amendments to Schedule E on Self-Underwriting

On June 2, 1983, the Securities and Exchange Commission ("SEC") approved amendments to Schedule E to Article IV, Section 2 of the Association's By-Laws ("Schedule E") which relates to the distribution of members' own securities and those of affiliates. The amendments became effective upon approval and are applicable to all offerings filed with the Association after June 2, 1983.

The amendments effect significant changes both with respect to offerings by members of their own securities and offerings by affiliates of members. The prior requirement that the the public offering price be established, in certain circumstances, at the price recommended by two independent underwriters with the participation of independent counsel has been amended to require only the recommendation of one qualified independent underwriter. Prior requirements for operating history and profitability of a broker/dealer proposing to participate in a distribution have been eliminated, although the requirement for five years investment banking or securities business experience by a majority of management has been retained.

With respect to requirements applicable to a broker/dealer issuing its own securities, regardless of whether it anticipates participating in the distribution, several liberalizing amendments were approved. Prior requirements regarding financial statements, transfer restrictions on securities of the member held by affiliates, specifications as to the size and duration of the offering, and limitation on the timing of any subsequent offering have been eliminated.

The text of Schedule E as amended, a copy of which is attached hereto, should be closely studied for a complete understanding of present requirements. Any questions concerning this notice or the applicability of Schedule E to any fact situation, may be directed to Dennis C. Hensley at (202) 728-8258.

Sincerely,

Gordon S. Macklin
President

SCHEDULE E

DISTRIBUTION OF SECURITIES OF MEMBERS AND AFFILIATES

Section 1 — General

No member or person associated with a member shall participate in the distribution of a public offering of securities issued or to be issued by the member or an affiliate of the member and no member shall issue securities except in accordance with this Schedule.

Section 2 — Definitions

For purposes of this Schedule, the following words shall have the stated meanings:

(a) Affiliate —

(1) a company which controls, is controlled by or is under common control with a member.

(2) For purposes of subsection 2(a)(1) hereof,

(i) a company will be presumed to control a member if the company beneficially owns 10 percent or more of the outstanding voting securities of a member which is a corporation, or beneficially owns a partnership interest in 10 percent or more of the distributable profits or losses of a member which is a partnership;

(ii) a member will be presumed to control a company if the member and persons associated with the member beneficially own 10 percent or more of the outstanding voting securities of a company which is a corporation, or beneficially own a partnership interest in 10 percent or more of the distributable profits or losses of a company which is a partnership;

(iii) a company will be presumed to be under common control with a member if:

(1) the same natural person or company controls both the member and company by beneficially owning 10 percent or more of the outstanding voting securities

of a member or company which is a corporation, or by beneficially owning a partnership interest in 10 percent or more of the distributable profits or losses of a member or company which is a partnership; or

(2) a person having the power to direct or cause the direction of the management or policies of the member or the company also has the power to direct or cause the direction of the management or policies of the other entity in question.

(3) The provisions of paragraphs (1) and (2) hereof notwithstanding, none of the following shall be presumed to be an affiliate of a member for purposes of this Schedule E:

(i) an investment company registered with the Securities and Exchange Commission pursuant to the Investment Company Act of 1940, as amended;

(ii) a "separate account" as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended;

(iii) a "real estate investment trust" as defined in Section 856 of the Internal Revenue Code;

(iv) a "direct participation program" as defined in Article III, Section 34 of the Rules of Fair Practice.

(b) Bona fide independent market—a market in a security which:

(1) is registered pursuant to the provisions of Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 or issued by a company subject to Section 15(d) of such Act, unless exempt from those provisions;

(2) has an aggregate trading volume for the 12 months immediately preceding the filing of the registration statement of at least 100,000 shares;

(3) has outstanding for the entire twelve-month period immediately preceding the filing of the registration statement, a minimum of 250,000 publicly held shares; and

(4) in the case of over-the-counter securities, has had at least three bona fide independent market makers for a period of at least 30 days immediately preceding the filing of the registration statement and the effective date of the offering.

(c) Bona fide independent market maker — a market maker which:

(1) continually maintains net capital as determined by Rule 15c3-1 of the General Rules and Regulations under the Securities Exchange Act of 1934 of $50,000 or $5,000 for each security in which it makes a market, whichever is less;

(2) regularly publishes bona fide competitive bid and offer quotations in a recognized interdealer quotation system;

(3) furnishes bona fide competitive bid and offer quotations to other brokers and dealers on request; and

(4) stands ready, willing and able to effect transactions in reasonable amounts, and at his quoted prices, with other brokers and dealers.

(d) Company — a corporation, a partnership, an association, a joint stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

(e) Effective date — the date on which an issue of securities first becomes legally eligible for distribution to the public.

(f) Immediate family — parents, mother-in-law, father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, children, or any relative to whom financial support is contributed directly or indirectly by an employee of, or person associated with, a member.

(g) Parent — any entity affiliated with a member from which member the entity derives 50 percent or more of its gross revenues or in which it employs 50 percent or more of its assets.

(h) Person — any natural person, partnership, corporation, association, or other legal entity.

(i) Public director — a person elected from the general public to the board of directors of a member or its parent which has made a public distribution of an issue of its own securities. Such person shall not beneficially own five percent or more of the outstanding voting securities of the member or its parent and

shall not be engaged in the investment banking or securities business or be an officer or employee of the member or its parent, or be a member of the immediate family of an employee occupying a managerial position with a member or its parent.

(j) Public offering — any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings and all other securities distributions of any kind whatsoever except any offering made pursuant to an exemption under Section 4(1) or 4(2) of the Securities Act of 1933.

(k) Qualified independent underwriter* — a member which:

(1) is actively engaged in the investment banking or securities business and which has been so engaged, in its present form or through predecessor broker/dealer entities, for at least five years immediately preceding the filing of the registration statement;

(2) in at least three of the five years immediately preceding the filing of the registration statement has had net income from operations of the broker/dealer entity or from the pro forma combined operations of predecessor broker/dealer entities, exclusive of extraordinary items, as computed in accordance with generally accepted accounting principles;

(3) as of the date of the filing of the registration statement and as of the effective date of the offering:

a. if a corporation, a majority of its board of directors or, if a partnership, a majority of its general partners, are persons who have been actively engaged in the investment banking or securities business for the five-year period immediately preceding the filing of the registration statement;

b. if a sole proprietorship, the proprietor has been actively engaged in the investment banking or securities business for the five-year period immediately preceding the filing of the registration statement;

* In the opinion of the National Association of Securities Dealers, Inc. and the Securities and Exchange Commission the full responsibilities and liabilities of an underwriter under the Securities Act of 1933 attach to a "qualified independent underwriter" performing the functions called for by the provisions of Section 3 hereof.

