13. Investments held in a Joint Account generally will not be sold prior to maturity except: (a) If Bernstein believes that the investment no longer presents minimal credit risk; (b) if, as a result of credit downgrading or otherwise, the investment no longer satisfies the investment criteria of all Portfolios participating in the investment; or (c) if the counterparty defaults. A Portfolio may, however, sell its fractional portion of an investment in the Joint Account prior to the maturity of an investment in such account if the cost of the transaction would not aversely affect the other Portfolios participating in the Joint Account. In no case would an early termination by less than all participating Portfolios be permitted if it would reduce the principal amount or yield received by other Portfolios participating in the Joint Account or otherwise adversely affect the other participating Portfolios. Each Portfolio participating in the Joint Account will be deemed to have consented to such sale and partition of the investment in such account.

14. Short Term Investments held through the Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and subject to the restriction that the Portfolio may not invest more than 15% (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities and any similar restrictions set forth in the Portfolio's investment restrictions and policies, if Bernstein cannot sell the instrument, or the Portfolio's fractional interest in such instrument, pursuant to the preceding condition.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–10026 Filed 4–14–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–7524, File No. S7–11–98]

Securities Uniformity; Annual Conference on Uniformity of Securities Laws

AGENCY: Securities and Exchange Commission.

ACTION: Notice of conference; request for comments.

SUMMARY: The Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for their annual conference to be held on May 4, 1998. This meeting is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, which are to increase cooperation between the Commission and state securities regulatory authorities in order to maximize the effectiveness and efficiency of securities regulation.

DATES: The conference will be held on May 4, 1998. Written comments must be received on or before April 29, 1998 in order to be considered by the conference participants.

ADDRESSES: Please send three copies of written comments by April 29, 1998 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Comments also can be sent electronically to the following E-mail address: rule-comments@sec.gov. Comment letters should refer to File No. S7–11–98; if E-mail is used, please include this file number on the subject line. Anyone can inspect and copy the comment letters at our Public Reference Room, 450 5th Street, NW, Washington, DC 20549. All electronic comment letters will be posted on the Commission's internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: John D. Reynolds, Office of Small Business Review, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549, (202) 942–2950.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of the federal regulatory structure in the Securities Act of 1933 (the ''Securities Act'').[1] Issuers trying to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with the federal securities laws as well as all applicable state laws and regulations. It has long been recognized that there is a need to increase uniformity between federal and state regulatory systems, and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

Congress endorsed greater uniformity in securities regulation with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980.[2] Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The policy of that section is that there should be greater federal and state cooperation in securities matters, including:

- Maximum effectiveness of regulation;
- Maximum uniformity in federal and state standards;
- Minimum interference with the business of capital formation; and
- Substantial reduction in costs and paperwork to decrease the burdens of raising investment capital, particularly by small business, and reduce the costs of the government programs involved.

In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The 1998 meeting will be the fifteenth conference.

During 1996, Congress again examined the system of dual federal and state securities regulation and the need for regulatory changes to promote capital formation, eliminate duplicative regulation, decrease the cost of capital and encourage competition, while at the same time promoting investor protection. These efforts resulted in passage of The National Securities Markets Improvement Act of 1996[3] (the ''1996 Act''). The 1996 Act contains significant provisions that realign the regulatory partnership between federal and state regulators. The legislation reallocates responsibility for regulation of the nation's securities markets between the federal government and the states in order to eliminate duplicative costs and burdens and improve efficiency, while preserving investor protections.

II. 1998 Conference

The Commission and the North American Securities Administrators Association, Inc. (''NASAA'')[4] are planning the 1998 Conference on Federal-State Securities Regulation (the ''Conference'') to be held May 4, 1998 in Washington, D.C. At the Conference, Commission and NASAA representatives will form into working groups in the areas of corporation finance, market regulation and oversight, investment management, and

[1] 15 U.S.C. 77a *et seq.*

[2] Pub. L. 96–477, 94 Stat. 2275 (October 21, 1980).

