NASD

Notice To Members

National Association of Securities Dealers, Inc. March 1989

Number 89-21

Suggested Routing:*

✓ Senior Management	Internal Audit	Operations	Syndicate
Corporate Finance	✓ Legal & Compliance	Options	Systems
Government Securities	Municipal	Registration	✓ Trading
Institutional	Mutual Fund	Research	✓ Training

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

IMPORTANT MAIL VOTE

Subject: Proposed Amendment Re: Predispute Arbitration Clauses in Customer Agreements; Last Voting Date: April 3, 1989

EXECUTIVE SUMMARY

Members are invited to vote on a proposed amendment to Article III, Section 21 of the NASD Rules of Fair Practice to adopt a new Subsection (f). The new subsection would require each member using a predispute arbitration clause in a customer agreement to highlight that clause and to provide disclosures concerning the nature of arbitration and the waiver of the customer's right to litigate disputes arising under the agreement.

The new subsection also would prohibit the use in any agreement of any language that limits or contradicts the rules of any self-regulatory organization, limits the ability of a party to file a claim in arbitration, or limits the ability of the arbitrators to make any award.

The NASD Board of Governors believes that approval of the new subsection is necessary in order to provide customers with effective disclosure of the meaning and effect of predispute arbitration clauses and in order to maintain the integrity of the arbitration process.

The text of the proposed amendment follows this notice.

BACKGROUND AND EXPLANATION

In keeping with its support for the continued improvement of securities industry arbitration as a fair, expeditious, and economical means for the resolution of disputes, the Board of Governors has responded to suggestions of the Securities and Exchange Commission and others seeking more explicit disclosure of the existence and meaning of predispute arbitration clauses in customer agreements.

Following the solicitation of comments concerning proposed new Subsection (f) of Article III, Section 21 of the NASD Rules of Fair Practice in *Notice to Members* 88-87 (November 1, 1988), the National Arbitration Committee and the Board of Governors determined that, in the interest of uniformity, the proposed subsection should be modified to substantially parallel proposals of other self-regulatory organizations. The modified proposed subsection would apply to

any member using a predispute arbitration clause in new agreements signed by an existing or new customer after the proposed subsection's effective date, which will be 120 days after the date of Securities and Exchange Commission approval.

As proposed, the subsection would require each member using a predispute arbitration clause in a customer agreement to highlight that clause and to include disclosures concerning the nature of arbitration and the waiver of the customer's right to litigate disputes arising under the agreement. The new subsection also would prohibit the use in any agreement of language that limits or contradicts the rules of any self-regulatory organization, limits the ability of a party to file a claim in arbitration, or limits the ability of arbitrators to make an award under the rules of a self-regulatory organization.

The Board of Governors believes that proposed new Subsection (f) provides to investors clear and informative disclosure of the fact that, by their assent to a predispute arbitration agreement, they are making an important election to which they will be bound. The NASD Board of Governors also thinks that the proposed subsection will serve the public interest by preserving the rights of contracting parties under the rules of any self-regulatory organization. For these reasons, the Board believes that the proposed subsection is necessary and appropriate and recommends that members vote their approval. Prior to becoming effective, the proposed subsection also must be approved by the Securities and Exchange Commission.

Please mark the attached ballot according to your convictions and return it in the enclosed stamped envelope to The Corporation Trust Company. Ballots must be postmarked no later than **April 3, 1989**.

Questions concerning this notice may be directed to Norman Sue, Jr., Assistant General Counsel, NASD Office of General Counsel, at (202) 728-8117.

PROPOSED AMENDMENT TO ARTICLE III, SECTION 21 OF THE NASD RULES OF FAIR PRACTICE

(**Note:** New language is underlined.)

Books and Records

Sec. 21.

Requirements When Using Predispute Arbitration Agreements With Customers

(f) (1) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following disclosure language (printed in outline form as set forth herein) which shall also be highlighted:

(i) Arbitration is final and binding on the parties.

(ii) The parties are waiving their right to seek remedies in court, including the right to jury trial.

(iii) Pre-arbitration discovery is generally more limited than and different from court proceedings.

(iv) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.

(v) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(2) Immediately preceding the signature line, there shall be a statement which shall be highlighted that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(3) A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(4) No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file any claim in arbitration or limits the ability of the arbitrators to make any award.

(5) The requirements of this subsection (f) shall apply only to new agreements signed by an existing or new customer of a member after 120 days have elapsed from the date of Commission approval of this rule.

NASD

Notice To Members

National Association of Securities Dealers, Inc. March 1989

Number 89-22

Suggested Routing:*

✓ Senior Management	Internal Audit	Operations	✓ Syndicate
Corporate Finance	✓ Legal & Compliance	Options	Systems
Government Securities	Municipal	Registration	Trading
Institutional	Mutual Fund	Research	Training

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

IMPORTANT MAIL VOTE

Subject: Proposed Amendment Re: Use and Disclosure of Member Names

Last Voting Date: April 3, 1989

EXECUTIVE SUMMARY

The NASD invites members to vote on a proposed amendment to Article III, Section 35 of the NASD Rules of Fair Practice. The amendment would establish standards regarding the use and disclosure of member names in public communications, including business cards and letterhead. The proposed amendment reflects the NASD's concern that members of the public may be confused by public communications that either fail to refer to an NASD member firm by its registered name, or include unclear references to both NASD member firms and entities that are not NASD members. Unless the identity of and the products offered by an NASD member firm are made clear in such communications, there is a possibility that the public will be confused or misled regarding the identity of the entity that is, in fact, offering securities. The proposed amendment seeks to address this problem by establishing both general and specific standards governing the manner in which member names must be disclosed in communications with the public. The text of the amendment follows this notice.

