

# Notice To Members

National Association of Securities Dealers, Inc.

October 1992

## Number 92-50

### Suggested Routing:\*

- Senior Management
- Corporate Finance
- Government Securities
- Institutional

- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund

- Operations
- Options
- Registration
- Research

- Syndicate
- Systems
- Trading
- Training

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

## Subject: Procedures Regarding Securities and Exchange Commission Rule 15c2-11 and Schedule H, Section 4 of the NASD<sup>®</sup> By-Laws

### EXECUTIVE SUMMARY

In response to questions by members, issuers, and the legal community, the NASD<sup>®</sup> is issuing this *Notice to Members* to address frequently raised questions regarding Schedule H, Section 4 of the NASD By-Laws relating principally to compliance with Securities and Exchange Commission (Commission or SEC) Rule 15c2-11. This section of Schedule H is described in *Notice to Members 90-40*. It requires broker/dealers to submit information to the NASD gathered pursuant to SEC Rule 15c2-11 before initiating or resuming a quota-

tion of a non-Nasdaq over-the-counter equity security in any quotation medium. Section 4 also requires members to specify the basis and factors considered in establishing their initial priced entries for a non-Nasdaq over-the-counter equity security before such entry may be published in any quotation medium. In preparing this Notice, the NASD has received comments from the staff of the Division of Market Regulation of the SEC; however, the views expressed in this Notice represent those of the NASD.

### INTRODUCTION

SEC Rule 15c2-11 governs the submission and publication of quotations by brokers and dealers for certain non-Nasdaq over-the-counter equity securities. Specifically, the rule applies to a broker/dealer's initiation or resumption of quotations for such securities in any interdealer quotation medium, including the NASD's OTC Bulletin Board<sup>®</sup> and National Quotation Bureau, Inc.'s "Pink Sheets" ("pink sheets"). Pursuant to the rule, brokers and dealers are required to review and maintain specified information about the issuer of the security before publishing a quotation for that

security.

Unless an exception to Rule 15c2-11 is available, the rule can be satisfied in one of only five ways: (1) the broker/dealer must have in its possession a prospectus specified by Section 10(a) of the Securities Act of 1933 (Securities Act) that has been filed with the Commission and which has been in effect less than 90 calendar days; or (2) the broker/dealer must have a copy of the offering circular provided for under Regulation A of the Securities Act and the effective date must be within the preceding 40 days; or (3) the issuer must be current in its filings with the Commission and the bro-

ker/dealer must have in its possession the issuer's latest Form 10-K and all subsequent Form 10-Qs and Form 8-Ks; or (4) the issuer must be exempt from Section 12(g) of the Securities Exchange Act of 1934 (Exchange Act) pursuant to Rule 12g3-2(b) and the broker/dealer must have in its possession all the information furnished to the Commission during the issuer's last fiscal year; or (5) the broker/dealer must have in its possession 16 items of information about the issuer, including financial information which shall be reasonably current in relation to the day the quotation is submitted.

Paragraph (g)(1) of Rule 15c2-11 provides that the required financial information with respect to the issuer will be presumed to be reasonably current, unless the broker/dealer has information to the contrary, if the balance sheet is as of a date less than 16 months before the submission or publication of the quotation; the statements of profit and loss and retained earnings are for the 12 months preceding the date of such balance sheet; and, if such balance sheet is not as of a date less than six months before the submission or publication of the quotation, is accompanied by additional statements of profit and loss and retained earnings for the period from the date of such balance sheet to a date less than six months before the submission or publication of the quotation.

Information that does not satisfy the time frame of paragraph (g)(1) of Rule 15c2-11, is presumptively not reasonably current. Broker/dealers seeking to rely on information outside of the time frame must affirmatively establish that the financial information is reasonably current.

Documentation compiled by a member pursuant to Rule 15c2-11 must be filed with the NASD pursuant to Schedule H, Section 4 of the By-Laws together with a completed Form 211 at least three business days prior to entering a quotation in a quotation medium. Upon receipt, the NASD conducts a substantive review of the material and within three business days, notifies the broker/dealer whether the application has cleared such that quotation activity may begin or, alternately identifies deficiencies in the submission which must be resolved prior to a member being permitted to enter a quotation in a quotation medium.

The following is a compilation of questions and answers relative to SEC Rule 15c2-11, the NASD's OTC Bulletin Board, and Schedule H of

the NASD By-Laws.

## QUESTIONS

### Rule 15c2-11, Informational Requirements

**Question #1:** What degree of scrutiny must a broker/dealer give the required Rule 15c2-11 documentation prior to submitting the information to the NASD seeking clearance to publish a quotation?

**Answer:** Prior to submitting the information to the NASD, a broker/dealer must have a reasonable basis for believing that the information is accurate in all material respects and is obtained from a reliable source.

**Question #2:** What steps should a broker/dealer take to have a reasonable basis to believe that the information is accurate in all material respects?

**Answer:** A broker/dealer must review the material for obvious errors, internal inconsistencies, and questionable disclosures. This review must be in the context of all other information about the issuer in the broker/dealer's knowledge or possession, including the information required by paragraph (b).

**Question #3:** What are the requirements of Rule 15c2-11 paragraph (b)?

**Answer:** Paragraph (b) requires a broker/dealer to have in its possession: (1) A record of the circumstances surrounding the quotation request, including the identity of the person for whom the quotation is being submitted, (2) a copy of the trading suspension order or the Commission release announcing the suspension if the security has been suspended by the Commission during the last 12 months, and (3) a copy or written record of other material information, including adverse information, that the broker/dealer becomes aware of prior to publishing a quotation.

**Question #4:** What steps should a broker/dealer take to have a reasonable basis to believe that the information is obtained from a reliable source?

**Answer:** Generally, a broker/dealer can be satisfied that information is obtained from a reliable source if it is received from the issuer or its agents, or was obtained from an independent infor-

mation service such as the Commission's public reference room. If a broker/dealer receives information about an issuer from another market maker or someone other than an agent of the issuer, the broker/dealer should verify the validity of the information with the issuer. Agents do not include promoters or others outside the issuer that may have a personal or an indirect interest in the security.

