



**SECURITIES AND
EXCHANGE COMMISSION**

Washington, D. C. 20549

(202) 272-2650



FOR RELEASE:

10:00 A.M.

THURSDAY, JULY 3,

80-30

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

AT THE

COMMISSION'S CONSIDERATION OF THE NASD
"PAPILSKY" RULE FILING

THE COMMISSION, THIS MORNING, IS CONSIDERING CERTAIN
RULE CHANGES FILED BY THE NATIONAL ASSOCIATION OF SECURITIES
DEALERS, PURSUANT TO SECTION 19(B) OF THE SECURITIES EXCHANGE
ACT OF 1934, RELATING TO FIRM COMMITMENT UNDERWRITINGS. IN
UNDERWRITINGS OF THIS KIND, NASD MEMBERS FORM SYNDICATES AND
PURCHASE SECURITIES FROM ISSUERS FOR RESALE TO THE PUBLIC AT
A FIXED OFFERING PRICE, RECEIVING AS COMPENSATION FOR
PARTICIPATING IN THE UNDERWRITING A PORTION OF THE "SPREAD"
BETWEEN THE PRICES AT WHICH THE SECURITIES ARE PURCHASED
FROM THE ISSUER AND AT WHICH THEY ARE, IN TURN, SOLD TO THE
PUBLIC. THE NASD'S PROPOSED RULES ARE DESIGNED TO ENSURE
THAT SUCH SALES ARE IN FACT MADE AT THE STATED PUBLIC OFFERING
PRICE. TO THAT END, THE NASD WOULD PROHIBIT A MEMBER
PARTICIPATING IN A FIXED UNDERWRITING FROM SELLING THE
UNDERWRITTEN SECURITIES TO AN AFFILIATED ACCOUNT AND WOULD
ALSO PROHIBIT THE GRANTING OF DIRECT -- AND CERTAIN INDIRECT
-- DISCOUNTS TO ANYONE WHO IS NOT A BROKER-DEALER ACTUALLY
ENGAGED IN OFFERING THE SECURITIES TO THE PUBLIC.

THESE PROPOSED RULES RESPOND IN CONSIDERABLE MEASURE TO THE IMPLICATIONS OF A CASE THAT WAS DECIDED BY A FEDERAL DISTRICT COURT IN NEW YORK IN 1976. THAT DECISION, PAPILSKY V. BERNDT, SUGGESTED THAT INSTITUTIONAL INVESTORS SHOULD CONSIDER JOINING THE NASD IN ORDER TO BYPASS THE TRADITIONAL UNDERWRITING AND SELLING GROUP MEMBERS IN A FIXED PRICE OFFERING. BY DOING SO, THEY WOULD THUS BE ABLE TO BUY THE UNDERWRITTEN SECURITIES DIRECTLY THROUGH THEIR AFFILIATES AND CAPTURE FOR THEMSELVES THE ECONOMIC BENEFIT OF THE "SELLING CONCESSION" WHICH REPRESENTS PART OF THE "SPREAD."

SUCH SELLING CONCESSIONS REPRESENT A SUBSTANTIAL SOURCE OF REVENUE TO MANY SECURITIES FIRMS. QUITE UNDERSTANDABLY, THEN, THE PAPILSKY DECISION AROUSED CONSIDERABLE CONCERN IN THE SECURITIES INDUSTRY. IT ALSO RAISED CONCERNS AMONG INSTITUTIONAL INVESTORS ABOUT A POSSIBLE FIDUCIARY DUTY TO SEEK RECAPTURE OF SELLING CONCESSIONS IN FIXED UNDERWRITINGS.

FINALLY, ISSUERS TOO VOICED CONCERN ABOUT PAPILSKY'S EFFECT ON THE FIXED PRICE UNDERWRITING SYSTEM WHICH, IN THEIR VIEW, HAS LONG PROVIDED AN INEXPENSIVE AND EFFICIENT MECHANISM FOR DISTRIBUTING THEIR SECURITIES TO THE MARKET-PLACE. THUS, EACH OF THESE GROUPS EXPRESSED SUBSTANTIAL FEARS ABOUT THE CONTINUED VIABILITY OF THE PRESENT FIXED PRICE UNDERWRITING SYSTEM AFTER PAPILSKY AND THE CURRENT STATE OF UNCERTAINTY REGARDING IT.

FOR OVER THREE YEARS NOW, BOTH THE COMMISSION AND THE NASD HAVE BEEN ENGAGED IN AN EFFORT TO SORT OUT THE IMPLICATIONS OF THE PAPILSKY DECISION. THE COMMISSION HELD EXTENSIVE PUBLIC HEARINGS ON THE PAPILSKY ISSUES LAST FALL AND HAS RECEIVED A LARGE VOLUME OF LETTERS AND OTHER COMMENTARY ON THE VARIOUS QUESTIONS RAISED. BASED ON THE WEALTH OF INFORMATION AND OPINION CONTAINED IN THIS RECORD, AS WELL AS ON ITS OWN EXTENSIVE EXPERIENCE WITH THE SECURITIES MARKETS, THE COMMISSION HAS BEEN WORKING TOWARDS AN ADMINISTRATIVE SOLUTION TO THE PROBLEMS POSED BY PAPILSKY THAT WOULD BOTH

ADDRESS THE NEED TO PRESERVE AND PROMOTE THE ABILITY OF AMERICAN BUSINESS TO RAISE CAPITAL EFFICIENTLY AND MEET THE REGULATORY AND COMPETITIVE OBJECTIVES ENUNCIATED BY THE CONGRESS IN THE EXCHANGE ACT.