BACKGROUND

Article III, Section 35 of the NASD Rules of Fair Practice governs members' communications with the public. Among the standards set forth in the rules are requirements that all advertising and sales literature contain the name of the NASD member and that no material fact be omitted if the omission would cause the communication to be misleading. In recent years, nonmember entities, such as financial planners, insurance companies, banks, and thrift institutions, increasingly have become involved in the securities field. As a consequence, the names of both NASD member firms and nonmember entities often appear in a single advertisement or item of sales literature. Sometimes, communications that have included the names of both member and nonmember entities have done so in ways that made it difficult for members of the public to identify which entity actually was offering securities. Similar problems have arisen when an individual affiliated with

member and nonmember entities is named in public communications, but the nature of the individual's relationships with named member and nonmember entities is left unclear. A related problem that also has developed during recent years stems from some members' use of fictitious names or variations on member names. Once again, this practice can make it difficult for members of the public to determine the identity of the NASD member with which they are dealing.

The recurrent problems in this area can be divided into five broad categories. Generally speaking, problems of public confusion have tended to occur when (1) NASD members conduct business under a fictional or "doing business as" (DBA) name rather than the name set forth on their Forms BD; (2) members use "generic" names that are to promote certain areas of the firm's business or to promote name recognition; (3) the term "division of" is used to distinguish those divisions of the member that conduct specialized businesses; (4) members permit certain firms, primarily financial planning firms, to use in public communications phrases such as "service of" or "securities offered through," followed by the name of the NASD member; or (5) members use confusing or misleading business cards and letterhead that incorporate one or more of the foregoing characteristics.

To address these problem areas, in September 1988 the NASD issued *Notice to Members* 88-65, which solicited member comment on a proposed amendment that contained both general and specific standards regarding members' public communications. The proposed amendment set forth herein is substantially similar to the proposal set forth in *Notice to Members* 88-65, although a number of significant revisions, discussed more fully below, were made in response to comments received.

EXPLANATION

General Standards

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

Specific Standards

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

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

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

■ *"Division of" Designations.* With respect to use of "division of" and similar designations,

the amendment would permit members to designate a portion of their business in this manner only when the designation is used with respect to a bona fide division of the member (i.e., a division that results from a merger or acquisition, or a functional division that conducts a specialized aspect of the member's business). The amendment also would require that the member name be clearly and prominently disclosed, and that the division be clearly identified as a division of the member.

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

COMMENTS RECEIVED

The NASD reviewed 41 comments in response to *Notice to Members* 88-65. After review and discussion of the comments, the Board of Governors made certain revisions, which are reflected in the text of the amendment that follows. The most significant of these are:

(1) To clarify the scope of the proposed amendment, Subsection (g)(1) has been revised to define the term "communication" as encompassing "advertising" and "sales literature," terms already defined in Section 35(a). This Subsection also has been revised to note that the terms "advertising" and "sales literature" include, among other things, business cards and letterhead.

(2) Subsection (g)(2)(A) was revised to include an explicit reference to the exclusion of blind recruiting ads provided by the existing Section 35(d)(2)(A).

(3) In response to a large number of negative comments, proposed Subsection (g)(1)(B), which would have required that the name of an NASD member be in type size at least as prominent as that used for any other entity named in a communication, was deleted. In addition, references throughout the balance of the proposed amendment to such "equal prominence" requirements have been deleted and replaced with requirements that member names be "clearly and prominently" disclosed, in conformity with Subsection (g)(1)(A).

(4) Subsection (g)(2)(D) has been amended so as to require that, when an individual is named in a communication that also names member and nonmember entities, the nature of the individual's relationship to the member be made clear. The previous version would have required that the individual's relationship with each named entity be made clear.

(5) Proposed Subsection (g)(2)(B)(i), which would have required that generic names be derivative of the name of a member, has been deleted.

(6) Subsection (g)(3)(B)(iii), which requires that communications convey no implication that a generic name is the name of a registered broker-dealer, has been added to the proposal.

(7) Subsection (g)(3)(E) has been added to the proposal in response to questions concerning the manner in which the proposed amendment would coordinate with certain amendments to Section 27 that were recently approved by the SEC. The new subsection expressly incorporates the requirements set forth in Article III, Section 27(f)(2) of the Rules of Fair Practice regarding telephone directory listings, business cards, and letterhead.

EFFECTIVE DATE

If the foregoing proposal is approved by the membership and by the Securities and Exchange Commission (SEC), the Board of Governors believes that it is appropriate to provide members with sufficient time following SEC approval to use existing supplies of such business stationery as letterhead, business cards, confirmation forms, and similar printed material. Accordingly, the Board has concluded that, insofar as the proposed amendment affects printed business stationery, the amendment should not take effect until six months after publication of a *Notice to Members* announcing SEC approval of the amendment. The Board contemplates, however, that in all other respects the proposed amendment would become effective 30 days after the publication of a *Notice to Members* announcing SEC approval of the amendment.

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

Please mark the attached ballot according to your convictions and return it in the enclosed, stamped envelope to The Corporation Trust

Company. Ballots must be postmarked no later than **April 3, 1989.**

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

PROPOSED AMENDMENT TO ARTICLE III, SECTION 35 OF THE NASD RULES OF FAIR PRACTICE

(**Note**: New language is underlined.)

COMMUNICATIONS WITH THE PUBLIC

Sec. 35.