**Question #5:** Under what circumstances would a broker/dealer be required to take further steps to have a reasonable basis to believe that the information is accurate in all material respects and the sources of the information are reliable?

**Answer:** Ordinarily the broker/dealer need not do any further review unless a potential material deficiency has been detected. Examples of potential material deficiencies are material inconsistencies in the information or between the information and other information in the broker/dealer's possession, a qualified auditor's report, a recently acquired asset that materially enhances the financial condition of the issuer, or a material asset listed on the balance sheet that is unrelated to the issuer's business.

**Question #6:** What should a broker/dealer do if a potential material deficiency is detected in the documents?

**Answer:** A broker/dealer's specific efforts to satisfy itself with respect to the accuracy of the information if a potential material deficiency has been detected will vary with the circumstances, and may require the broker/dealer to obtain additional information or seek to verify existing information. For example, the broker/dealer may be satisfied that the information is correct after questioning the issuer, or the broker/dealer may need to consult an independent source, such as an attorney or accountant. Regardless of the methodology used to review a potential material deficiency, members are required to maintain in their records any other material information (including adverse information) regarding the issuer which comes to the member's knowledge or possession before the publication or submission of the quotation. Members are also strongly urged to document the manner in which the material deficiencies are resolved.

**Question #7:** May a broker/dealer satisfy its obligation to review the required information and

have a reasonable belief as to its accuracy and the reliability of its source solely because its documentation has been reviewed by the NASD?

**Answer:** No. A broker/dealer must independently satisfy the requirements of Rule 15c2-11. Clearance by the NASD to initiate quotations in a quotation medium is not a substitute for this review.

**Question #8:** Are a wholesale market maker's obligations under Rule 15c2-11 any different than a retail market maker's obligations?

**Answer:** No. Commission Release No. 34-29094 states that the rule is directed at the fraudulent, deceptive, or manipulative potential of a broker/dealer's quotations, and does not focus on whether the broker/dealer also engages in retail activity.

**Question #9:** Can a supplemental prospectus satisfy Rule 15c2-11(a)(1)?

**Answer:** Yes. As long as the supplemental prospectus is filed pursuant to Section 10(a) of the Securities Act and includes sufficient information about the issuer to enable the broker/dealer to satisfy its obligation under Rule 15c2-11, i.e., it contains the types of information described in Rule 15c2-11(a)(5). However, if the issuer meets the requirements of Rule 15c2-11(a)(3), the broker/dealer must obtain the documents required by Rule 15c2-11(a)(3).

**Question #10:** Is the issuer required to be current in its filings with the Commission in order for the broker/dealer to utilize Rule 15c2-11(a)(3)?

**Answer:** Yes. Issuers that meet the requirements of Rule 15c2-11(a)(3) are those issuers that report to the Commission and are current in their reports. The broker/dealer must have the issuer's latest Form 10-K and all subsequent Form 10-Qs and those Form 8-Ks filed within five business days prior to publication or submission of the quotation. If the issuer has not filed a Form 10-K, the broker/dealer must have a copy of the prospectus, which has been in effect less than 16 months, and all subsequent Form 10-Qs and Form 8-Ks. If a filing is due at the Commission prior to the NASD's clearance of the Form 211 application, that filing must also be submitted with the application.

**Question #11:** What happens if an issuer is not current in its filings with the Commission?

**Answer:** If the issuer is not current in its filings with the Commission, the broker/dealer can seek to satisfy another subsection of the rule. Usually this would be Rule 15c2-11(a)(5). However, the fact that the issuer is not current in its filings may bear upon the determination of whether the available information is materially accurate.

**Question #12:** Can banks that file Form 10-Ks and Form 10-Qs with the Office of Thrift Supervision or other bank regulators satisfy Rule 15c2-11(a)(3)?

**Answer:** If the reports are filed pursuant to Section 13 or 15(d) of the Exchange Act with bank regulators, the reports will satisfy Rule 15c2-11(a)(3).

**Question #13:** What information is required to be submitted under Rule 15c2-11(a)(4) relating to certain foreign issuers which are exempt from the periodic reporting requirements of Section 12(g) of the Exchange Act?

**Answer:** The broker/dealer is required to submit all the information that the issuer has furnished during its past fiscal year to the Commission in order for the issuer to maintain its Rule 12g3-2(b) exemption.

**Question #14:** Must the financial information required under Rule 15c2-11(a)(5) be independently audited?

**Answer:** No. Rule 15c2-11(a)(5) does not require audited financials. However, a broker/dealer would ordinarily be required to review unaudited financial statements more closely than if the statements were independently audited. Nevertheless, simply because the statements have been audited, a broker/dealer cannot avoid its responsibility to review the financial statements in order to have a reasonable basis to believe that the information is accurate.

**Question #15:** If an issuer has filed a Form 10-K or a prospectus with the Commission and the issuer is current in its reports to the Commission, can the broker rely on Rule 15c2-11(a)(5)?

**Answer:** No. If an issuer has filed a 10-K or prospectus with the Commission and is current in its reports, the broker must file under, and have in

its possession the information required by, Rule 15c2-11(a)(3).

**Question #16:** What are the requirements for a broker/dealer if the issuer or its predecessor has been the subject of a Commission trading suspension during the preceding year?

**Answer:** An SEC trading suspension should alert the broker/dealer to the possibility that information in its possession concerning the issuer may no longer be current or accurate. The broker/dealer must be particularly cautious when seeking to reinstate quotations following an SEC trading suspension. The member must obtain a copy of the Commission trading suspension order or the Commission release announcing the trading suspension. A broker/dealer should, at a minimum, receive assurances or additional information with respect to matters cited in the suspension order or with respect to other matters affecting the broker/dealer's reasonable belief as to the accuracy of the information. Reliance on new information or assurances from prior sources of information in these circumstances, however, requires caution. In exceptional cases, where the source is unable to provide reasonable assurances about the reliability of the information, consultation with an independent accountant or attorney may be warranted. All information gathered in the broker/dealer's investigation of the issues must accompany the Form 211 application.

