

NEWS

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

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OPENING STATEMENT OF
THE HONORABLE HAROLD M. WILLIAMS, CHAIRMAN
SECURITIES AND EXCHANGE COMMISSION

AT THE

COMMENCEMENT OF THE COMMISSION'S HEARINGS
ON PRACTICES IN FIXED PRICE OFFERINGS:
PAPILSKY HEARINGS

ON BEHALF OF THE SECURITIES AND EXCHANGE COMMISSION, I
AM PLEASED TO OPEN THESE PROCEEDINGS AND WELCOME YOU HERE
THIS MORNING. THE PUBLIC HEARINGS WHICH BEGIN TODAY ARE
FOR THE PURPOSE OF CONSIDERING A PROPOSED RULE CHANGE
FILED BY THE NATIONAL ASSOCIATION OF SECURITIES DEALERS
TO AMEND CERTAIN OF ITS RULES OF FAIR PRACTICE GOVERNING
THE GIVING AND RECEIVING OF SELLING CONCESSIONS, DISCOUNTS
OR OTHER ALLOWANCES IN CONNECTION WITH FIXED PRICE
OFFERINGS OF SECURITIES.

THE PROPOSED RULE CHANGE, WHICH WAS PRECIPITATED BY
A SERIES OF EVENTS RESULTING FROM THE COURT DECISION IN
PAPILSKY V. BERNDT JUST OVER THREE YEARS AGO, REPRESENTS
THE FIRST SUBSTANTIVE REVISIONS OF THESE RULES IN THE
NASD'S 40-YEAR HISTORY.

THE NASD'S PROPOSED RULE CHANGE DEALS WITH A BROAD RANGE OF SALES PRACTICES WHICH, IN THE NASD'S VIEW, MAY RESULT IN DIRECT OR INDIRECT CUSTOMER DISCOUNTS IN FIXED PRICE OFFERINGS. DUE TO THE IMPORTANCE OF THE ISSUES PRESENTED BY THE RULE FILING, THE COMMISSION IN MAY OF THIS YEAR PUBLISHED A FOLLOW-UP RELEASE CONTAINING, IN ADDITION TO THE TEXT OF THE PROPOSED RULE CHANGE, AN EXTENSIVE NARRATIVE FOCUSING ATTENTION ON PARTICULAR ISSUES RAISED BY THE NASD FILING. THE MAY RELEASE ALSO ANNOUNCED THE COMMISSION'S INTENTION TO HOLD THESE HEARINGS.

THE FOCUS OF THESE HEARINGS, AS SET FORTH IN THE MAY RELEASE, IS THE NASD RULE FILING AND A DETERMINATION OF WHETHER IT IS CONSISTENT WITH THE REQUIREMENTS OF THE

SECURITIES EXCHANGE ACT OF 1934, PARTICULARLY THE
STANDARDS FOR REGISTRATION OF NATIONAL SECURITIES
ASSOCIATIONS SET FORTH IN SECTION 15A. SECTION 15A
PROHIBITS THE NASD FROM FIXING MINIMUM PROFITS, OR IMPOSING
ANY SCHEDULE OR FIXING RATES OF COMMISSIONS AND DISCOUNTS,
OR IMPOSING UNNECESSARY OR INAPPROPRIATE BURDENS ON COMPETITION.

AS THE COMMISSION STATED IN THE MAY RELEASE, THE CORE
LEGAL ISSUE PRESENTED BY THE FILING IS THE NASD'S AUTHORITY
TO REGULATE THE CONTRACTUAL TERMS AND CONDITIONS OF FIXED
PRICE OFFERINGS, NOT NECESSARILY THE VALIDITY OR ENFORCEABILITY
OF THOSE PRIVATE CONTRACTS INDEPENDENT OF NASD INTERVENTION.
NEVERTHELESS, BROADER ISSUES MAY OF NECESSITY BE IMPLICATED
IN THE COURSE OF EXAMINING THE NASD'S RULE PROPOSAL, AND

A CLEAR UNDERSTANDING OF THE BROADER CONTEXT IS NECESSARY TO THE COMMISSION'S RESOLUTION OF THE SPECIFIC ISSUE BEFORE IT.

THE ABILITY OF THE NASD FAIRLY AND EFFECTIVELY TO ENFORCE THE PROPOSED RULE CHANGE IS AN ISSUE WHICH THE COMMENTATORS RAISED. IN ADDITION, SEVERAL PERSONS HAVE EXPRESSED CONCERN THAT THE PROPOSED RULES MAY HAVE A DISPROPORTIONATE ADVERSE IMPACT ON SOME SMALL AND REGIONAL BROKER-DEALERS DUE TO THE SPECIALIZED NATURE OF THE BUSINESSES OF THESE FIRMS. IT HAS ALSO BEEN SUGGESTED THAT PROPOSED RESTRICTIONS ON THE ABILITY OF BROKER-DEALERS TO PROVIDE RESEARCH AND OTHER SERVICES IN CONNECTION WITH FIXED PRICE OFFERINGS MIGHT REDUCE THE AVAILABILITY OF SUCH SERVICES.

THE COMMISSION IN THESE HEARINGS WILL EVALUATE, WHERE APPROPRIATE, BOTH THE BROAD ISSUES OUTLINED ABOVE AND THE MORE SPECIFIC QUESTIONS RAISED IN THE MAY RELEASE ANNOUNCING THIS PROCEEDING AND IN THE WRITTEN COMMENTS RECEIVED IN CONNECTION WITH THE NASD'S PROPOSED RULE CHANGE. WE WILL BE ASSISTED IN THIS TASK BY A
NUMBER OF DISTINGUISHED WITNESSES.

DUE TO THE VERY HEAVY SCHEDULE OF COMMISSION BUSINESS, THESE HEARINGS WILL BE CONDUCTED THROUGHOUT THIS FALL. THE COMMISSION PREVIOUSLY ANNOUNCED THE INITIAL SCHEDULE FOR THE FIRST THREE DAYS OF HEARINGS -- TODAY, SEPTEMBER 20, AND SEPTEMBER 25. THE REMAINDER OF THE HEARING SCHEDULE, COVERING DATES IN OCTOBER AND NOVEMBER, WILL BE ANNOUNCED SHORTLY. THE COMMISSION WISHES TO EXPRESS ITS APPRECIATION TO THOSE PERSONS WHO HAVE OFFERED TO BRING THEIR EXPERIENCE AND UNDERSTANDING TO BEAR ON THIS IMPORTANT MATTER.