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

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

(2) General Standards

(A) Any communication used in the promotion of a member's securities business (except those forms of advertising excluded under subsection (d)(2)(A) of this Section) must clearly and prominently set forth the name of the NASD member.

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

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

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

(E) Communications that refer to individuals may not include, with respect to such individuals, references to non-existent or self-conferred degrees or designations, nor may such communications make reference to bona fide degrees or designations in a misleading manner.

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

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

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

(3) Specific Standards

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

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

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

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

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

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

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

(B) Generic Names: An NASD member may use an "umbrella" designation to promote name recognition or use altered versions of the firm name to promote certain areas of the firm's

business, provided the following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

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

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

NASD

Notice To Members

National Association of Securities Dealers, Inc. March 1989

Number 89-23

Suggested Routing:*

✓ Senior Management	__ Internal Audit	✓ Operations	__ Syndicate
__ Corporate Finance	✓ Legal & Compliance	__ Options	__ Systems
__ Government Securities	__ Municipal	✓ Registration	__ Trading
__ Institutional	__ Mutual Fund	__ Research	✓ Training

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

IMPORTANT MAIL VOTE

Subject: Proposed Amendment Re: Providing Terminated Employees With Form U-5 and Obtaining Prior Form U-5 for Potential Employees

Deadline for Voting: April 3, 1989

EXECUTIVE SUMMARY

The NASD invites members to vote on proposed amendments to Article IV, Section 3 of the NASD By-Laws and Article III, Section 27 of the Rules of Fair Practice. These amendments would require NASD members to provide a copy of the Form U-5 to persons who terminate or are terminated by the member. Members would provide the Form U-5 concurrently with the filing of the Form U-5 with the NASD. In addition, each NASD member would be required to use its best efforts to obtain the most recent Form U-5 from any person seeking employment in a registered capacity.

BACKGROUND AND EXPLANATION

The NASD Board of Governors, in implementing the recommendations of the NASD Regulatory Review Task Force, has determined that a member submitting to the NASD a Uniform Termination Notice of Securities Industry Registration (Form U-5), pursuant to Article IV, Section 3 of the NASD By-Laws, should provide a copy to the employee who has been terminated.

Furthermore, the Board of Governors has determined that it is appropriate to require NASD members that employ persons previously registered with another NASD member to obtain a copy of the Form U-5 (and any amendments thereto) filed by the person's most recent employer. The Board believes that, by making the Form U-5 available in this manner, members will be better able to meet their obligation under Article III, Section 27(e) of the Rules of Fair Practice to adequately investigate the background of potential employees.

Article III, Section 27(c) requires that "each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration with this Association." Members now are not required to obtain the Form U-5 for the most recent employment with an NASD member.

The NASD believes, however, that the circumstances of a termination, as disclosed on the Form U-5, may well be relevant to the hiring decision and that this information should be readily available to any NASD member for that

purpose. This information is particularly pertinent for a situation in which the person was terminated for cause or in which affirmative answers have been provided to Items 13-15 of the Form U-5 regarding possible rule violations during the period of employment. As part of the hiring process, members should be allowed to compare the Form U-5 with any statements made by the potential employee regarding the termination. The proposed amendments would establish the requirement to obtain the Form U-5, set forth timeliness standards for compliance, and provide for obtaining the Form U-5 through the NASD Firm Access Query System (FAQS) for FAQS subscribers or from the prospective employee for firms that do not subscribe to FAQS.

Article IV, Section 3 of the NASD By-Laws does not now require NASD members to give terminated employees a copy of the Form U-5 filed with the NASD. The NASD believes that the policy of providing broader access to the information on the Form U-5 requires that terminated persons be given the Form U-5 so they can verify the accuracy and completeness of the representations in the form. The terminated individual then can express any disagreement with the Form U-5 to his or her subsequent NASD member employer. The proposed amendments would establish this requirement. In addition, the amendments would codify the requirement that an amendment to the Form U-5 be filed if later-discovered information causes any statements in the form to be inaccurate or incomplete.

COMMENTS RECEIVED

The proposed amendments to Article IV, Section 3 of the NASD By-Laws and Article III, Section 27 of the NASD Rules of Fair Practice were published for comment in NASD *Notice to Members* 88-68 dated September 1988. The NASD received 13 comments on the proposed amendment. Of these, 10 commenters were generally in favor of the proposed amendment and three were generally opposed.

Commenters identified three issues concerning the proposed amendment to the Rule of Fair Practice. The first dealt with the language of the proposed amendment, which imposes a different requirement on a member complying with the Rule of Fair Practice by using its FAQS computer connection to the NASD and a member requesting a hard copy of the Form U-5 from the applicant. As originally drafted, the FAQS firm would have been required to "obtain" the Form U-5 prior to the filing of an application for registration, while the non-FAQS firm would be required only to "request" a copy of the Form U-5.

Second, commenters raised concern about the two different time parameters required for compliance as contained in the proposed Rule of Fair Practice amendment. A member could have had either 30 days or 60 days to comply with the Rule of Fair Practice amendment depending on the date on which a registration application was filed. The Board determined that this requirement was both confusing and placed an unrealistic administrative burden on the member.

Finally, commenters noted that an associated person might change the Form U-5 prior to providing it to the prospective employer and thereby alter the nature of the reported information. The Board determined that both the issues of the differing requirements for FAQS and non-FAQS users and the variation in the time parameters in the proposed Rule of Fair Practice amendment would be resolved if there were a single uniform time frame for compliance with the proposed rule. The Board approved a uniform 60-day period for compliance.