[3] Pub. L. 104–290, 110 Stat. 3416 (October 11, 1996).

[4] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian Provinces and Territories.

enforcement, to discuss methods of enhancing cooperation in securities matters in order to improve the efficiency and effectiveness of federal and state securities regulation. Generally, attendance will be limited to Commission and NASAA representatives to encourage frank discussion. However, each working group in its discretion may invite certain self-regulatory organizations to attend and participate in certain sessions.

The Commission and NASAA are formulating an agenda for the Conference. As part of that process the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate by submitting written comments on the issues set forth below. In addition, comment is requested on other appropriate subjects sought to be included in the Conference agenda. All comments will be considered by the Conference attendees.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight, and enforcement.

(1) Corporation Finance Issues

A. Uniformity of Regulation

The 1996 Act amended section 18 of the Securities Act [5] to preempt state blue-sky registration and review of securities offerings of ''covered securities.'' [6] ''Covered securities'' are defined by section 18 and include several types of securities, including ''nationally traded securities,'' *i.e.*, securities traded on the New York Stock Exchange, Inc. (''NYSE''), American Stock Exchange, Inc. (''AMEX'') or the Nasdaq National Market System (''Nasdaq/NMS''). ''Covered securities'' also include registered investment company securities and certain exempt securities and offerings.

Securities that are not ''covered securities'' remain subject to state registration requirements. These securities include:

- Securities quoted on the Nasdaq SmallCap market or the NASD over-the-counter Bulletin Board (''OTC Bulletin Board'');
- Securities quoted on the over-the-counter ''pink sheets'';
- Securities listed on securities exchanges other than the NYSE or AMEX; [7]
- Various securities of non-listed issuers, such as asset-backed and mortgage-backed securities;
- Private placements of securities under section 4(2) of the Securities Act that do not meet the requirements of Rule 506 of Regulation D; [8] and
- Securities issued in exempt offerings under Regulation A [9] and Rules 504 and 505 of Regulation D.

The states retain certain authority in connection with offerings of covered securities. With respect to these offerings (other than nationally-traded securities), the states have the right to require specified fee payments and/or notice filings.[10] The states' authority over securities offerings continues the need for uniformity between the federal and state registration systems, where consistent with investor protection.

The 1996 Act required the Commission to conduct a study about the extent of uniformity among state regulatory requirements for securities and securities transactions that are not ''covered securities'' (the ''Uniformity Study'').[11] The Commission issued the study results in its ''Report on the Uniformity of State Regulatory Requirements for Offerings of Securities that are not 'Covered Securities' '' in October 1997 (the ''Uniformity Report''). As part of the Uniformity Study, the Commission distributed surveys to state securities administrators, various issuers, broker-dealers and law firms requesting information concerning the extent of uniformity among state regulatory requirements for securities that are not preempted by the 1996 Act. The surveys also were posted on the Commission's Internet web site. The Commission received 46 responses from state securities regulators and more than 100 responses from issuers, law firms, broker-dealers, and others, including NASAA and the Securities Industry Association.

The Uniformity Study found that the states have taken significant actions to increase uniformity in regulating offerings of securities that are not ''covered securities.'' Examples of this progress include, among others:

- Coordinated state review of certain offerings registered at the federal level;
- A uniform registration statement for offerings exempt at the federal level and a regional state review program for this form; and,
- Statements of policy on several matters that enhance uniformity in review among the states.

Despite this significant progress, certain survey respondents reported differences among the states in several areas including, for example, the following:

- Standards of merit review;
- Length of comment periods;
- Suitability standards; and
- Notice requirements for exempt offerings.

The Uniformity Study focused on the degree of uniformity among state regulatory requirements for offerings of securities that are not ''covered securities.'' Despite this focus, some survey respondents provided information regarding the effects of preemption of ''covered securities.'' While most respondents noted the benefits from preemption, some commenters voiced concerns in the areas of Rule 506 offerings, issuer-dealer registrations and notices for secondary trading transactions.