#### Rule 15c2-11 Exceptions

**Question #17:** Are there any exceptions from the informational requirements of Rule 15c2-11?

**Answer:** Yes. If a broker/dealer can meet one of the exceptions of Rule 15c2-11, it is not required to maintain or submit to the NASD any documents required by Rule 15c2-11. These exceptions primarily relate to instances where a broker/dealer wishes to quote a security that: is traded on a national securities exchange in the United States; represents unsolicited customer interest; has been the subject of regular and continuous quotations for the past 30 days; or is traded on Nasdaq.

**Question #18:** When does the Rule 15c2-11(f)(1) "exchange" exception apply?

**Answer:** The exchange exception applies to securities that are traded on a United States national securities exchange on the same day or the

business day prior to the day the application is made to the quotation medium.

**Question #19:** If the common stock of an issuer trades on the New York Stock Exchange, are the warrants of the same issuer exempt from Rule 15c2-11?

**Answer:** No. The exception relates only to specific securities and not to the issuer. Each security must independently meet the requirements of the exception.

**Question #20:** If trading in a security is halted or suspended on Nasdaq or an exchange, but the security has not been officially delisted from Nasdaq or the exchange, can it be listed on the OTC Bulletin Board?

**Answer:** No. The OTC Bulletin Board is only for non-Nasdaq, non-U.S. exchange-listed securities. Dual listing is not permitted. Until a security is officially delisted from an exchange or Nasdaq, it cannot be entered on the OTC Bulletin Board.

**Question #21:** If the broker/dealer is claiming the Rule 15c2-11(f)(2) "unsolicited customer interest" exception of Rule 15c2-11, can the broker/dealer publish quotations for the security in a quotation medium for its own account?

**Answer:** No. If the broker/dealer claims the unsolicited customer interest exception, it can only publish or submit a quotation for that customer account. If the broker/dealer wishes to publish or submit a quotation for its own account or any other accounts, it must comply with Rule 15c2-11. Paragraph (f)(2) of Rule 15c2-11 does not apply to a quotation consisting of both a bid and an offer, each at a specified price, unless the quotation medium specifically identifies the quotation as representing a customer's unsolicited indication of interest.

**Question #22:** Will the NASD be monitoring the broker/dealer's compliance with the unsolicited customer interest exception?

**Answer:** Yes. The NASD monitors all aspects of broker/dealer compliance with Rule 15c2-11, including a quotation utilizing the unsolicited customer interest exception. The NASD may require the broker/dealer to produce its trading records and other documents to determine whether the broker/dealer traded for any account other than the in-

dicated customer.

**Question #23:** What are the requirements of Rule 15c2-11(f)(3), the "piggyback" exception?

**Answer:** If a broker/dealer is relying on the Rule 15c2-11(f)(3) exception, the security must be quoted **in the same interdealer quotation medium** as the intended quotation during the past 30 calendar days, and that during those 30 days the security had to be quoted on at least 12 days without more than four consecutive business days without quotations.

**Question #24:** Do "name only" quotations satisfy the piggyback exception requirement that the security be quoted in the quotation medium?

**Answer:** Yes. The information requirements of Rule 15c2-11 apply to name only as well as priced quotations. Both types of quotations can be used to satisfy the piggyback exception. It should be noted, however, that each broker/dealer submitting a quotation must satisfy the informational requirements of Rule 15c2-11 until all of the requirements of the piggyback exception, including the 30-day quotation period, have been satisfied.

**Question #25:** What happens when a security is no longer quoted by a broker/dealer in the quotation medium?

**Answer:** If a security is not quoted by any broker/dealer for a period of more than 4 business days, the security no longer qualifies for the piggyback exception. A broker/dealer would be required to comply with Rule 15c2-11 before it could initiate or resume quotation of the security.

**Question #26:** What constitutes a "business day" for purposes of Rule 15c2-11?

**Answer:** For purposes of Rule 15c2-11, a "business day" is defined by reference to the quotation medium to which a broker/dealer submits the quotation. Any day that the quotation medium accepts and disseminates quotations would constitute a "business day" under Rule 15c2-11.

**Question #27:** Must a broker/dealer quote a security for an entire "business day" to qualify for the "piggyback" exception contained in paragraph (f)(3) of Rule 15c2-11?

**Answer:** Under the "piggyback" exception, a security will be deemed to have been quoted on a

business day where a broker/dealer has continuously quoted a security for all or a substantial portion of that day. The existence of closing quotations on the OTC Bulletin Board may be used by the NASD to create a rebuttable presumption that the broker/dealer continuously quoted a security for a substantial portion of the business day.

**Question #28:** If a security qualifies for the piggyback exception in one quotation medium, does it meet the piggyback exception for other quotation mediums? For example, if a security is quoted in the OTC Bulletin Board, can a market maker quote the security in the "pink sheets" without filing a Form 211 application?

**Answer:** No. The staff of the SEC takes the position that the piggyback exception does not transfer from one quotation medium to another. Thus, quotations for a security in the OTC Bulletin Board may not be used to satisfy the piggyback requirements for the "pink sheets."

**Question #29:** What are the requirements of Rule 15c2-11(f)(5), the "Nasdaq" exception?

**Answer:** In order for a broker/dealer to rely on the Nasdaq exception, the security must be authorized for quotation on Nasdaq and the authorization must not be suspended, terminated, or prohibited.

**Question #30:** Can a broker/dealer publish a quotation on the OTC Bulletin Board for a security that is currently traded on Nasdaq?

**Answer:** No. The OTC Bulletin Board does not allow quotations for Nasdaq securities.

**Question #31:** If the common stock and units of an issuer are already quoted on the OTC Bulletin Board, does a Form 211 application need to be submitted for the warrants of the same issuer?

**Answer:** Yes. Rule 15c2-11 applies to securities, not issuers. Quotations for the common stock and units may be in compliance with Rule 15c2-11, but that does not qualify any other securities of the issuer. Accordingly, a completed Form 211 and the Rule 15c2-11 information would have to be submitted for the warrants. However, if the broker/dealer has previously submitted documents relating to the issuer that continue to meet the requirements of Rule 15c2-11, it need not refile identical documents. The broker/dealer need only submit a com-

pleted Form 211 alone or with any additional documents needed to comply with Rule 15c2-11.