Some commenters expressed concern that an unethical individual might change derogatory information contained on a Form U-5 from his or her previous employer before presenting it to a new firm. The NASD review process for both Form U-5 and Form U-4 includes a system of checks that alleviates these concerns, and no changes have been made relating to this issue.

The Board of Governors believes that the amendments to Article IV, Section 3 of the NASD By-Laws and Article III, Section 27 of the NASD Rule of Fair Practice are necessary and appropriate and recommends that members vote their approval. Prior to becoming effective, the rule change also must be approved by the Securities and Exchange Commission. Please mark the enclosed 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 **April 3, 1989.**

Questions concerning this notice may be directed to Craig L. Landauer, Senior Attorney, NASD Office of General Counsel, at (202) 728-8291.

PROPOSED AMENDMENT TO ARTICLE IV, SECTION 3 OF NASD BY-LAWS

(**Note**: New language is underlined.)

Registered Representatives And Associated Persons

Notification by Member to Corporation and Associated Person of Termination; Amendments to Notification.

Sec. 3(a) Following the termination of the association with a member of a person who is registered with it, such member shall promptly, but in no event later than thirty (30) calendar days after such termination, give written notice to the Association on a form designated by the Board of Governors of the termination of such association, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with the Association. A member who does not submit such notification in writing, and provide a copy thereof to the person whose association has been terminated, within the time period prescribed shall be assessed a late filing fee as specified by the Board of Governors. Termination of registration of such person associated with a member shall not take effect so long as any complaint or action is pending against a member and to which complaint or action such person associated with a member is also a respondent, or so long as any complaint or action is pending against such person individually or so long as any examination of the member or person associated with such member is in process. The Corporation, however, may in its discretion declare the termination effective at any time.

(b) The member shall notify the Association in writing by means of an amendment to the notice filed pursuant to paragraph (a) above in the event that the member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with the Association and provided to the person whose association with the member has been terminated not later than thirty (30) calendar days after the member learns of the facts or circumstances giving rise to the amendment.

PROPOSED AMENDMENT TO ARTICLE III, SECTION 27 OF THE RULES OF FAIR PRACTICE

(**Note**: New language is underlined.)

Supervision

Qualifications investigated. (e) Each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to making such a certification in the application of such person for registration with this Association. Where an applicant for registration has previously been registered with the Association, the member shall obtain from the Firm Access Query System (FAQS) or from the applicant a copy of the Uniform Termination Notice of Securities Industry Registration ("Form U-5") filed with the Association by such person's most recent previous NASD-member employer, together with any amendments thereto that may have been filed pursuant to Article IV, Section 3 of the Association's By-Laws. The member shall obtain the Form U-5 as required by this section no later than sixty (60) days following the filing of the application for registration or demonstrate to the Association that it has made reasonable efforts to comply with the requirement. A member receiving a Form U-5 pursuant to this section shall review the Form U-5 and any amendments thereto and shall take such action as may be deemed appropriate.

Applicant's Responsibility. (f) Any applicant for registration who receives a request for a copy of his or her Form U-5 from a member pursuant to this section shall provide such copy to the member within two (2) business days of the request if the Form U-5 has been provided to such person by his or her former employer. If a former employer has failed to provide the Form U-5 to the applicant for registration, such person shall promptly request the Form U-5, and shall provide it to the requesting member within two (2) business days of receipt thereof. The applicant shall promptly provide any subsequent amendments to a Form U-5 he or she receives to the requesting member.

(Current subsection (f) is renumbered as (g).)

NASD

Notice To Members

National Association of Securities Dealers, Inc. March 1989

Number 89-24

Suggested Routing:*

✓Senior Management	__Internal Audit	__Operations	__Syndicate
__Corporate Finance	✓Legal & Compliance	__Options	__Systems
__Government Securities	__Municipal	✓Registration	__Trading
__Institutional	__Mutual Fund	__Research	__Training

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

REQUEST FOR COMMENTS

Subject: Proposed Amendment to Schedule C to the NASD By-Laws to Amend the Definition of a Direct Participation Program; Last Date for Comments: April 3, 1989

EXECUTIVE SUMMARY

The NASD invites comments on a proposed amendment to Schedule C to the By-Laws that would exclude from the definition of a direct participation program freely tradable limited partnership securities that are or will be quoted on the NASDAQ System or listed on a registered national securities exchange. Persons who are direct participation program limited representatives or limited principals would not be qualified to engage in transactions in freely tradable limited partnership securities that are or will be quoted on the NASDAQ System or listed on an exchange, as such transactions would require registration as either a general securities principal/representative or as a corporate securities representative. The text of the proposed amendment follows this notice.

BACKGROUND

The NASD has become concerned about the scope of the present definition of direct participation program (DPP) in Part II, Section 2(d)(ii) of Schedule C to the By-Laws with respect to the types of securities in which Direct Participation Programs - Limited Principals and Limited Representatives are qualified to transact business. These categories of registration originally were established for those member firms and their associated persons who participated in the distribution of securities, usually interests in limited partnerships, that provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution. One of the distinguishing characteristics of the DPP vehicle had been its illiquidity relative to other investments and, for this reason, the DPP limited representatives and principal qualifications examinations have not included questions on the distribution of liquid securities, secondary trading in the securities markets, and related market regulation.