(4) has actively engaged in the underwriting of public offerings of securities for at least the five-year period immediately preceding the filing of the registration statement;

(5) is not an affiliate of the entity issuing securities pursuant to Section 3 of this Schedule; and

(6) has agreed in acting as a qualified independent underwriter to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act of 1933, specifically including those inherent in Section 11 thereof.

(l) Registration statement — a registration statement as defined by Section 2(8) of the Securities Act of 1933; notification on Form 1A filed with the Securities and Exchange Commission pursuant to the provisions of Rule 255 of the General Rules and Regulations under the Securities Act of 1933; or any other document, by whatever name known, initiating a registration or similar process for an issue of securities which is required to be filed by the laws or regulations of any federal or state agency.

(m) Settlement — the distribution of the net proceeds from an offering to the issuer or selling stockholders.

Section 3 — Participation in Distribution of Securities of Member or Affiliate

(a) No member shall underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of an issue of debt or equity securities issued or to be issued by the member or an affiliate of the member unless the member is in compliance with subsection 3(b) and either subsection 3(c) or 3(d) below, depending on the nature of the member's participation.

(b) In the case of a member which is a corporation, the majority of the board of directors, or in the case of a member which is a partnership, a majority of the general partners or, in the case of a member which is a sole proprietorship, the proprietor as of the date of the filing of the registration statement and as of the effective date of the offering shall have been actively engaged in the investment banking or securities business for the five year period immediately preceding the filing of the registration statement.

(c) If a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of debt or equity securities subject to this Section without limitation as to the amount of securities to be distributed by the member, one or more of the following three criteria shall be met:

(1) the price at which an equity issue or the yield at which a debt issue is to be distributed to the public is established

at a price no higher or yield no lower than that recommended by a qualified independent underwriter which shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and which shall exercise the usual standards of "due diligence" in respect thereto; provided, however, that an offering of securities by a member which has not been actively engaged in the investment banking or securities business, in its present form or as a predecessor broker/ dealer, for at least the five years immediately preceding the filing of the registration statement shall be managed by a qualified independent underwriter; or

(2) the offering is of a class of equity securities for which a bona fide independent market exists as of the date of the filing of the registration statement and as of the effective date thereof; or

(3) the offering is of a class of securities rated Baa or better by Moody's rating service or BBB or better by Standard & Poor's rating service or rated in a comparable category by another rating service acceptable to the Association.

(d) A member may participate as a member of the underwriting syndicate or selling group in the distribution of a public offering of debt or equity securities subject to this Section without regard to the requirements of subsection (c), if the member restricts its participation to an amount not exceeding ten percent of the total dollar amount of the offering and the offering is underwritten on a firm commitment basis and managed by a qualified independent underwriter.

Section 4 — Escrow of Proceeds

(a) All proceeds from an offering by a member of its securities shall be placed in a duly established escrow account and shall not be released therefrom or used by a member in any manner until the member has complied with Section 5 hereof.

(b) Any member offering its securities pursuant to this Schedule shall disclose in the registration statement offering circular, or similar document a date by which the offering is reasonably expected to be completed and the terms upon which the proceeds will be released from the escrow account described in subsection (a) hereof.

Section 5 — Net Capital Computation

Any member offering its securities pursuant to this Schedule shall immediately notify the Corporation when the offering has been terminated and settlement effected and it shall file with the Corporation a computation of its net capital computed pursuant to the provisions of Rule 15c3-1 of the General Rules

and Regulations under the Securities Exchange Act of 1934 (the net capital rule) as of the settlement date. If at such time its net capital ratio as so computed is more than 10:1 or, net capital fails to equal 120 percent of the minimum dollar amount required by Rule 15c3-1 or, in the event the provisions of Rule 15c3-1(f) are utilized in making such computation, the net capital is less than seven percent of aggregate debit items as computed in accordance with Rule 15c3-3a, all monies received from sales of securities of the offering must be returned in full to the purchasers thereof and the offering withdrawn, unless the member has obtained from the Securities and Exchange Commission a specific exemption from the net capital rule. Proceeds from the sales of securities in the offering may be taken into consideration in computing net capital ratio for purposes of this section.

Section 6 - Audit Committees

Any member or parent of a member which makes a public offering of an issue of its securities shall be required to establish within twelve months of the effective date of said offering an audit committee composed of members of the board of directors (except that it shall not include the chief accounting or chief financial officer of the member or its parent) and the functions of the audit committee shall include the following:

(a) to review the scope of the audit;

(b) to review with the independent auditors the corporate accounting practices and policies and recommend to whom reports should be submitted within the company;

(c) to review with the independent auditors their final report;

(d) to review with internal and independent auditors overall accounting and financial controls; and

(e) to be available to the independent auditors during the year for consultation purposes.

Section 7 - Public Director

Any member or parent of a member which makes a public offering of an issue of its securities shall cause to be elected to its board of directors within twelve months of the effective date of said offering a public director who shall serve as a member of the audit committee.

Section 8 — Periodic Reports

Any member which makes a distribution to the public of an issue of its securities pursuant to this Schedule, shall send to each of its shareholders or, in the case of debt offerings, to each of its investors:

(1) quarterly, a summary statement of its operations; and

(2) annually, independently audited and certified financial statements.

Section 9 - Offerings Resulting in Affiliation or Public Ownership of Member

If an issuer proposes to direct all or part of the proceeds from a public offering to a member or exchange securities by means of a public offering for an interest in a member, and the member is, or as a result of the proposed transaction would be, an affiliate of the issuer, or if an issuer proposes to engage in any offering which results in the public ownership of a member, the offering shall be subject to the provisions of this Schedule E to the same extent as if the offering were of securities issued by the member.

Section 10 - Registration Statements for Intrastate Offerings

Any member offering its securities pursuant to an exemption under Section 3(a)(11) of the Securities Act of 1933 shall disclose in the registration statement at a minimum that information suggested by the Securities and Exchange Commission in Securities Act Release No. 5222 (January 3, 1972).

Section 11 — Suitability

Every member underwriting an issue of its securities, or securities of an affiliate, pursuant to the provisions of Section 3 hereof, who recommends to a customer the purchase of a security of such an issue shall have reasonable grounds to believe that the recommendation is suitable for such customer on the basis of information furnished by such customer concerning the customer's investment objectives, financial situation, and needs, and any other information known by such member. In connection with all such determinations, the member must maintain in its files the basis for its determination.

Section 12 - Discretionary Accounts

Notwithstanding the provisions of Article III, Section 15 of the Corporation's Rules of Fair Practice, or any other provisions of law, a transaction in securities issued by a member or an affiliate of a member shall not be executed by any member in a discretionary account without the prior specific written approval of the customer.