Schedule H and OTC Bulletin  
Board Questions

**Question #32:** What must be included in the basis and factors for a broker/dealer's initial priced entry?

**Answer:** A broker/dealer's basis and factors should relate to the price that the broker/dealer is proposing. The statement on the Form 211 must be concise and directly related to the proposed bid and/or offer. The basis and factors should not be broad generalized statements but should articulate how the priced quotation was determined, including the factors taken into consideration. The NASD is not conducting merit review but must be able to clearly understand the basis for the initial priced entry.

**Question #33:** If a broker/dealer's Rule 15c2-11 documentation has been cleared by the NASD, but the broker/dealer did not request clearance for a priced quotation, is the broker/dealer required to file anything additional when it changes its unpriced quotation to a priced quotation?

**Answer:** Yes. The broker/dealer must supplement its original application with the Form 211 indicating the intended priced entry and the basis and factors even if other broker/dealers are publishing priced quotations for the security or a piggyback exception has become available.

**Question #34:** Can Form 211 applications be faxed to the NASD?

**Answer:** No. The original Form 211 must be mailed and requires original signatures.

**Question #35:** If a security on the OTC Bulletin Board appears in the "eligible" status, can a broker/dealer enter quotations without filing a Form 211 application?

**Answer:** No. The "eligible" status on the OTC Bulletin Board indicates that another broker/dealer has been cleared to quote the security, but the piggyback exception of Rule 15c2-11 has not been met. When the status for a security on the OTC Bulletin Board is "active" a broker/dealer may enter quotes without filing the Form 211 application.

**Question #36:** What are the filing requirements of Schedule H if another security of the issuer is trading on Nasdaq, i.e., if a broker/dealer wishes to quote the warrants of an issuer that has a common stock listed on Nasdaq?

**Answer:** Since an issuer that has a security trading on Nasdaq will be a reporting company, the broker/dealer need only submit the Form 211 and indicate on the Form 211, under Rule 15c2-11(a)(3), the reports that the broker/dealer has in its possession. These reports would include the issuer's latest Form 10-K and all subsequent Form 10-Qs and Form 8-Ks. In this case the Form 211 can be faxed to the NASD.

**Question #37:** Is there an expedited procedure for listing recently delisted Nasdaq securities on the OTC Bulletin Board?

**Answer:** Yes. On February 28, 1992, the SEC granted an exemption from Rule 15c2-11 for securities that will be delisted from Nasdaq due to the revised listing and maintenance requirements for the Nasdaq Small-Cap Market.<sup>SM</sup> When these securities are delisted, they will automatically be eligible to quote on the OTC Bulletin Board or any other quotation medium **the next business day** without the filing of a Form 211, as long as the following requirements are met:

- (1) The security must have been traded on Nasdaq for the past 30 days;
- (2) The issuer must not be subject to bankruptcy proceedings;
- (3) The issuer must be current in its SEC reporting requirements; and
- (4) The broker/dealer relying on this exception must have been a market maker in the subject security during the 30 days prior to delisting.

**Question #38:** Can more than one security of an issuer be included on a Form 211?

**Answer:** Yes. More than one security for a **single issuer** may be requested on a single Form 211.

**Question #39:** Can a broker/dealer accept payment to make a market in an issuer's securities?

**Answer:** No. A market maker cannot accept any form of compensation, including cash, securities, products, or services, for the purposes of making a market, to cover out-of-pocket expenses for

making a market, or for submitting an application to make a market in an issuer's securities. This activity was addressed in *Notice to Members 75-16* in 1975.

**Question #40:** Can a broker/dealer rely on the inside market (high bid, low ask prices) calculated on the OTC Bulletin Board in executing retail transactions?

**Answer:** No. Broker/dealers cannot execute transactions in non-Nasdaq over-the-counter equity securities based on the prices of any non-validated quotations. Members should be aware that the best indication of the prevailing market price is the actual trades that are occurring in the marketplace and not the quotations appearing on the OTC Bulletin Board or other quotation mediums. As the Commission stated in the leading decision of *Alstead, Dempsey & Company, Incorporated* (SEC Release No. 34-20825, April 5, 1984): "By their very nature, quotations only propose a transaction: they do not reflect the actual result of a completed arms-length sale. Thus, as we have frequently pointed out, quotations for obscure securities with limited inter-dealer trading activity may have little value as evidence of the current market." (See *Notice to Members 92-16*).

**Question #41:** If the OTC Bulletin Board displays three firm quotations, is a broker/dealer required by Article III, Sections 1 and 21 (b) of the NASD Rules of Fair Practice, to call the market makers to verify their quotations appearing on the OTC Bulletin Board?

**Answer:** No. The broker/dealer does not have to call the three market makers to verify the firm quotations that are displayed on the screen. A broker/dealer need only note on the order ticket the identity of the broker/dealers and the firm quotations obtained from the OTC Bulletin Board.

**Question #42:** If the OTC Bulletin Board has one firm quote and two name only quotations, is the broker/dealer required to call the name-only market makers to determine their quotations?

**Answer:** Yes. If there are fewer than three firm quotations on the OTC Bulletin Board, the broker/dealer must call the name-only market makers to obtain the three required quotations.

**Question #43:** What is the broker/dealer's ob-

ligation if the OTC Bulletin Board has fewer than three market makers listed?

**Answer:** The broker/dealer must check the "pink sheets" or any other quotation medium for additional market makers. A market maker in these quotation mediums must be contacted to obtain its current quotations. If three market makers cannot be found, then the broker/dealer need only contact the one or two that were found.

**Question #44:** If the OTC Bulletin Board has three non-firm priced quotations in a foreign security, must a broker/dealer contact each market maker?

**Answer:** Yes. Non-firm quotations on the OTC Bulletin Board cannot be used to satisfy the requirement that quotations be obtained from other market makers.

**Question #45:** Does Rule 15c2-11 and Schedule H apply to secondary market transactions in direct participation program securities?

**Answer:** Yes. Both Rule 15c2-11 and all of the sections of Schedule H apply. Pursuant to Schedule H, Section 4, members are required to submit their Rule 15c2-11 information to the NASD prior to publishing quotations. Moreover, members must report their volume in secondary market transactions, and certain pricing informa-

tion in direct participation program trading as required by Schedule H, Section 2 of the NASD By-Laws. For more information on trade reporting for these securities, please call Automated Reports at (301) 590-6887. In addition, a separate Notice will be issued addressing this subject.