In recent years, freely tradable limited partnerships, such as master limited partnerships, have emerged as a significant portion of the DPP segment of the securities industry. Technically, freely tradable partnership securities are encompassed by the current definition of a direct participation program in Section 2(d)(ii) to Part II of Schedule C. The NASD believes that in cases where limited partnership securities are or will be quoted in the NASDAQ System or listed on a registered national

securities exchange, that the freely tradable feature of the limited partnership interests requires a substantial body of additional knowledge, including the operation of secondary securities markets, customer account and margin requirements, and trading-related regulation, which is not covered by the current DPP qualifications examinations. Therefore, the NASD believes that such freely tradable partnership interests should not be included in the definition of the direct participation program in Schedule C, as such securities more closely resemble other equity products that are publicly traded in the secondary securities markets.

In reviewing this issue, the Qualifications Committee and the DPP/Real Estate Committee also considered and rejected a proposal to expand the subject matter of the DPP qualification examinations to include the material, identified above, relevant to the freely tradable feature of limited partnership securities in the secondary market.

EXPLANATION OF PROPOSED AMENDMENT*

The NASD proposes to amend the definition of direct participation program in Part II, Section (2)(d)(ii) of Schedule C to the By-Laws to exclude secondary market transactions in any direct participation program security for which quotations are displayed on the NASDAQ System or which is listed on a registered national securities exchange. The amendment would also exclude the initial distribution of any direct participation program that will be quoted on the NASDAQ System or will be listed on a registered national securities exchange within a reasonable period following the formation of the program. The "reasonable period" determination will be made at the time the program is filed with the NASD pursuant to the Interpretation of the Board of Governors with respect to the Review of Corporate Financing under Article III, Section 1 of the Rules of Fair Practice.

The proposed amendment is contained in the registration category for direct participation programs principal. It is incorporated by reference in Part III, Section (2)(c) of Schedule C to the By-Laws, the registration rule for direct participation programs representative. Accordingly, persons who effect transactions in direct participation program securities that are or will be quoted on the NASDAQ System or listed on an exchange are required under the proposed amendment to register as either a general securities principal/representative or as a corporate securities representative.

The NASD encourages all members and interested parties to comment on the proposed amendment to Schedule C to the By-Laws. Comments should be directed to:

Mr. Lynn Nellius, Secretary
National Association of Securities Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1506.

Comments must be received no later than April 3, 1989. Comments received by this date will be considered by the Qualifications Committee and the Board of Governors. Any changes to Schedule C to the By-Laws must be filed with, and approved by, the SEC before becoming effective.

Questions concerning this notice can be directed to Frank J. McAuliffe, Vice President, NASD Qualifications, at (301) 590-6694, or Jacqueline T. Whelan, NASD Office of General Counsel, at (202) 728-8291.

PROPOSED AMENDMENT TO PART II, SECTION (2)(d)(ii) SCHEDULE C TO THE BY-LAWS

(**Note**: New language is underlined.)

II

REGISTRATION OF PRINCIPALS

(2) Categories of Principal Registration

(d) Limited Principal - Direct Participation Programs

(ii) For purposes of this Schedule C, "direct participation programs" shall mean programs which provide for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate

* The amendment proposed herein does not affect the definition of direct participation program in Article III, Section 34(d)(2) of the By-Laws. Therefore, Appendix F to Article III, Section 34 remains applicable to freely tradable limited partnerships.

offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of the Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code and any company including separate accounts registered pursuant to the Investment Company Act of 1940. Also excluded from this definition is any program for which quotations are displayed on the NASDAQ system or which is listed on a registered national securities exchange or any program that will be quoted on the NASDAQ system or will be listed on a registered national securities exchange within a reasonable period following the formation of the program.

(Note: This definition is incorporated by reference in Part III, Section (2)(c) of Schedule C to the By-Laws, the registration rule for Limited Representative - Direct Participation Programs.)

NASD

Notice To Members

National Association of Securities Dealers, Inc. March 1989

Number 89-25

Suggested Routing:*

__Senior Management	✓Internal Audit	✓Operations	__Syndicate
✓Corporate Finance	__Legal & Compliance	__Options	__Systems
__Government Securities	__Municipal	__Registration	__Trading
__Institutional	__Mutual Fund	__Research	__Training

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

Subject: SIPC Reimposes Assessments Based on a Percentage of Gross Revenue

EXECUTIVE SUMMARY

The Securities Investor Protection Corporation has reimposed assessments based on gross revenues. The assessment rate of three-sixteenths of one percent (.001875) went into effect January 1, 1989.

BACKGROUND

Last summer, the Board of Directors of the Securities Investor Protection Corporation (SIPC) adopted amendments to SIPC's By-laws to resume assessments based on a percentage of the member's gross revenue from the securities business. Since March 1986, a member's assessment has been an annual minimum of $100, and prior thereto the assessment was based on gross revenue from the securities business of one-fourth of one percent.

Beginning January 1, 1989, all SIPC members are subject to assessments of three-sixteenths of one percent (.001875) of gross revenue from the securities business with an annual minimum assessment of $150. However, to lessen the reporting impact that this change may have on its members, SIPC is effecting two changes from the previous reporting requirements in an attempt to simplify and reduce the reporting process.

- The filing of Form SIPC-6 has been changed from quarterly to semi-annually.
- The requirement to file a Supplemental Report with the certified annual audit will be waived for certain members.

SCHEDULE OF FILINGS

Forms SIPC 6 and SIPC 7 are required to be filed, with payments computed thereon to be due, based on the firm's fiscal year-end. Form SIPC 6 will cover the first six months of the firm's fiscal year; Form SIPC 7 will reconcile the cumulative fiscal-year report of SIPC gross revenue and payments.