Section 13 — Sales to Employees — No Limitations

Notwithstanding the provisions of the Board of Governors' Interpretation With Respect To "Free-Riding And Withholding," a member may sell securities issued by a member or an affiliate of a member to its employees; potential employees resulting from intended mergers, acquisitions, or other business combination of members resulting in one public successor corporation, or persons associated with it; and the immediate family of such employees or associated persons without limitation as to amount and regardless of whether such persons have an investment history with the member as required by that Interpretation.

Section 14 — Filing Requirements; Coordination with Corporate Financing Interpretation

(a) Notwithstanding the provisions of the "Interpretation of the Board of Governors — Review Of Corporate Financing" relating to factors to be taken into consideration in determining underwriter's compensation, the value of securities of a new corporate member succeeding to a previously established partnership or sole proprietorship member acquired by such member or person associated therewith, or created as a result of such reorganization, shall not be taken into consideration in determining such compensation.

(b) All offerings of securities included within the scope of this Schedule shall be subject to the provisions of the "Interpretation of the Board of Governors — Review Of Corporate Financing", and documents and filing fees relating to such offerings shall be filed with the Corporation pursuant to the provisions of that Interpretation. The responsibility for filing the required documents and fees shall be that of the member issuing securities, or, in the case of an issue of an affiliate, the managing underwriter or, if there is none, the member affiliated with the issuer.

Section 15 — Predominance of Schedule E

If the provisions of this Schedule E are inconsistent with any other provisions of the Corporation's By-Laws, Rules of Fair Practice or Uniform Practice Code, or of any interpretation thereof or resolution of the Board of Governors, the provisions of this Schedule shall prevail.

Section 16 — Requests for Exemption from Schedule E

The Corporate Financing Committee of the Board of Governors, upon written request, may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member unconditionally or on specified terms from any or all of the provisions of Schedule E which it deems appropriate. Unless waived by the party requesting an exemption, a hearing shall be held upon a request before the Corporate Financing Committee, or a Subcommitttee thereof designated for that purpose.

Section 17 — Violation of Schedule E

A violation of the provisions of this Schedule shall constitute conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and a violation of Article III, Section 1 of the Corporation's Rules of Fair Practice and possibly other sections, especially Sections 2 and 18, as the circumstances of the case may indicate.

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

notice to members 83-46

August 17, 1983

TO: All NASD Members and Municipal Securities Bank Dealers

ATTN: All Operations Personnel

RE: Labor Day: Trade Date-Settlement Date Schedule

Securities markets and the NASDAQ System will be closed on Monday, September 5, 1983, in observance of Labor Day. "Regular-Way" transactions made on the business days immediately preceding that day will be subject to the following schedule.

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

Trade Date		Settlement Date		*Regulation T Date	
August	29	September	6	September	8
	30		7		9
	31		8		12
September	1		9		13
	2		12		14
	6		13		15

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 the application of these settlement dates to a particular situation may be directed to the Uniform Practice Department of the NASD at (212) 839-6257.

---

* Pursuant to Section 4(c)(2) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a purchase transaction in a cash account if full payment is not received within seven (7) business days of the date of purchase or, pursuant to Section 4(c)(6), make application to extend the time period specified. The date members must take such action is shown in the column entitled "Regulation T Date."

NASD
National Association of Securities Dealers, Inc.
1735 K St., N.W. • Washington, D.C. 20006 • (202) 728-8000
notice to members 83-47

August 18, 1983

IMPORTANT

MAIL VOTE

Officers * Partners * Proprietors

TO: All NASD Members

RE: Proposed New Rule of Fair Practice to Regulate the Activities of Members Experiencing Financial and/or Operational Difficulties

Last Voting Date Is September 19, 1983

Enclosed herewith is a proposed new rule under Article III of the Rules of Fair Practice. Proposed Section 38 was approved by the Association's Board of Governors and now requires the approval of the membership. If approved, it must then be filed with, and approved by, the Securities and Exchange Commission. As discussed below, the proposed rule was published for member comment on August 19, 1982 (Notice to Members 82-45).

BACKGROUND AND EXPLANATION OF THE PROPOSED RULE

The proposed rule provides the Association with authority to prescribe certain remedial courses of action which a member must follow during periods when the member is experiencing financial or operational difficulty. The rule is intended to address such problems in a timely fashion to protect the member, the investing public and other members.

As proposed, the rule addresses two levels of possible financial and/or operational difficulties. First, it restricts a member from expanding its business whenever certain early warning financial criteria relating to minimum net capital, ratio requirements and/or scheduled capital withdrawals are exceeded. Secondly, it covers a deteriorating situation in which another set of warning criteria with lower tolerances are exceeded. In such situations, the proposed rule requires a member to reduce or eliminate certain facets of its business.

In conjunction with adoption of the proposed rule, the Board has also adopted amendments to the Association's Code of Procedure to provide a special procedure to implement the provisions of the rule. Specifically, the procedures provide for the creation of a special Surveillance Committee of the Board and a special District Surveillance Committee to direct the implementation of the rule. The procedures also provide the member with an opportunity for an impartial hearing, an independent review by the Board of Governors and appeal to the Securities and Exchange Commission.

Additionally, the procedures permit a District Surveillance Committee to issue additional or supplemental notices to members whenever the Committee finds that the problems which gave rise to previous limitations are continuing or becoming more pronounced. Appropriate hearing procedures are also provided in such cases. Another provision specifies that action taken by the Association pursuant to the proposed rule would not preclude a District Committee from taking formal complaint action for violation of the Rules of Fair Practice.

Finally, the proposed rule is accompanied by an Explanation of the Board of Governors. The Explanation includes examples of conditions that might cause the Association to determine that a member is in or approaching financial and/or operational difficulties. Also included are examples of the types of remedial actions that might be selected to correct the problems. This list of possible problem situations and possible remedial actions is not intended to be, and is not, all inclusive. Rather, the list and the Explanation in general is intended to facilitate members' understanding of how the proposed rule would be administered and implemented by citing hypothetical problems and corrective actions as examples.

COMMENTS RECEIVED

The Association received 15 comment letters on the proposed rule. Each letter was reviewed by the Association's Capital and Margin Committee and the full Board of Governors. The general concerns expressed in these letters and the Board's decisions regarding such are described below. General headings are used since similar points are made in more than one letter.

Applicability of the Rule — In response to the comments, the Board agreed that as to dual members (i.e., firms which are members of two or more self-regulatory organizations), the proposed rule would be limited solely to those members which have been designated to the NASD by the Securities and Exchange Commission pursuant to Rule 17d-1 (the regulatory allocation rule for financial responsibility).