IN FORMULATING ITS RECOMMENDATION TODAY, THE DIVISION OF MARKET REGULATION HAS CAREFULLY CONSIDERED THE NEARLY UNANIMOUS VIEW OF THE COMMENTATORS THAT THE FIXED PRICE UNDERWRITING SYSTEM HAS SERVED THIS NATION WELL OVER THE YEARS; THAT IT IS WORTHY OF PRESERVATION; AND THAT THE PROPOSED NASD RULES WOULD ADD A NEEDED MEASURE OF SUPPORT AND CERTAINTY TO THAT SYSTEM IN THE WAKE OF THE PAPILSKY DECISION. SIMILARLY, THE STAFF HAS TAKEN CAREFUL NOTE OF THE MANY ARGUMENTS PRESENTED ON THE IMPORTANCE OF RESEARCH TO THE VIABILITY AND EFFICIENCY OF OUR SECURITIES MARKETS, AND OF THE DESIRABLE ELEMENT OF COMPETITION WHICH COULD BE PRESERVED, THROUGH ALLOWING SO-CALLED "SOFT DOLLAR" CONCESSIONS FOR RESEARCH, WITHOUT FURTHER ERODING THE

FIXED UNDERWRITING SYSTEM OR UPSETTING THE ECONOMIC BALANCE THAT CURRENTLY EXISTS AMONG THE PARTICIPANTS IN FIXED UNDERWRITINGS. FINALLY, IN APPLYING THE STATUTORY STANDARDS OF SECTION 15A OF THE EXCHANGE ACT, THE DIVISION HAS CAREFULLY BALANCED THE COMPETITIVE AND REGULATORY OBJECTIVES OF THE ACT, AND OFFERED ITS BEST ASSESSMENT CONCERNING THE PRESENT AND FUTURE COMPETITIVE FORCES AND REGULATORY NEEDS THAT WILL MANIFEST THEMSELVES IN THIS AREA.

AFTER EVALUATING THE RECORD IN THESE PROCEEDINGS, AND PROVIDING THE COMMISSION WITH ITS VIEWS ON THE POLICY AND LEGAL ISSUES RAISED BY IT, THE DIVISION OF MARKET REGULATION HAS ADVISED US THAT THE COMMISSION HAS SUFFICIENT AUTHORITY AND DISCRETION UNDER THE EXCHANGE ACT TO APPROVE THE NASD'S PROPOSED RULES -- AND THAT THE COMMISSION WOULD HAVE A SOUND BASIS ON WHICH TO CONSIDER APPROVING THE NASD'S RULE FILINGS -- IF CERTAIN PROBLEMS IN THOSE RULE PROPOSALS

ARE CURED BY AMENDMENT OF THE NASD'S FILING BEFORE FINAL COMMISSION ACTION. ACCORDINGLY, THE STAFF HAS SUGGESTED THAT THE COMMISSION REQUEST THE NASD TO ADDRESS THOSE PROBLEMS AND TO FILE AMENDMENTS CORRECTING THEM.

I FULLY SUPPORT BOTH THE DIVISION'S ANALYSIS AND ITS RECOMMENDATIONS. I BELIEVE THAT THE COMMISSION SHOULD, AT THIS TIME, COMMUNICATE ITS CONCERNS REGARDING THE PROPOSED RULES DIRECTLY TO THE NASD AND SUGGEST THAT THE NASD GIVE PROMPT ATTENTION TO THEM.

AT THE SAME TIME, HOWEVER, I BELIEVE THAT IT IS IMPORTANT TO EMPHASIZE THAT THE COMMISSION'S ACTION TODAY IN COMMUNICATING ITS VIEWS TO THE NASD SHOULD NOT BE READ AS EXPRESSING ANY LACK OF SUPPORT FOR THE NASD'S EFFORTS TO ENSURE THE CONTINUED VITALITY OF THE CAPITAL-RAISING CAPACITY WHICH THE SECURITIES INDUSTRY HAS PROVIDED OVER SO MANY YEARS, AND WHICH THIS NATION SO VITALLY NEEDS AT THIS TIME. THE PAPILSKY PROCEEDINGS ARE BEING CAREFULLY WATCHED BY THE FINANCIAL COMMUNITY, AS WELL AS BY THE

BUSINESS COMMUNITY AT LARGE, AND I, THEREFORE, BELIEVE THAT IT IS ESSENTIAL THAT THE COMMISSION'S ACTION TODAY NOT BE VIEWED AS SUGGESTING THAT THE CURRENT UNDERWRITING SYSTEM WHICH HAS SERVED THIS NATION SO WELL OVER THE YEARS SHOULD, IN ANY WAY, BE DISMANTLED OR DISCARDED. RATHER, IT SHOULD BE READ AS SUPPORTIVE OF THE NASD'S EFFORTS TO BRING MUCH-NEEDED CONFIDENCE AND CERTAINTY TO THE IMPORTANT PROCESS BY WHICH AMERICAN BUSINESS RAISES THE CAPITAL WHICH IS SO CRUCIAL TO THIS NATION'S CONTINUED PROSPERITY AND GROWTH, AND I WOULD EXPECT THE NASD, THE PARTICIPANTS IN THE SYSTEM, AND THE COMMENTATORS TO VIEW THE COMMISSION'S SUGGESTIONS IN THAT LIGHT.

0861