**Question #46:** Where can a broker/dealer get more information on the subjects discussed in this Notice?

**Answer:** All interested broker/dealers should read Rule 15c2-11, Commission Release No. 34-29094, Schedule H, Section 4 of the NASD By-Laws, and *Notice to Members 90-40*. Additionally, the Compliance Division's OTC Compliance Unit (202) 728-8149 is available throughout the business day and by voice mail during non-business hours to respond to inquiries or to direct the caller to the appropriate party. We encourage members to call with their questions and inquiries.

For more information contact Daniel M. Sibears, Director, Compliance Division, at (202) 728-8959 or Ken Worm, Manager, OTC Compliance Unit, at (202) 728-8149. Also, broker/dealers with questions regarding Rule 15c2-11 may contact the Office of Trading Practices, Division of Market Regulation, Securities and Exchange Commission at (202) 272-2848.

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# Notice To Members

National Association of Securities Dealers, Inc.

October 1992

## Number 92-51

### Suggested Routing:\*

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

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

**Subject: SEC Approval of Amendments Relating to "When, as and if Issued" and "When, As and if Distributed" Contracts; Effective November 2, 1992**

### EXECUTIVE SUMMARY

On September 4, 1992, the Securities and Exchange Commission (SEC) approved amendments to Section 4 of the NASD<sup>®</sup> Uniform Practice Code. The amendments codify as new provisions of Section 4 of the UPC the Memorandum of the Committee relating to "When, as and if Issued" and "When, as and if Distributed" Contracts, and delete the Memorandum from the Code. The amendments take effect on November 2, 1992. The text of the new rule language follows the discussion below.

### BACKGROUND AND DESCRIPTION OF THE AMENDMENTS

On September 4, 1992, the SEC approved amendments to Section 4 of the Uniform Practice Code (Code) codifying as new provisions of Section 4 the Memorandum of the NASD Operations Committee (Memorandum) relating to "When, as and if Issued" and "When, as and if Distributed" Contracts ("when issued" contracts or "when issued" securities). Currently, the Memorandum is published in the *NASD Manual* (Manual) immediately following Section 4. The rule change deletes the Memorandum in its entirety from the Code.

The amendments to Section 4 cover confirmations, accrued interest, marks to market, margin requirements, deposit requests, segregation of funds, contract settlement, and cancellation. Except for confirmations, all the changes incorporate the subjects covered in the Memorandum into Section 4. Further, except for the cancellation provision in Subsection 4(h), Section 4 and those portions incorporated from the Memorandum are substantively unchanged. However, in certain cases, procedures previously recommended are now mandatory, and the explanatory language of the Memorandum is deleted.

New Subsection 4(a) requires that parties to "when issued" transactions send confirmations containing certain minimum information. This information required to be sent is drawn from current Subsections 4(a) and 4(b), and ¶3504.10 of the Memorandum at page 3516 of the Manual. This information includes a description of the security and the plan under which it will be distributed, the designated authority for ruling on contract performance, and a provision for marking the contract to the market. New subparagraph 4(a)(3) states that the NASD Operations Committee (formerly, the Uniform Practice Committee)(the Committee) will provide a description of the security and any plan of issuance or distribution for inclusion in "when issued" contracts. This language is based on

¶3504.11 of the Memorandum at page 3516 of the Manual. New Subsection 4(b) specifies the treatment of accrued interest in “when issued” contracts and is based on ¶3504.12 of the Memorandum at page 3517 of the Manual.

New Subsection 4(c) provides that because of potentially significant delays in the issuance or distribution of “when issued” securities, such contracts should be marked to the market pursuant to the provisions of Section 58 of the Code to protect a party whose interest becomes partially unsecured as a result of market value changes to the securities under contract. This provision differs from ¶3504.13 of the Memorandum at page 3517 of the Manual. The NASD has determined that separate marks to market standards for “when issued” contracts are not necessary and, instead, members can rely on Section 58 requirements.

New Subsection 4(d) requires “when issued” contracts to comply with Sections 220.4 and 220.5 of Regulation T of the Board of Governors of the Federal Reserve System. This provision differs from ¶3504.20 of the Memorandum at page 3518 of the Manual, which is only precatory in nature. New Subsection 4(e) allows members to require deposits or collateral for “when issued” contracts even if not required by Regulation T. This provision is based on the last paragraph of ¶3504.13 of the Memorandum at page 3518 of the Manual. New Subsection 4(f) recommends the segregation of “when issued” contracts, and deposits made in connection with them, on the books of a member firm and is drawn from ¶3504.30 of the Memorandum at page 3518 of the Manual. New Subsection 4(g) specifies the rules for settlement of such contracts and incorporates current Subsections 4(c) and 4(d).<sup>1</sup>

Finally, new Subsection 4(h) provides for the cancellation of “when issued” contracts by the Committee. The Committee canceled “when issued” contracts under its authority to rule on issues related to such contracts specified in Section 2 of the Code. In addition, the Memorandum states that the date for settlement of “when issued” contracts must be determined after the date of issuance becomes known and that, if the securities eventually issued or distributed differ substantially from those contemplated in the contract, the contract cannot be settled and must be canceled. ¶3504.10 of the Memorandum at page 3516 of the Manual.

Subsection 4(h) is intended to codify the gen-

eral authority of the Committee to cancel “when issued” contracts and to provide some specificity regarding the Committee’s cancellation authority. The structure of Subsection 4(h) is intended to differentiate between situations where the contract will (1) always be canceled; (2) generally be canceled; and (3) generally not be canceled.

Subsection 4(h)(1) retains the original language from ¶3504.10 of the Memorandum at page 3516 of the Manual and Section 2 of the Code granting the committee broad discretionary power to cancel “when issued” contracts if circumstances change. This general authority to cancel contracts is retained in Subsection 4(h) to provide for situations which are not anticipated by the more specific provisions of Subsections 4(h)(3) and (4). Thus, notwithstanding the fact that the circumstances surrounding the performance of a contract may fit within Subsections 4(h)(3) and (4), the Committee retains the discretion to act inconsistently with those subparagraphs if, in its judgment, such action is necessary to effectuate the purposes of Section 2 of the Code.