The question of whether the rule should include introducing firms as well as firms carrying customer accounts was also addressed by the Board. It noted that certain introducing firms, particularly those engaged in market making activities or those which hold positions for their own accounts, could potentially pose some risk and exposure as a result of such activities. However, it observed that those firms which introduced strictly agency business, the so-called "$5,000" firms under the net capital rule, posed no such problems. The Committee therefore concluded that the rule should only be applicable to firms required to maintain $25,000 in capital in accordance with the applicable provisions of the net capital rule irrespective of whether such firms carry customer accounts.

Rule Was Too Vague And/Or Placed Too Much Power With the Association's Staff — A number of commentators stated that because of the vagueness of Subsections (b)(2) and (c)(2) of the proposed rule, too much discretion would be left with the Association staff in interpreting these provisions.

It should be emphasized that under the rule, the staff's function is simply to obtain the necessary facts and make recommendations to the District Surveillance Committee. It has no decision-making authority as to implementation of the rule in any case. It would be the responsibility of the District Surveillance Committee, not the staff, to determine whether the provisions of the rule should be implemented. The proposed rule authorizes the District Surveillance Committee, not the staff, to prescribe the limitations by which the member would be obligated to abide.

Additionally, the procedure adopted by the Board makes available to a member ample opportunity for appeal of the District Surveillance Committee's decision to the Board of Governors and thereafter to the Securities and Exchange Commission.

The Committee therefore concluded that no changes should be made to the proposed rule based on these comments.

The Proposed Rule Imposes More Restrictive Criteria Than Rule 17a-11, the SEC's "Early Warning" Rule — Several commentators noted that SEC Rule 17a-11 already provided an "early warning" measure with respect to broker-dealers and that the early warning threshold was set at 120%, significantly less than the 150% prescribed in the proposed rule. In response, the Board noted that the purpose of the proposed rule differs from the Commission's rule in that the proposed rule is designed to have a remedial effect on a member. In other words, the rule's approach is to put the Association on notice well before a firm reaches the more "critical" stage of 17a-11 reporting in order that corrective measures may be taken early enough to ensure the continuing viability of the firm. In the Board's opinion, sufficient lead time is necessary in order to address a firm's difficulties before they become irreversible.

The Board therefore determined that the early warning financial criteria as contained in the proposed rule were appropriate and should be retained.

Examples Cited in the "Explanation of the Board of Governors" — Commentators also noted that some situations and remedies specified in the companion explanation to the rule were too narrow in scope, unduly harsh, or not truly indicative in some cases of a firm's true financial health.

The Board emphasizes that the instances cited in the "Explanation" are merely examples of problems and suggested remedies and are not intended to be "automatic" in their application. The language of the rule and the accompanying Explanation make it sufficiently clear that these situations are provided as further explanation and were simply illustrative of situations and corrective actions which could be imposed depending on the circumstances.

The Board therefore determined not to alter the "Explanation of the Board of Governors" as a result of these comments.

Other Areas — One letter noted that the proposed rule did not speak to how and when any restrictions imposed by the rule would be lifted. The Board agreed and revised the procedure to vest responsibility for lifting the imposed restrictions in the District Surveillance Committee. Thus, restrictions once imposed would remain in effect until lifted or modified by the District Surveillance Committee.

Another commentator suggested that the procedure be changed to provide that a hearing on an order issued by the District Surveillance Committee be requested within five (5) business days of the receipt of the notice rather than three (3) business days after the issuance of the notice.

The Board noted that, in most instances, these notices would be hand-delivered to the member and therefore agreed that receipt of notice would not be difficult to document. The Board therefore determined to amend the procedure retaining the specified time frames but changing the starting point from "issuance" to "receipt of." A request for a hearing would, therefore, have to be made within three business days of receipt of the notice.

* * *

The text of the proposed rule and the Explanation of the Board of Governors is attached and merits your immediate attention. Also attached are amendments to the Code of Procedure which do not require a membership vote and are included for informational purposes. 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 September 19, 1983.

The Board of Governors believes the proposed rule is necessary and appropriate and recommends that members vote their approval.

Questions concerning this notice may be directed to James M. Cangiano at (202) 728-8273, or your District Director.

Sincerely,

Gordon S. Macklin
President

Enclosures

PROPOSED RULE OF FAIR PRACTICE

Proposed Article III, Section 38
of the Rules of Fair Practice

(a) Application - For the purposes of this rule, the term "member" shall be limited to any member of the Association who is not designated to another self-regulatory organization by the Securities and Exchange Commission for financial responsibility pursuant to Section 17 of the Securites Exchange Act of 1934 and Rule 17d-1 thereunder. Further, the term shall not be applicable to any member who is subject to paragraphs (a)(2) and (a)(3) of SEC Rule 15c3-1, or is otherwise exempt from the provisions of said rule.

(b) A member, when so directed by the Association, shall not expand its business during any period in which:

(1) Any of the following conditions continue to exist, or have existed, for more than 15 consecutive business days:

(A) A firm's net capital is less than 150 percent of its net capital minimum requirement or such greater percentage thereof as may from time to time be prescribed by the Association;

(B) If subject to the aggregate indebtedness requirement under SEC Rule 15c3-1, a firm's aggregate indebtedness is more than 1,000 per centum of its net capital;

(C) If, in lieu of subparagraph (b)(1)(B) above, the specified percentage of the aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers under SEC Rule 15c3-3 (the alternative net capital requirement) is applicable, a firm's net capital is less than 5 percent of the aggregate debit items thereunder; or,

(D) The deduction of capital withdrawals including maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in (A), (B) or (C) of this subparagraph (1).

(2) The Association restricts the member for any other financial or operational reason.

(c) A member, when so directed by the Association, shall forthwith reduce its business:

(1) To a point enabling its available capital to comply with the standards set forth in subparagraphs (b)(1)(A), (B) or (C) of this rule if any of the

following conditions continue to exist, or have existed, for more than fifteen (15) consecutive business days:

(A) A firm's net capital is less than 125 percent of its net capital minimum requirement or such greater percentage thereof as may from time to time be prescribed by the Association;

(B) If subject to the aggregate indebtedness requirement under SEC Rule 15c3-1, a firm's aggregate indebtedness is more than 1,200 per centum of its net capital;

(C) If, in lieu of subparagraph (c)(1)(B) above, the specified percentage of the aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers, under SEC Rule 15c3-3 (the alternative net capital requirement) is applicable, a firm's net capital is less than 4 percent of the aggregate debit items thereunder; or,

(D) If the deduction of capital withdrawals including maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in subparagraph (c)(1)(A), (B) or (C) of this rule.

(2) As required by the Association when it restricts a member for any other financial or operational reason.