Conferees will discuss the Uniformity Report, the nature and extent of uniformity at present and methods to increase uniformity.

B. Definition of Qualified Purchaser and Accredited Investor; NASAA's Model Accredited Investor Exemption

Section 18 of the Securities Act, as amended by the 1996 Act, excludes from state regulation and review securities offerings to purchasers who are defined by Commission's rules to be ''qualified purchasers.'' [12] A security sold to a ''qualified purchaser'' is a ''covered security'' subject to the same regulatory approach as other covered securities. The Commission will be undertaking rulemaking to define ''qualified purchaser'' for this purpose. In this process, the Commission is considering whether changes should be made to the definition of ''accredited investor'' [13] under the Securities Act,

[5] 15 U.S.C. 77r.

[6] 15 U.S.C. 77r (a) and (b).

[7] The Commission may designate securities listed on other exchanges to be covered securities if it determines by rule that the listing standards of such exchanges are substantially similar to the listing standards of the NYSE, AMEX or Nasdaq/NMS. The Commission has adopted Rule 146(b) under the Securities Act which designates securities listed on the Chicago Board Options Exchange, Tier I of the Pacific Exchange and Tier I of the Philadelphia Stock Exchange as covered securities for purposes of section 18. Securities Act Release No. 7494 (January 13, 1998) [63 FR 3032].

[8] 17 CFR 230.501 through 230.508.

[9] 17 CFR 230.251 through 230.263.

[10] Following the 1996 Act, the states also retain anti-fraud authority over all securities offerings, including offerings of covered securities.

[11] Section 102(b) of the 1996 Act.

[12] 15 U.S.C. 77r(b)(3).

[13] The term ''accredited investor,'' as defined by the Securities Act and the Commission's rules, is intended to encompass those persons whose financial sophistication render the protections of the Securities Act registration process unnecessary.

Continued

and whether the definitions of ''qualified purchaser'' and ''accredited investor'' should be similar or different. The appropriate criteria for these two definitions will be discussed by Commission and NASAA representatives.

Participants also will discuss NASAA's Model Accredited Investor Exemption which was adopted in 1997. Generally, the model rule exempts offers and sales of securities from state registration requirements if, among other things, the securities are sold only to persons who are, or are reasonably believed to be, accredited investors. To date, ten states have adopted the exemption. Twelve other states indicate that they intend to adopt the exemption in the near future and another six are considering adoption. State representatives will share their experiences with the exemption, including any issues that have arisen.

C. Small Business Initiatives

In February 1997, the Commission proposed amendments to Rule 430A to permit certain smaller or less seasoned reporting companies to price securities on a delayed basis after effectiveness of a registration statement, if they meet specified conditions.[14] The proposals are intended to provide flexibility and efficiency to qualified registrants, enabling them to time their offerings to advantageous market conditions, consistent with investor protection. The coordination of Rule 430A procedures with state registration and review procedures raises certain issues, such as when state registration fees become payable and when state reviews will be conducted. Conferees will discuss these various issues and ways to increase coordination between federal and state procedures.

The Commission recently proposed revisions to Rule 701 under the Securities Act.[15] Rule 701 provides an exemption for the offer and sale of securities to employees and certain other persons by private companies under compensatory benefit plans or written compensation agreements. The proposals are designed to expand the ability of issuers to use the rule, improve the disclosures provided in offerings under the rule and clarify and simplify the rule. For example, the proposals would remove the current limitations based on offers and instead focus only on the amount of sales permitted each year. Issuers would be allowed to sell securities each year up to an amount determined under two formulas (*i.e.*, 15% of total assets or 15% of outstanding securities) or $1 million, whichever is greater. The present $5 million limitation on the aggregate offering amount would be removed from the rule. Rule 701 now does not impose any specific disclosure obligations on the issuer. The proposed rule revisions would require disclosure of risk factors and the unaudited financial statements required in a Regulation A offering.

The participants will discuss the impact of these proposed rule changes, if adopted, and the need for any additional rulemaking in the small business area.