Please refer to the accompanying Notice issued by SIPC that includes its Filing Guide detailing the filing schedule of payments and forms. Beginning with firms that have fiscal years ending January 1989, all firms will begin to file SIPC 7 Annual General Assessment reconciliation. Assessments are to be computed on gross revenue for the applicable period in 1989 or on a prorated amount, but will not be less than $150. SIPC 6 forms will be filed in 1989 by all SIPC members whose fiscal years ending in September 1989 and later and will cover the applicable period in 1989.

SUPPLEMENTAL REPORT

As to the requirement in Rule 17a-5(e)(4), for the firm's accountant to prepare a Supplemental Report on the firm's SIPC filings in connection

with its certified annual report, the attached no-action letter from the Securities and Exchange Commission waives the preparation of the Supplemental Accountant's report for all firms that have gross annual revenue of $500,000 or less.

It should be noted that firms whose business is derived exclusively from the distribution of mutual funds, variable annuities, insurance, or unit investment trusts must file Form SIPC 3 annually. Firms that qualify to file SIPC 3 by reason of their sources of revenue are exempt from the payment of SIPC assessments, but may be required to file the supplemental accountant's reports in connection with the annual audit.

Questions concerning this Notice can be directed to Richard McMahon, Supervisor, Automated Reports at (301) 590-6936 or Adrienne Washington, SIPC Coordinator at (301) 590-6869.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

January 9, 1989

Mr. Theodore H. Focht
President and General Counsel
Securities Investor Protection Corporation
805 Fifteenth Street, N.W., Suite 800
Washington, D.C. 20005-2207

Dear Mr. Focht:

This is in response to your letter of September 21, 1988 in which the Securities Investor Protection Corporation ("SIPC") recommended that SIPC member broker-dealers that report $500,000 or less in total revenues in their statement of income of their annual audited report ("annual audited statement of income") filed pursuant to Rule 17a-5(d) [17 C.F.R. §240.17a-5(d)] under the Securities Exchange Act of 1934 be relieved of the responsibility of filing a supplemental report pursuant to Rule 17a-5(e)(4).

From your letter, and subsequent telephone conversations with the staff, we understand the pertinent facts to be as follows:

In the summer of 1988, the SIPC Board of Directors ("SIPC Board") provided for the reimposition, beginning January 1, 1989, of assessments based on its members' gross revenues from the securities business ("SIPC gross revenues"). In that connection, the SIPC Board directed that the members' reporting burden be simplified and reduced, wherever possible. Two steps that SIPC is taking in that direction are (1) SIPC's planned semi-annual assessment payment frequency and (2) clarification and simplification of the SIPC assessment forms.

You state that another simplification step would be the elimination of the Rule 17a-5(e)(4) supplemental report for SIPC members that incur an expense for that report that is disproportionate to the amount of their annual assessment. You further state that although SIPC has not collected data on the cost to members of the supplemental report, SIPC has reviewed the filing and payment data for members whose fiscal years ended in 1985 (the most recent full year for which assessments based on SIPC gross revenues, at 1/4 of 1%, were collected).

Mr. Theodore H. Focht
Page Two

You indicate that at the end of 1985, there were approximately 11,000 members, 3,000 of which were exempt from the audit requirement of Rule 17a-5. The remaining 8,000 were subject to the audit requirement.

SIPC states that if a waiver from filing the Rule 17a-5(e)(4) report were given to members reporting $500,000 or less of total revenues on their annual audited statement of income, the maximum SIPC assessment any of them would likely pay at 3/16 of 1% would be $937.50. Based on 1985 data, SIPC estimates that such a waiver would relieve approximately 4,000 members from filing the Rule 17a-5(e)(4) supplemental report.

SIPC believes that SIPC can obtain independent attestation from the examining authority with respect to members that are relieved of the responsibility to file a Rule 17a-5(e)(4) supplemental report. SIPC believes that the attestation procedure would be the desirable alternative in these circumstances for the otherwise required supplemental report.

Based on the foregoing, the Division will not recommend any action to the Commission if a broker-dealer that is a member of SIPC and that reports $500,000 or less in total revenues in its annual audited statement of income filed pursuant to Rule 17a-5(d) does not file the supplemental report required by Rule 17a-5(e)(4).

You should understand that the position expressed herein is a staff position with respect to enforcement only and does not purport to express any legal conclusion on this matter. The Division's position is necessarily confined to the facts as represented herein. Any material change in these conditions must be brought to the Division's attention immediately.

Sincerely,

Michael A. Macchiaroli

Michael A. Macchiaroli
Assistant Director

SECURITIES INVESTOR PROTECTION CORPORATION
805 FIFTEENTH STREET, N.W. SUITE 800
WASHINGTON, D.C. 20005-2207
(202) 371-8300

September 30, 1988

IMPORTANT NOTICE TO ALL SIPC MEMBERS
REGARDING SIPC ASSESSMENT FORM FILING REQUIREMENTS
COMMENCING JANUARY 1, 1989

Enclosed for your information are working copies of:

SIPC-6 (18-REV-9/88), General Assessment Payment Form
(Required to be filed by all SIPC members for the first half of each fiscal year).

SIPC-7 (17-REV-9/88), General Assessment Reconciliation
(Required to be filed annually by all SIPC members).

In his letter to SIPC members dated September 9, 1988, Chairman Stearns stated that the SIPC Board of Directors adopted bylaw amendments cleared by the SEC that provide "Effective January 1, 1989, assessments will be resumed at 3/16ths of 1% of gross revenues from the securities business or $150, whichever is greater."