Subsection 4(h)(2) states that the Committee will cancel contracts if the securities will not be issued or distributed. This provides for the situation where an announced merger, reorganization, or distribution plan fails or is terminated after “when issued” securities have begun trading. Because such securities cannot be delivered since they will not be issued or distributed, the NASD has determined to cancel any such contracts.

Subsection 4(h)(3) provides that contracts will generally be canceled if the “securities which are to be issued or distributed are not substantially the same as those contemplated in the contract.” A nonexclusive list of the types of material changes that will generally result in cancellation includes changes to the redemption provision schedule, dividend payments, interest rate, maturity, yield, and exercise price. The NASD regards these as changes to the terms of the security and, therefore, material to the contract to purchase the security.

Subsection 4(h)(4) provides for certain changes that “shall not require cancellation of contracts . . . .” Because they change the terms underlying the plan of distribution and not the terms of

<sup>1</sup>Current Subsections 4(c) and 4(d), previously numbered 4(e) and 4(f), were renumbered in SR-NASD-91-13, approved by the SEC in Rel. No. 34-29687 on September 13, 1991; 56 F.R. 47819 (September 20, 1991).

the security, these terms are not material to the contract to purchase the security and include: (1) a change in the amount of equity or debt to be issued; (2) restructuring of the financing arrangements; and (3) settlement of a legal action directly related to the distribution plan which also affects the financial statement of the issuer.

The NASD believes that Subsections 4(h)(3) and (4) will clarify the NASD's standards for the cancellation of contracts under the enumerated situations. Such standards will assist risk/benefit analysis by participants in "when issued" transactions, thereby advancing the purposes of Section 2 of the Code.

The NASD's preference, as expressed in the two Subsections, is to cancel "when issued" contracts only if the security issued or distributed, not the plan for issuance or distribution, is substantially different. The NASD also believes, however, that the effect of changes to particular securities and plans of distribution are not predictable and, therefore, may not be appropriately resolved by rigidly adhering to the formula in Subsections 4(h)(3) and (4). It is for this reason that the NASD has retained its general authority to cancel "when issued" contracts as necessary.

The amendments take effect on November 2, 1992. Questions concerning this Notice should be directed to Elliott R. Curzon, Senior Attorney, Office of General Counsel at (202) 728-8451, or Dorothy Kennedy, Manager of Uniform Practice at (212) 858-4340.

## TEXT OF AMENDMENTS TO SECTION 4 OF THE UNIFORM PRACTICE CODE

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

### [Delivery Dates]

#### When, As and If Issued/Distributed Contracts Sec. 4

##### Confirmations or comparisons

[(a) A confirmation covering a transaction in a security "when, as and if issued" shall adequately identify the security and the plan, if any, under which the security is proposed to be issued.

(b) A confirmation covering a transaction in a security "when, as and if distributed" shall adequately identify the security and the plan, if any, under which the security is proposed to be distributed.]

(a)(1) Each party to the transaction shall send

a written "when, as, and if issued" or "when as and if distributed" confirmation or comparison in the same form as set forth as Exhibit A of this section and pursuant to the requirements of Sections 9(a), 10 and 64 of the Code.

(2) Each confirmation or comparison covering a contract in a "when, as and if issued" or "when, as and if distributed" security shall, at a minimum, contain:

- (i) an adequate description of the security and the plan, if any, under which the security is proposed to be issued or distributed;
- (ii) designation of the National Association of Securities Dealers, Inc., as the authority which shall rule upon the performance of the contract; and
- (iii) provision for marking the contract to the market.

(3) The Committee will furnish, upon written request therefor, an adequate description of any particular issue of securities and of the plan under which the securities are proposed to be issued for the purpose of inclusion in all contracts or confirmations covering transactions on a "when, as and if issued" or "when, as and if distributed" basis in the particular securities.

#### Accrued interest

(b) Unless the parties agree otherwise, "when, as and if issued" or "when, as and if distributed" transactions between members in fixed obligations of new or reorganized companies shall be "and accrued interest" to date of settlement. Interest shall be computed on the basis of the expired portion of the coupon current at the time of settlement, and all due and past due coupons shall be detached.

"When, as and if issued" or "when, as and if distributed" transactions between members in income or contingent interest securities of such companies shall be traded "flat" and shall carry all payments that may be made or declared in connection with such new securities from the effective date of the plan; except that, if any payment is made or declared directly or indirectly in connection with such securities, prior to the settlement date, transactions made on and after the "ex" date for such payment shall carry only payments made or declared in connection with such securities from such "ex" date.

Securities of such companies which bear a

fixed rate of interest, plus contingent additional payment, are to be traded “and accrued interest” at the rate of the fixed interest, and traded “flat” in respect to the contingent payments.

#### **Marks to the market**

(c) In case of “when, as and if issued” or “when, as and if distributed” contracts, the time of issuance or distribution of the securities is indefinite and may be long delayed. Therefore, such contracts should be marked to the market pursuant to the provisions of Section 58 of the Code.

#### **Contracts on margin**

(d) All “when, as and if issued” or “when, as and if distributed” contracts shall be in compliance with Sections 220.4 and 220.5 of Regulation T of the Board of Governors of the Federal Reserve System.

#### **Request for deposits**

(e) A member may require a customer to deposit cash or collateral to secure a “when, as and if issued” or “when, as and if distributed” contract even though Section 220.8(b)(1) of Regulation T of the Board of Governors of the Federal Reserve System may not require such deposit.

#### **Segregation of funds**

(f) Deposits against “when, as and if issued” or “when, as and if distributed” transactions should be segregated on the books of the firm in order to present a true picture of the firm’s position and its commitment in transactions of this kind. It may be appropriate to segregate such deposits from the firm’s general cash balances by depositing them in a bank other than those containing the general deposits, loans or other obligations of the firm.

Whether or not such physical segregation is made, no member should permit any part of deposits against “when, as and if issued” or “when, as and if distributed” contracts to be used for any purpose whatsoever other than to secure such contracts.