* * * * * * *

EXPLANATION OF THE BOARD OF GOVERNORS

Restrictions On A Member's Activity

This explanation outlines and discusses some of the financial and operational deficiencies which could initiate action under the rule. Subparagraphs (b)(2) and (c)(2) of the rule recognizes that there are various unstated financial and operational reasons for which the Association may impose restrictions on a member so as to prohibit its expansion or require a reduction in overall level of business. These provisions are deemed necessary in order to provide for the variety of situations and practices which do arise and, which if allowed to persist, could result in increased exposure to customers and to broker-dealers.

In the opinion of the Board of Governors, it would be impractical and unwise to attempt to identify and list all of the situations and practices which might lead to the imposition of restrictions or the types of remedial actions the Corporation may direct be taken because they are numerous and cannot be totally identified or specified with any degree of precision. The Board believes, however, that it would be helpful to members' understanding to list some of the other bases upon which the Corporation may conclude that a member is in or approaching financial difficulty.

Explanation

(a) For purposes of subparagraphs (b)(2) and (c)(2) of the rule, a member may be considered to be in or approaching financial or operational difficulty in conducting its operations and therefore subject to restrictions if it is determined by the Corporation that any of the parameters specified therein are exceeded or one or more of the following conditions exist:

(1) The member has experienced a reduction in excess net capital of 25% in the preceding two months or 30% or more in the three-month period immediately preceding such computation.

(2) The member has experienced a substantial change in the manner in which it processes its business which, in the view of the Corporation, increases the potential risk of loss to customers and members.

(3) The member's books and records are not maintained in accordance with the provisions of SEC Rules 17a-3 and 17a-4.

(4) The member is not in compliance, or is unable to demonstrate compliance, with applicable net capital requirements.

(5) The member is not in compliance, or is unable to demonstrate compliance, with SEC Rule 15c3-3 (Customer Protection Reserves and Custody of Securities).

(6) The member is unable to clear and settle transactions promptly.

(7) The member's overall business operations are in such a condition, given the nature and kind of its business that, notwithstanding the absence of any of the conditions enumerated in subparagraphs (1) through (5), a determination of financial or operational difficulty should be made, or

(8) The member is registered as a Futures Commission Merchant and its net capital is less than 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder.

(b) If the Corporation determines that any of the conditions specified in subparagraph (a) of this Explanation exist, it may require that the member take appropriate action by effecting one or more of the following actions until such time as the Corporation determines they are no longer required:

(1) Promptly pay all free credit balances to customers.

(2) Promptly effect delivery to customers of all fully-paid securities in the member's possession or control.

(3) Introduce all or a portion of its business to another member on a fully-disclosed basis.

(4) Reduce the size or modify the composition of its inventory.

(5) Postpone the opening of new branch offfices or require the closing of one or more existing branch offices.

(6) Promptly cease making unsecured loans, advances or other similar receivables, and, as necessary, collect all such loans, advances or receivables where practicable.

(7) Accept no new customer accounts.

(8) Undertake an immediate audit by an independent public accountant at the member's expense.

(9) Restrict the payment of salaries or other sums to partners, officers, directors, shareholders, or associated persons of the member.

(10) Effect liquidating transactions only.

(11) Accept unsolicited customer orders only.

(12) File special financial and operating reports and/or

(13) Be subject to such other restrictions or take such other action as the Corporation deems appropriate under the circumstances in the public interest and for the protection of members.

* * * * * * *

AMENDMENTS TO CODE OF PROCEDURE FOR HANDLING TRADE PRACTICE COMPLAINTS

Limitation Procedures Under Article III, Section 38 of the Rules of Fair Practice

Board of Governors Surveillance Committee

(1) The Board of Governors shall appoint a standing Committee of the Board to be known as the Board of Governors Surveillance Committee which is composed of such members as are from time to time determined by the Board.

District Surveillance Committee

(2) As required to implement the provisions of this rule, each District Committee shall create a District Surveillance Committee composed of two current or former District Business Conduct Committee members; two members of the Board of Governors Surveillance Committee, and one former member of the Board of Governors.

Written Notification

(3) If the District Surveillance Committee has reason to believe that a member has not complied with any of the conditions contained in subsections (b) or (c) of Section 38, it may exercise the authority conferred by Section 38 by issuing a notice directing the member to limit its business. Such notice shall contain a statement of the specific grounds on which such action is being taken, specify in reasonable detail the nature of the limitations being imposed and inform the member that he has an opportunity to be heard, if such request is made within three business days of receipt of the notice. The District Surveillance Committee shall also provide a similar notice in writing to a member of any revision or modification of restrictions or limitations previously imposed.

Hearing

(4) If an opportunity to be heard is requested, it shall be provided by the District Surveillance Committee within five business days of the receipt of the notice. A member requesting the opportunity to be heard shall present its reasons why the notice should be withdrawn or modified and shall be entitled to be represented by counsel. A record shall be kept of the proceeding before the District Surveillance Committee.

Decision and Effective Date

(5) (A) The District Surveillance Committee shall within five business days of a hearing issue a written decision approving or modifying the limitations specified in the notice. The decision shall also provide for an appropriate sanction to be immediately imposed for failure to comply with any limitations imposed.

(B) When an opportunity to be heard is not requested, the limitations contained in the notice shall become effective three days following receipt of the notice without any written decision unless the District Surveillance Committee decides upon a later effective date or unless the matter is reviewed by the Board of Governors, subject to the provisions of subsections (6), (7), and (8) hereof, and they shall remain in effect until such time as they are removed, revised or modified by the District Surveillance Committee.

Review by Board

(6) The written decision issued pursuant to subsection (5) shall be subject to review by the Board of Governors upon application by the member aggrieved thereby filed within five business days of the date of the decision. The decision, or the notice where no opportunity to be heard was requested before the District Surveillance Committee, shall also be subject to review by the Board of Governors on its own motion within 30 calendar days of the decision or notice. Where two members of the District Surveillance Committee disagree with the determination of the Committee, the matter will automatically be reviewed by the Board of Governors. In the case of an appeal, the member shall be given an opportunity to be heard before a subcommittee of the Board within 10 business days of the written decision. If called for review, the matter shall be heard within 30 days of such action In any hearing before the Board, a member shall be entitled to be represented by counsel. The institution of review, whether by application or on the initiative of the Board, shall operate as a stay of the action by the District Surveillance Committee unless otherwise ordered by the Board.

Composition of Board of Governors Hearing Subcommittee

(7) The Board of Governors' hearing subcommittee shall be composed of two members of the Board of Governors' Surveillance Committee and one current member of the Board.