Assessment forms will be mailed to members together with return envelopes sufficiently in advance of their due dates for completion and timely filing with the SIPC collection agents. These forms are required to be filed, with the payments computed thereon to be due, on the basis of each member's fiscal year (for purposes of the audit requirement of SEC Rule 17a-5). Promptly advise SIPC in writing if the month in which your fiscal year ends differs from that shown on your mailing label.

A guide which reflects general assessment form filing requirements effective January 1, 1989, is on the reverse side of this notice. The SIPC Coordinator at your SIPC Collection Agent would be pleased to answer questions about this Notice and the enclosures.

Interest on late payments is at the rate of 20 percent per annum. It is important that you review the enclosures and this notice carefully and retain them for future reference.

Sincerely,

SECURITIES INVESTOR PROTECTION CORPORATION

Enclosures

SIPC GENERAL ASSESSMENT FORM FILING GUIDE
(reflects filing and payment requirements effective January 1, 1989)

Month in which fiscal year ends for purposes of the audit requirement of SEC Rule 17a-5 (Note)	File SIPC-6, General Assessment Payment Form, for the period shown below and for the first six month period of each fiscal year thereafter.		File SIPC-7, General Assessment Reconciliation, for the period shown below and annually thereafter.	
	Beginning	Ended	Beginning	Ended
January	2/01/89	7/31/89	1/01/89	1/31/89
February	3/01/89	8/31/89	1/01/89	2/28/89
March	4/01/89	9/30/89	1/01/89	3/31/89
April	5/01/89	10/31/89	1/01/89	4/30/89
May	6/01/89	11/30/89	1/01/89	5/31/89
June	7/01/89	12/31/89	1/01/89	6/30/89
July	8/01/89	1/31/90	1/01/89	7/31/89
August	9/01/89	2/28/90	1/01/89	8/31/89
September	1/01/89	3/31/89	1/01/89	9/30/89
October	1/01/89	4/30/89	1/01/89	10/31/89
November	1/01/89	5/31/89	1/01/89	11/30/89
December	1/01/89	6/30/89	1/01/89	12/31/89
	SIPC-6 is due no later than 30 days after end of period together with payment of the assessment determined thereon to be due.		SIPC-7 is due no later than 60 days after end of period together with payment of the assessment balance determined thereon to be due.	

Note: If you are exempted from the audit requirement of SEC Rule 17a-5, file SIPC assessment forms on a calendar year basis.

NASD

Notice To Members

National Association of Securities Dealers, Inc. March 1989

Number 89-26

Suggested Routing:*

✓Senior Management	__Internal Audit	✓Operations	__Syndicate
__Corporate Finance	✓Legal & Compliance	__Options	__Systems
__Government Securities	__Municipal	__Registration	✓Trading
__Institutional	__Mutual Fund	__Research	__Training

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

SEC REQUEST FOR COMMENTS

Subject: Securities and Exchange Commission's Proposed Rule 15c2-6 Re: Sales Practices in Pink Sheet Stocks

EXECUTIVE SUMMARY

The Securities and Exchange Commission (SEC) has proposed Rule 15c2-6 to address fraudulent, deceptive, or manipulative acts and practices used in connection with high-pressure telephone sales campaigns to sell OTC pink sheet stocks issued by small, little-known companies to unsophisticated investors. Under the conditions set forth in the proposal, this rule would prohibit broker-dealers from selling certain pink sheet securities to customers unless a prior written customer agreement has been executed. Comments must be received by the SEC by **April 14, 1989.**

BACKGROUND

There has been an increase in the number of NASD members and individuals engaged in the sale of low-priced, speculative penny stocks to the investing public using high-pressure tactics and other fraudulent and deceptive practices. As a result, the NASD has been placing increased emphasis on the examination, surveillance, and enforcement of abusive sales practices involving these non-NASDAQ OTC (NNOTC) securities. In this regard, several disciplinary actions have been taken involving such matters as fraud in the offer and sale of securities, market manipulation, and fraudulently excessive markups. The NASD has levied sanctions including expulsions, bars, suspensions, and substantial monetary fines. There are a number of pending cases that could result in similar types of actions.

Furthermore, since September 1, 1988, members executing principal transactions in non-NASDAQ securities cleared through National Securities Clearing Corporation (NSCC) have been required to electronically report price and volume on a daily basis if their aggregate volume of purchases or sales exceeds 50,000 shares or $10,000. This price and volume information is used for regulatory purposes by the NASD through its Market Surveillance and Anti-Fraud Departments.

In addition to disciplinary actions that are the result of investigations conducted by the NASD, the Association also is engaged in a number of joint investigations with the SEC and various states, and is a major participant in interagency task forces reviewing penny-stock fraud and abuses. This includes cooperative investigations and regulatory efforts with the FBI, United States

attorneys offices, and others.

In this regard, to address the serious concerns about the growing incidence of broker-dealer fraud and other abusive sales practices in non-NASDAQ penny stocks, on February 8, 1989, the SEC proposed Rule 15c2-6. The rule is designed to prevent fraudulent, deceptive, or manipulative acts or practices in connection with certain recommended transactions in equity securities ("Designated Securities") that are not registered on a national securities exchange or authorized for listing in NASDAQ. Also exempt are those issuers that meet minimum net income, capital and surplus, or asset standards. These securities are quoted primarily in daily listings of dealers published by the National Quotations Bureau (pink sheets), and often are traded at less than one dollar per share. Proposed Rule 15c2-6 would require a written customer agreement and a documented suitability determination before a broker-dealer may sell certain securities it has recommended. The proposed rule seeks to help address regulatory concerns about abusive sales practices in the sale of "small pink sheet stocks" of issuers that do not meet certain minimum net income, capital and surplus, or asset standards.