At a minimum, every member doing business in “when, as and if issued” or “when, as and if distributed” securities shall ensure that the sum of the cash balances and any deposits with banks, clearing houses, or other brokers against “when, as and if issued” or “when, as and if distributed” contracts always exceeds the aggregates of all free credits and deposits against “when, as and if issued” or

“when, as and if distributed” contracts by an amount fully ample to conduct his business without employing any part of such deposits.

#### **Settlement of contracts**

(g)(1) A date for the settlement of “when, as and if issued” and “when, as and if distributed” contracts shall be determined by the Committee when a sufficient percentage of the issue is outstanding.

#### **[“When, as and if issued”**

(c)](2) In connection with a transaction in a security “when, as and if issued,” delivery shall be made at the office of the purchaser on the date declared by the Committee: except that if no delivery date shall be declared by the Committee, [(1)](a) delivery may be made by the seller on the business day following the day upon which the seller has delivered at the office of the purchaser written notice of intention to deliver, and [(2)](b) open market “when, as and if issued” contracts in securities currently being publicly offered through a syndicate or selling group shall be settled on the date such syndicate or selling group contracts are settled: provided, however, delivery of securities in accordance with this subsection shall be made during the normal delivery hours in the community where the buyer is located.

#### **[“When, as and if distributed”**

(d)](3) In connection with a transaction in a security “when, as and if distributed,” delivery shall be made at the office of the purchaser on the date declared by the Committee: except that if no delivery date shall be declared by the Committee, delivery may be made by the seller on the business day following the day upon which the seller has delivered at the office of the purchaser written notice of intention to deliver.

#### **Cancellation of contracts**

(h)(1) Pursuant to Section 2 of the Code the Committee may cancel or terminate “when, as and if issued” and “when, as and if distributed” contracts as necessary to resolve conflicts over the settlement of such contracts.

(2) Contracts will be cancelled if the securities are not to be issued or distributed.

(3) Contracts will generally be cancelled if the securities which are to be issued or distributed

are not substantially the same as those contemplated in the contract. Material changes which will generally result in cancellation include, but are not limited to, changes to the redemption schedule, dividend payments, interest rates, maturity, yield, and exercise price.

(4) Notwithstanding paragraph (h)(3), contracts will not generally be cancelled as a result of changes that do not constitute material changes to the terms of the security called for under the contract. Changes which will not generally result in

cancellation include, but are not limited to:

- (i) changes in the dollar value of securities to be issued or distributed;
- (ii) restructuring of financing arrangements previously announced by the issuer of the securities; or
- (iii) settlement of any legal action or the occurrence of any other event which has or will have a material effect on the financial condition of the issuer of the securities.

**Exhibit A**

**Standard Form of "When, As and If Issued" or "When, As and If Distributed" Contract**

**For use by dealers and brokers in confirming transactions with other dealers and brokers**

"When, as and if Issued" or "When, as and if Distributed" Contract

\_\_\_\_\_  
(Firm Name)

Date \_\_\_\_\_

(Sold to) (Purchased From)	Quantity	Description of Security	Price

If this contract was made on a national securities exchange, it shall be subject to and governed by the requirements of such exchange, its constitution, rules, practices and interpretations thereof, relating to contracts between members of such exchange, as the same may be amended or modified from time to time.

If this contract was made elsewhere than on a national securities exchange, it shall be subject to and governed by the requirements of the National Association of Securities Dealers, Inc., its By-Laws, Rules of Fair Practice, Uniform Practice Code, rulings and interpretations thereof as the same may be amended or modified from time to time.

This contract shall be settled and payment therefor made at such time and place, in such manner, and by the delivery of such securities and/or other property as the exchange or association to whose requirements this contract is subject in its sole discretion may determine, or shall be canceled and thereafter shall be null and void if such exchange or association determines in its sole discretion that the [plan or proposal to which the securities were to be issued or distributed has been abandoned or materially changed] securities which are to be issued or distributed are not substantially the same as those contemplated in the contract. During the pendency of this contract either party shall have the right to call for a mark to the market, and upon failure of the other party to comply therewith the party not in default may close this contract in accordance with the requirements of the exchange or association to whose requirements this contract is subject.

**Standard Form of "When, As and If Issued" or "When, As and If Distributed" Contract**

**For use by a dealer (principal) and his customer covering transactions on a principal basis**

\_\_\_\_\_ Date

"When, as and if Issued" or "When, as and if Distributed" Contract

TO \_\_\_\_\_

I/we have sold to you/purchased from you \_\_\_\_\_ shares/par value \_\_\_\_\_ at \_\_\_\_\_.

These securities shall be payable and deliverable "when, as and if issued" or "when, as and if distributed", or this contract shall be cancellable in accordance with the requirements of the National Association of Securities Dealers, Inc., its By-Laws, Rules of Fair Practice, Uniform Practice Code, applicable rules and interpretations thereunder and amendments thereof.

I/we shall have the right to demand deposits according to such requirements. On your failure to comply therewith, we may close the contract in accordance with such requirements.

\_\_\_\_\_  
(Firm Signature)

Accepted:

\_\_\_\_\_  
(Signature of Customer)

# Notice To Members

National Association of Securities Dealers, Inc.

October 1992

## Number 92-52

### Suggested Routing:\*

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

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

## Subject: Broker/Dealer and Agent Renewals for 1992-93

### EXECUTIVE SUMMARY

The 1992-93 NASD<sup>®</sup> broker/dealer and agent registration renewal cycle begins in early November. This program simplifies the renewal process through the payment of one invoice amount that will include fees for NASD personnel assessments, NASD branch-office fees, New York Stock Exchange (NYSE), American Stock Exchange (ASE), and Chicago Board Options Exchange (CBOE) maintenance fees. In addition, Pacific Stock Exchange (PSE) maintenance fees will be collected for the first time this year. The invoice also includes state agent renewal fees and state broker/dealer renewal fees. Members should read this notice and the instruction materials included in the invoice package to ensure continued eligibility to do business in the states effective January 1, 1993.

### INITIAL RENEWAL INVOICES

On or around November 11, 1992, initial renewal invoices will be mailed to all member firms. The invoices will include fees for NASD personnel assessments, NASD branch-office fees, NYSE, ASE, CBOE, and PSE maintenance fees, state agent renewal fees, and state broker/dealer renewal

fees. The NASD must receive full payment of the November invoice **no later than December 18, 1992.**

NASD personnel assessments for 1993 will be based on the number of registered personnel with an approved NASD license as of December 31, 1992. That personnel assessment is \$10 per person. NASD branch-office assessments will be based on the number of active branches as of December 31, 1992. This branch-office assessment is \$50 per branch.