Decision

(8) Upon consideration of the record, the Board of Governors shall in writing affirm, modify, reverse or dismiss the decision of the District Surveillance Committee or remand the matter for further proceedings consistent with its instructions. The Board shall set forth specific grounds upon which its determination is based and shall provide for an appropriate sanction to be immediately imposed for failure to comply with any limitations imposed. If a hearing is held, a decision shall issue within five business days of the hearing and the decision shall be the final action of the Board. If no hearing is requested, the matter shall be considered on the record and a decision shall be issued promptly. Any limitation imposed as a result of Board action shall become effective immediately upon issuance of its decision and shall remain in effect until such time as removed or modified by the District Surveillance Committee.

Application to Commission for Review

(9) In any case where a member feels aggrieved by any action taken or approved by the Board of Governors, such member may make application for review to the Securities and Exchange Commission in accordance with Section 19 of the Securities Exchange Act of 1934, as amended. There shall be no stay of the Board's action upon appeal to the Commission unless the Commission determines otherwise.

Successive Notices

(10) If it appears at any time to the District Surveillance Committee that, notwithstanding an effective notice or decision under subsections (3), (5) and (8) hereof, the member is still approaching financial or operational difficulty, the District Surveillance Committee may prescribe additional limitations of a member's business in which case all of the procedures specified above shall be followed prior to the implementation thereof.

Complaint by District Committee

(11) Action by the Corporation under this Article is not intended to foreclose complaint action by the District Business Conduct Committee under the Code of Procedure for Handling Trade Practice Complaints where a violation of the Rules of Fair Practice may be involved.

* * * * * * *

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

notice to members 83-48

August 22, 1983

TO: All NASD Members

RE: Proposed New Rule of Fair Practice Relating To Permission For Members to Carry Customer Accounts

The Association's Board of Governors is publishing for comment a proposed new Rule of Fair Practice relating to permission for members to carry customer accounts. Interested persons are advised that comments must be received by the Association by September 22, 1983, in order to receive consideration. After the comment period has closed, the proposal will again be reviewed by the Board of Governors. Thereafter, the proposed rule will be submitted to the membership for vote. Upon completion of such, if approved, the proposal will be submitted to the Securities and Exchange Commission for approval.

BACKGROUND OF PROPOSED RULE

In January 1982, the Board of Governors authorized the Capital and Margin Committee (the "Committee") to proceed with the development of a rule, or rules, which would provide the Association with additional regulatory tools to evaluate the financial and operational condition of members. One recommendation which emerged from the Committee's deliberations is the proposed new Rule of Fair Practice regarding permission for members to carry customer accounts.

The proposed rule requires that an existing member obtain the Association's prior approval before it begins carrying customer accounts. At the present time, a member is not required to obtain such approval. As long as a member has the minimum amount of net capital prescribed by SEC Rule 15c3-1, (the "Net Capital Rule") and an appropriately qualified financial and operations principal, it may begin carrying customer accounts at any time without prior notification. In the Committee's opinion, these are very minimal requirements given the significance a change of operations from non-clearing to clearing presents with respect to a member's financial and operational viability. Such a change also presents potential risks to customers, particularly in times of heavy volume. The current requirements do not provide a means whereby the Association can evaluate, in advance, a firm's capacity, in terms of facilities and trained personnel, to process and clear its own transactions; nor do they provide the means to evaluate management's understanding of and ability to comply with applicable rules designed to safeguard customers' property.

In light of the foregoing considerations, the Committee determined that it is necessary for the Association to ensure that a member has the proper mechanisms in place prior to carrying customer accounts. The proposed rule is designed to provide the Association with that mechanism. Upon its review of this matter, the Board of Governors determined that this proposal should be circulated to the membership for comment.

DISCUSSION OF THE PROPOSAL

The proposed rule prohibits a member from carrying customer accounts, i.e., holding customer funds and/or securities, without having obtained the written approval of the Association prior to commencing this activity. The request for such approval must be submitted to the appropriate District Director of the District in which the main office of the member is located. The member is required to describe in detail the reasons why it has decided to carry customer accounts and the procedures it has established to supervise this activity. In turn, the proposed rule requires the District Director to advise the member, in writing, of a decision within five business days of the receipt of the member's request.

The proposed rule specifies several conditions which will be considered by a District Director in making a determination as to the approval or disapproval of a proposed arrangement. Such considerations include, but are not limited to, the following:

- the type of business conducted by the member;
- the training, experience and qualifications of the member and its associated persons;
- the member's procedures for safeguarding customer funds and securities;
- the member's overall financial and operational condition; and,
- any other relevant information under the circumstances.

If permission to carry customer accounts is denied by the District Director, the rule provides that a member may appeal to the District Committee and thereafter to the Board of Governors.

* * *

All comments pertaining to the proposal should be in writing and sent to S. William Broka, Secretary, National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C. 20006, and be received on or before September 22, 1983, in order to receive consideration. Questions concerning the proposal may be directed to James M. Cangiano, Assistant Director, Department of Policy Research, at (202) 728-8273.

Sincerely,

Frank J. Wilson
Executive Vice President
Legal and Compliance

Enclosure

PROPOSED RULE OF FAIR PRACTICE

Article III, Section ___

a. No member shall commence carrying customer accounts, i.e., the holding of customers' funds and/or securities, without first having obtained the written approval of the Association. Application for such approval may be made by filing a request to carry customer accounts with the Director of the District within whose jurisdiction the member's principal place of business is located. Such notice shall be in writing and shall detail the reasons which precipitated the member's decision to carry customer accounts and the methods the member has established to manage such activity. Within five (5) business days of the receipt of the application, the District Director shall inform the member, in writing, of his decision to approve or deny the request.

b. In making the determination as to whether to approve the application required in subsection (a) above, the District Director shall take into account relevant matters including the type of business done and securities sold, the training, experience and qualifications of persons associated with the member, the member's procedures for the safeguarding of customer funds and securities, its overall financial and operational condition and any other information deemed relevant in the particular circumstances.

c. Whenever permission to carry customer accounts is denied by the District Director, the member may petition the District Committee for review of such decision and thereafter the Board of Governors. Review before the District Committee and/or the Board of Governors shall be on the record unless the District Committee and/or Board of Governors determines that a personal appearance is necessary.

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

notice to members 83-49

September 7, 1983

TO: All NASD Members and Other Interested Persons
Attention: Direct Participation Program Department

RE: Request for Comments on Proposed Amendment to Appendix F Concerning Associate General Partners of Direct Participation Programs

The Association is requesting comments on a proposed amendment to Appendix F to Article III, Section 34 of the Rules of Fair Practice ("Appendix F"). Appendix F relates primarily to public offerings of direct participation programs, most of which are limited partnerships. The amendment would clarify the status under Appendix F of certain broker/dealer affiliates when those affiliates receive ongoing compensation as an associate or co-general partner of a public program distributed by the broker/dealer.

The background and terms of the proposed amendment are discussed below.