EXCERPTS FROM PROPOSED SEC RULE 15c2-6

Proposed Rule 15c2-6 would provide that a broker-dealer who recommends to a person the purchase of a Designated Security may not sell that security to such person unless (1) the person was a regular customer of the broker-dealer (i.e., maintains a cash or margin account and has purchased securities of 3 or more different issuers on separate occasions within the preceding two years) or an accredited investor as defined by Regulation D, (2) the broker-dealer's transactions in the security did not exceed an aggregate volume of $5,000 or 10,000 shares during any period of five consecutive business days that ended within the preceding 90 days, or (3) prior to the sale, the broker-dealer had received written agreement to the sale from such person and had approved the person's account for transactions in Designated Securities. In approving an account, the broker-dealer would be required to obtain information concerning the customer's investment objectives, financial situation, experience, and knowledge. The member must also reasonably determine that transactions in Designated Securities were suitable for the customer, and maintain in its files a written statement setting forth the basis for such determination.

The Commission's decision to propose Rule15c2-6 at this time reflects the Commission's growing concern with the widespread incidence of broker-dealer fraud and other misconduct in the market for small pink sheet stocks. In recent years, the Commission has initiated a number of injunctive and administrative proceedings against individual broker-dealers involved in a wide array of misconduct in connection with transactions in pink sheet stocks. Despite the expenditure of considerable Commission resources in investigating and prosecuting these illegal activities, the Commission's ongoing broker-dealer examination program indicates that broker-dealer misconduct in connection with transactions in pink sheet stocks has continued. Therefore, the Commission believes that additional regulatory action is necessary to deal more effectively with the problem.

The Commission is proposing Rule 15c2-6 in particular to address the indiscriminate use by some broker-dealers of high-pressure telephone sales campaigns to sell pink sheet stocks issued by small, little known companies to unsophisticated investors. Many of these stocks are speculative securities that require purchasers to possess a significant degree of expertise, as well as access to information, before an informed investment decision can be made. The issuers of these securities are rarely followed by professional securities analysts or covered by the financial press. In addition, these small pink sheet issuers often are not subject to Exchange Act periodic reporting requirements, and therefore may not be making publicly available on a regular basis complete information about their operations and financial condition. As a result, investors may have few reliable sources of information on these companies. Moreover, many of these issuers often have few assets and limited operating histories, but nevertheless intend to expand rapidly. Such issuers necessarily have a high risk of failure and corresponding loss of investment for their shareholders. A decision to invest in pink sheet stocks therefore requires diligent investigation and careful analysis of the issuer and its management to determine whether it is a viable operating entity with realizable potential for growth.

The sales practices of some broker-dealers active in this area, however, apparently are designed to preclude careful analysis by investors of the

fundamental investment merits of small pink sheet companies. A common means of solicitation is the "cold call" — a telephone call to a person whose name has been drawn from the telephone directory or a membership list, or who has responded to advertisements promoting purchases of small growth companies. Although broker-dealers making cold calls at times may provide prospective buyers with sufficient information and time to make an informed investment decision, more frequently cold calls regarding the stocks of small pink sheet issuers provide investors with little information on the company and little time for reflection before deciding whether to buy.

High pressure cold calls are the predominant means to locate customers used by "boiler room" operations active in the pink sheet market in recent years. These operations involve a concerted, high-intensity effort to sell over the telephone large quantities of little known, speculative stocks to any and all buyers. Salespersons are expected to make hundreds of cold calls per day, and are trained in high-pressure sales tactics frequently involving use of prepared scripts designed to elicit an immediate buy decision from the person called. These tactics usually focus on pink sheet stocks, often where the broker-dealer is the sole or dominant market maker and little information is available about the issuer.

Because these cold call campaigns normally are directed at individuals drawn from a telephone directory or list of names, inevitably many of the persons contacted will have little investment experience and limited financial resources. These individuals may be particularly vulnerable to high pressure sales tactics from salespersons willing to disregard the unsuitability of the recommended security for the purchaser. The potential for mistreatment of investors in cold calls is magnified when the securities being sold are not traded through organized markets and are issued by little known companies, where the risk of loss and the importance of the investment analysis require a careful and unhurried investment decision.

For these reasons, the Commission believes that a serious potential for fraud against investors exists in the unbridled sale of the securities of small pink sheet issuers through the use of cold calls. The Commission is proposing Rule 15c2-6 to help address these problems.

The term "designated security" means any equity security *other than* NASDAQ or exchange-listed securities, investment company securities, or issuers having (a) annual net income in excess of $300,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years; (b) capital and surplus in excess of $8,000,000 at the end of the most recently completed fiscal year; or (c) total assets in excess of $10,000,000 at the end of the most recently completed fiscal year.

NASD members seeking further information or who wish to comment on this proposed rule may obtain a copy of its full text (Release No. 34-26529) at any SEC or NASD office. Comments should be received by the SEC by **April 14, 1989,** and may be sent to:

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW, Mail Stop 6-9
Washington, DC 20549.

Comment letters should refer to File No. S7-3-89. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. For further information, contact Robert L.D. Colby, Chief Counsel, (202) 272-2844; or Daniel M. Gray, Attorney, SEC Division of Market Regulation (202) 272-2848.

Members are requested to send copies of comment letters to:

Lynn Nellius, Corporate Secretary
National Association of
Securities Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1506.