Agent renewal fees for NYSE, ASE, CBOE, PSE, and state affiliations are listed in a table enclosed with each invoice. The table includes a list of broker/dealer renewal fees for states that are participating in this year's broker/dealer renewal program. NYSE, ASE, CBOE, and PSE maintenance fees — collected by the NASD for firms that are registered with NYSE/ASE/CBOE/PSE as well as the NASD — are based on the number of NYSE-, ASE-, CBOE-, and PSE-registered personnel employed by the member.

If a state is not participating in this year's broker/dealer renewal program, members registered in that state must contact the state directly to assure compliance with renewal requirements. In addition, some participating states may require steps beyond the payment of renewal fees to complete the broker/dealer renewal process. Members should contact states directly for further information on

state renewal requirements.

Payment of the initial invoice should be in the form of a check made payable to the National Association of Securities Dealers, Inc. The check should be drawn on the member firm's account, with the firm's Central Registration Depository (CRD) number included on the check. Submit the check along with the top portion of the invoice and mail them in the return envelope provided with the invoice. To ensure prompt processing, the renewal invoice payment should not be included with other forms or fee submissions. Members should be aware that failure to return payment to the NASD by the December 18, 1992, deadline will mean a loss of eligibility to do business in the states effective January 1, 1993.

### FILING FORM U-5

Members may wish to avoid unwanted renewals by filing Form U-5 for agent terminations in one or more jurisdiction affiliations. Because of the increased convenience and flexibility reported by members that used predated Form U-5 for renewals in previous years, the NASD will again process predated agent terminations this year. From November 1 to December 18, the NASD will accept and process Forms U-5 (both partial and full terminations) with **predated dates of termination**. Under this procedure, if the U-5 indicates a termination date of December 31, 1992, an agent may continue doing business in a jurisdiction until the end of the calendar year without being assessed renewal fees for that jurisdiction. Please ensure that Forms U-5 are filed by the renewal deadline date of December 18, 1992. Also, **predated U-5s cannot be processed if the date of termination indicated is January 1, 1993 or thereafter.**

Members should exercise care when submitting predated Forms U-5. The NASD will process these forms as they are received but cannot withdraw a predated termination once processed. To withdraw a predated termination, a member would have to file a new Form U-4 **after** the termination date.

The NASD encourages members having access to the Firm Access Query System (FAQS) to utilize electronic filings for the submission of all Forms U-5 and page 1s of Form U-4. FAQS offers several advantages to firms in this regard, including the ability to **immediately** process terminations, ensure in-house control over agent registra-

tions, and reduce normal and express mailing costs as well as long-distance telephone calls. It also allows members to quickly and efficiently handle the large filing volumes that typically occur at this time every year. Because of that, the NASD will provide an additional service to FAQS users by expanding the on-line user hours for November and December 1992. The system will be operational from 7 a.m. to 11 p.m., Eastern Time (ET) Mondays through Fridays and will also be available on Saturdays from 9 a.m. to 5 p.m., ET during these months.

### FILING FORMS BDW

The CRD Phase II program, now in its fourth year, allows firms requesting terminations (either full or state only) to file their Forms BDW with the CRD to avoid the assessment of renewal fees in those jurisdictions that are designated on the Form BDW, **provided that the jurisdiction is a CRD Phase II participant**. Currently, there are seven jurisdictions that are **not** participating in Phase II. They are:

- Michigan
- Puerto Rico
- American Stock Exchange
- Chicago Board Options Exchange
- New York Stock Exchange
- Pacific Stock Exchange

Firms requesting termination in any of the above-listed jurisdictions must submit a Form BDW directly to the jurisdiction as well as to the CRD.

The deadline for receipt of Forms BDW by the CRD for firms desiring to terminate an affiliation before year-end 1992 is December 18, 1992. This same date applies to the filing of Forms BDW with the jurisdictions that are not participating in Phase II. Predated Forms BDW filed with the CRD **will be** accepted and processed in the same manner as predated Forms U-5.

### REMOVING OPEN REGISTRATIONS

For the sixth year, the NASD will include in the initial invoice package a roster of firm agents whose NASD registration is either terminated or purged due to the existence of a deficient condition for more than 180 days, but who have approved registrations with states. This roster should aid in the reconciliation of personnel registrations prior to year's end. Firms may terminate obsolete state

registrations through the submission of a Form U-5 or reinstate NASD licenses through the filing of a page 1 of Form U-4. No roster will be included if a firm does not have agents within this category.

### **BILLING CODE BREAKDOWN**

This year's final invoice package will again include a breakdown of fees assessed by billing code for firms that use billing codes in the registration process. This breakdown will aid firms in their internal research and allocation of fees.

### **FINAL ADJUSTED INVOICES**

On or about January 11, 1993, the NASD will mail final adjusted invoices to members. These invoices will reflect the final status of firm and agent registrations as of December 31, 1992. Any adjustments in fees owed as a result of registration terminations or approvals subsequent to the initial invoice mailing will be made in this final reconciled invoice. If a member has more agents registered at year's end than it did on the November invoice date, additional fees will be assessed. If a member has fewer registered personnel at year's

end than it did in November, a credit will be issued.

Included with this adjusted invoice will be the member renewal rosters, which will list all renewed personnel with the NASD, NYSE, ASE, CBOE, PSE, and each state. Persons whose registration is approved in any of these jurisdictions during November and December will automatically be included in this roster, while registrations that are pending approval or are deficient at year's end **will not** be included in the renewal process. Firms also will receive an NASD branch-office roster that lists all branches for which they have been assessed.

Firms then will have a two-month period in which to reconcile any discrepancies on the rosters. All jurisdictions should be contacted directly in writing. Specific information and instructions concerning the final adjusted invoice package will appear in the January 1993 issue of the *Notice to Members*, as well as on the inside cover of the renewal roster.

Questions concerning this Notice may be directed to the NASD's Member Services Phone Center at (301) 590-6500.