Background

The Direct Participation Programs Committee ("Committee") of the Association's Board of Governors has become concerned about an evolving practice whereby subsidiaries or other affiliates of member firms seek to obtain continuing compensation in the form of general partner compensation under circumstances in which that compensation is apparently received as a reward for the distribution of a public direct participation program.

Historically, most direct participation programs were sponsored and managed by organizations with an operating history in the area of program activity, e.g. real estate, oil and gas, and without a direct affiliation with traditional broker/dealers. While the Association has never prohibited members from creating or acquiring bona fide operating sponsors, most programs continue to be managed by traditional, unaffiliated sponsors. Recently, however, an increasing number of programs have been structured with affiliates of traditional broker/dealers acting as associate or co-general partners with programs' operating general partners. These associate general partners typically receive substantial amounts of

compensation during the life of the program. The Committee is concerned that the associate general partner structure is being used in some cases to enable broker/dealers to receive otherwise impermissible forms and amounts of underwriting compensation disguised as general partner compensation. Typical arrangements and their status under existing rules are described below.

Fact Pattern

In a typical arrangement, the broker/dealer which will distribute a new program's units forms a subsidiary (or sister subsidiary under a common holding company) which joins the traditional operating general partner as an associate general partner. The associate general partner can contribute minimal capital because the operating general partner's capital is used to satisfy state securities and tax law requirements. The associate general partner can negotiate to receive any proportion of general partner compensation, however, and that compensation typically is a percentage of program revenues and dissolution proceeds, payable throughout the life of the program.

The associate general partner may not be required to perform any functions in return for its compensation or may perform functions such as investor relations work which are usually performed by broker/dealers. The associate general partner is often able to negotiate both its compensation and functions from a strong position because of its affiliation with the broker/dealer which raises proceeds for the program.

Application of Present Rule

Pursuant to Section 5(b)(1) of Appendix F, the Association presumes underwriting compensation to be unfair and unreasonable if

> the total amount of all items of compensation from whatever source payable to underwriters, broker/dealers, or affiliates thereof ... in connection with ... the distribution of the public offering ...

exceeds 10 percent of offering proceeds (plus 0.5 percent for reimbursed due diligence expenses). (Emphasis added.) Section 5(b)(5) of Appendix F contains a presumption against

> compensation of an indeterminate nature ... paid to members or persons associated with members for sales of program units, or for services of any kind rendered in connection with ... the distribution ....*

---

* The NASD Board of Governors recently approved an amendment to Section 5(b)(5) which will permit continuing compensation to be received under certain circumstances. Among other things, such compensation will only be permitted if cash distribution is less than that normally permitted and the continuing compensation is limited in percentage amount. That amendment must be approved by the Securities and Exchange Commission before it becomes effecive. If the amendment were effective, associate general partner compensation received in connection with the offering would be permitted only if all of the amendment's restrictions were satisfied.

Fees, such as associate general partner compensation fees, which take the form of participation in program revenues and dissolution profits virtually always are subject to both Subsection 5(b)(1) and (5) if the fees are received "in connection with" the sales effort for a public offering. General partner compensation received for bona fide functions and not "in connection with" a public offering is generally not regulated by the Association.

The critical question under Appendix F in each case of an associate general partner arrangement, therefore, is whether the compensation is received in connection with the public offering. Section 5(d) of Appendix F contains four factors which determine whether compensation is connected to an offering. That section states that

> [t]he determination of whether compensation paid to underwriters, broker/dealers, or affiliates thereof is in connection with or related to a public offering ... shall be made on the basis of such factors as the timing of the transaction, the consideration rendered, the investment risk, and the role of the member in the organization, management and direction of the enterprise in which the sponsor is involved. Emphasis added.

The NASD Corporate Financing Department ("Department") applies these factors in deciding whether a connection exists.

The last two factors — risk and the role in management — usually receive the greatest attention when there is a question as to whether a connection exists between an associate general partner arrangement and the sales effort for the offering. The risk factor can be viewed as being two separate factors. First is the risk that any consideration paid or contribution to the program will be lost if the program does poorly. The amounts committed in these capacities are usually small, minimizing risks and suggesting that these are compensation arrangements.

The second aspect of risk in associate general partner structures is the risk of assuming unlimited liability as a general partner, and, therefore, the risk to the capital of the associate general partner. In reviewing offerings, the Department seeks to determine whether associate general partners are bearing full general partner liability. In some cases, agreements have been found indemnifying the associate general partner against any loss. In other cases, there may be full general partner liability but it is borne by a newly-created corporation which has been capitalized with minimal funds.

The final factor — role in management — is viewed as a means of determining whether an associate general partner is performing a bona fide function in return for the compensation to be received or whether the compensation is further payment for the sales effort. As a result of the difficulty in weighing this factor, the Department seeks substantial detail on the anticipated role of a proposed associate general partner, the relevant expertise and experience of its employees, and the need which it is going to fill. Partnership and other agreements are studied to determine whether the associate general partner is legally obligated to perform any service or provide any specific number of man-hours or any facilities. In some cases, personnel of the associate general partners are permitted but not required to attend meetings of the operating general partner's decision-

making body. In other cases, such persons are required to attend meetings or provide services if requested by the operating general partner, but there is no indication that the general partner will ever need or want to call on the associate general partner.

After weighing all four factors, the Department concludes whether there is a connection between the proposed compensation of the associate general partner and the distribution of the public offering. If a connection is found, the compensation to the associate general partner is treated as underwriting compensation and, if continuing in nature, is not permitted under Section 5(b)(5) of Appendix F.

On the basis of a review of the applicability of the present provisions of Appendix F to evolving practices, the Committee concluded that it is necessary to amend the language of Appendix F to clarify the applicability of its provisions to these evolving practices.

Proposed Amendment

The Association is therefore publishing for comment a proposed amendment to Section 5(d) of Appendix F which would clarify those instances in which associate general partners will be presumed to be bearing sufficient risk as to satisfy that criteria in determining whether a connection exists between a proposed associate general partner arrangement and a public offering. The conclusion to clarify instances in which the risk test would be satisfied reflects the conclusion of the Committee that the other three tests contained in Section 5(d) are not usually in issue or are sufficiently subjective as to be difficult to refine further. Under the proposed amendment, however, those criteria would be retained and would need to be satisfied for each offering.

Under the proposed amendment, an associate general partner would be presumed to be bearing investment risk when it meets four criteria. First, the associate general partner must be bearing full general partner liability. Secondly, the associate general partner cannot be indemnified against general partner liability by any party.

Thirdly, the associate general partner must have assets equal to at least five percent of the net proceeds of the proposed public offering or $1.0 million, whichever is less. This is intended to assure that a substantial amount of assets are placed at risk and in turn to assure that the associate general partner is performing a bona fide function.

Lastly, the associate general partner must have agreed to retain the above-referenced assets under its control until the dissolution of the program. This is intended to assure that the associate general partner will continue to bear substantial risk throughout the life of the program.

Although not specified in the language of the proposed amendment, it is the Committee's intent that the capital required for associate general partners reflect the capitalization of the associate general partner irrespective of the number of programs for which it acts in that capacity.

Request for Comments

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

The 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 Direct Participation Programs 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 Exhcnage 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 October 7, 1983. All comments received will be made available for public inspection.

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

Sincerely,

Gordon S. Macklin
President

Attachment

Proposed Amendment to Appendix F to Article III, Section 34 of the Rules of Fair Practice*

Section 5(d)

The determination of whether compensation paid to underwriters, broker/dealers, or affiliates thereof is in connection with or related to a public offering, for purposes of this section, shall be made on the basis of such factors as the timing of the transaction, the consideration rendered, the investment risk, and the role of the member or affiliate in the organization, management and direction of the enterprise in which the sponsor is involved; provided however, that an affiliate of a member which acts or proposes to act as a general partner, associate general partner, or other sponsor of a program shall be presumed to be bearing investment risk if the affiliate is subject to liability as a general partner; is not indemnified against such liability; has assets equal to at least five percent of the net proceeds of the proposed public offering or $1.0 million, whichever is less; and has agreed that said assets will be retained under the affiliate's control until dissolution of the program. For purposes of determining the factors to be utilized in computing compensation derived from securities received in connection with a public offering, the guidelines set forth in the Interpretation of the Board of Governors — Review of Corporate Financing shall govern to the extent applicable.

---

* New material is underlined.

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

notice to members 83-50

September 29, 1983

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

RE: 50 Securities Scheduled to Join NMS on October 18

An additional 50 issues will voluntarily join the NASDAQ National Market System on October 18, bringing the total number of NMS securities to 571. These 50 issues meet the SEC's criteria for voluntary designation, which include average monthly trading volume of 100,000 shares and a minimum bid price of $5.

The 50 issues scheduled to join NMS on Tuesday, October 18, are:

AIAI	AIA Industries, Inc.	Trevose, PA
ALGO	Algorex Corporation	Syosset, NY
AQAS	American Quasar Petroleum Company	Fort Worth, TX
AXXX	Artel Communications Corporation	Worcester, MA
AZIN	Aztech International, Ltd.	Albuquerque, NM
BASEA	Base Ten Systems, Inc. (Class A)	Trenton, NJ
BRAE	Brae Corporation	San Francisco, CA
CHOM	Chomerics, Inc.	Woburn, MA
COLL	Collins Industries, Inc.	Hutchinson, KS
CUSE	Computer Usage Company, Inc.	San Francisco, CA
DBIO	Damon Biotech, Inc.	Needham Heights, MA
DIAG	Diagnostic Data, Inc.	Mountain View, CA
DMBK	Dominion Bankshares Corporation	Roanoke, VA
GEEN	Genetic Engineering, Inc.	Denver, CO
HSYS	Hale Systems, Inc.	Palo Alto, CA
HELX	Helix Technology Corporation	Waltham, MA
HILXZ	Helionetics, Inc. (Wts)	Irvine, CA
INFN	Infotron Systems Corporation	Cherry Hill, NJ
INET	Institutional Networks Corporation	New York, NY

JAME	Jamesbury Corporation	Worcester, MA
JOIN	Jones Intercable, Inc.	Englewood, CO
JOINA	Jones Intercable, Inc. (Class A)	Englewood, CO
JOAMS	Johnstown American Companies	Atlanta, GA
JSTN	Justin Industries, Inc.	Fort Worth, TX
KLIC	Kulicke and Soffa Industries, Inc.	Horsham, PA
MGNE	Magnetic Controls Company	Minneapolis, MN
MDTA	Megadata Corporation	Bohemia, NY
MNST	Minstar, Inc.	Minneapolis, MN
MABS	Monoclonal Antibodies, Inc.	Mountain View, CA
MOSE	Moseley, Hallgarten, Estabrook & Weeden Holding Corporation	Boston, MA
OHSC	Oak Hill Sportswear Corp.	New York, NY
ORCO	Optical Radiation Corporation	Azusa, CA
ORBN	Orbanco Financial Services Corporation	Portland, OR
PERC	Perceptronics, Inc.	Woodland Hills, CA
PCCM	Price Communications Corp.	New York, NY
PROG	Progressive Corporation (The)	Mayfield Village, OH
RYAN	Ryan's Family Steak Houses, Inc.	Greenville, SC
SISB	SIS Corporation	Westlake, OH
SCIXF	Scitex Corporation Ltd.	Herzlia B, Israel
STJM	St. Jude Medical, Inc.	St. Paul, MN
SEQP	Supreme Equipment & Systems Corp.	Brooklyn, NY
STRX	Syntrex Incorporated	Eatontown, NJ
TVIV	Taco Viva, Inc.	Pompano Beach, FL
TCAT	TCA Cable TV, Inc.	Tyler, TX
USVC	United Services Life Insurance Company	Washington, D.C.
UVBK	United Virginia Bankshares, Incorporated	Richmond, VA
UHCO	Universal Holding Corp.	Garden City, NY
WSGC	Williams-Sonoma Inc.	Emeryville, CA
WOOD	Woodward & Lothrop Inc.	Washington, D.C.
WRTC	Writer Corporation (The)	Englewood, CO

Any questions regarding the 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 83-51

September 30, 1983

TO: All NASD Members and Municipal Securities Bank Dealers

FROM: All Operations Personnel

RE: Columbus Day: Trade Date-Settlement Date Schedule

"Regular-Way" transactions made on Monday, October 10, Columbus Day and the days immediately preceding this day will be subject to the settlement date schedule listed below. The purpose of this schedule is to provide uniformity since, while the NASDAQ System and other securities markets will be open on these days, many banking institutions will be closed.

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

Trade Date		Settlement Date		Regulation T Date*	
October	3	October	11	October	12
	4		12		13
	5		13		14
	6		14		17
	7		17		18
	10		17		19

October 10 will not be considered a business day for determining the day for settlement of a trade, the day on which stock shall be quoted ex-dividend or ex-rights, or in computing interest on bond trades. Marks to the market, reclamations, and close-outs should not be made on that day.

For purposes of Regulation T of the Federal Reserve Board, October 10 will be counted as a business day for receiving customers' payments.

---

* Pursuant to Section 4(c)(2) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within seven (7) business days of the date of purchase or, pursuant to Section 4(c)(6), make application to extend the time period specified. The date by which members must take such action is shown in the column entitled "Regulation T Date."

The above 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 the application of these settlement dates to a particular situation may be directed to the Uniform Practice Department of the NASD at (212) 839-6255.

* * *