Commission and state representatives will discuss whether changes should be made to the Regulation D exemptions. Rule 506 of Regulation D provides a ''safe harbor'' for non-public offerings under section 4(2) of the Securities Act. An issuer which satisfies the requirements of Rule 506 can be assured that its offering will qualify as a non-public offering under section 4(2).[16] As noted above, securities issued in a Rule 506 offering are covered securities and therefore preempted from state registration requirements. Because Rule 506 offerings are preempted from state registration, conferees will consider whether Rule 506 requirements should be revised.

Rule 504 of Regulation D provides an exemption from the Securities Act registration requirements for offerings up to $1 million in any 12-month period, if certain conditions are met. Generally, Rule 504 is available only to the smallest companies. Issuers in Rule 504 offerings may use general solicitation or advertising, and the securities issued in those offerings are freely tradeable. Rule 504 offerings are not subject to specific federal disclosure requirements nor are these offerings reviewed at the federal level. The Commission is concerned that this current federal approach to Rule 504 offerings may be contributing to fraudulent offerings by micro-cap issuers, *i.e.*, issuers with small amounts of capitalization, or fraudulent aftermarket trading in securities of micro-cap issuers on the OTC Bulletin Board or in the ''pink sheets.'' Commission and state representatives will discuss whether and how Rule 504 should be revised to address these fraud concerns while at the same time preserving the ability of small companies to raise capital.

Conferees will discuss several state initiatives designed to facilitate offerings by smaller issuers. These initiatives include:

- The Coordinated Equity Review (''CER'') program;
- The Small Company Offering Registration (''SCOR'') form; and
- The state regional review program for SCOR and Regulation A filings (the ''Regional Review Program'').

The CER program provides for a coordinated state review process for offerings of equity securities registered at the federal level. Under CER, the participating states coordinate with each other to produce one comment letter to an issuer which addresses both substantive and disclosure matters. To date, 38 states (out of 43 states that require registration of these offerings) have agreed to participate in the program.

Many states use a similar coordinated program to review state registrations using the SCOR form, the ''Regional Review Program.'' The SCOR form is a simplified question and answer format used for the registration of securities offerings with approximately 40 states. This form is used to register securities offerings exempt from registration under Rule 504 of Regulation D or Regulation A at the federal level. Under the Regional Review Program, states in certain regions of the country elect one state to lead the review and issue comments on the filing. Three regional programs have been started to date and include about half of the states requiring registration of these offerings. The SCOR form was adopted by NASAA in 1989. NASAA's Small Business Capital Formation and Regional Review Committee is considering certain revisions to update and modernize the form.

NASAA's representatives will discuss their experiences with the SCOR form and the state coordinated review programs, including issues which have arisen in their use. Participants will consider how these programs may be improved to increase uniformity between the federal and state levels.

During 1997 and 1998, the Commission continued to meet with small businesses in town hall meetings conducted throughout the United States. These town hall meetings are intended to provide basic information about the securities offering process to small business issuers and educate the Commission about the concerns and problems facing small businesses in raising capital. To date, nine town hall

Offers and sales to these investors are afforded special treatment under the federal securities laws.

[14] Securities Act Release No. 7393 (February 20, 1997) (62 FR 9276).

[15] Securities Act Release No. 7511 (February 27, 1998) [63 FR 10785].

[16] An offering which does not meet the requirements of Rule 506 nevertheless may qualify as a section 4(2) non-public offering based on the facts and circumstances of the offering.

meetings have been held, attended by more than 2,500 small business persons. NASAA and Commission representatives will discuss information and ideas obtained from these meetings.

D. Securities Act Concept Release

The Commission has been engaged in a broad reexamination of the regulatory framework for the offer and sale of securities under the federal securities laws. A concept release was issued during 1996 to solicit comment on the best means of improving the regulation of the capital formation process while maintaining or enhancing investor protection.[17] The concept release solicited comment on several different approaches, such as:

- The recommendation of the Advisory Committee on the Capital Formation and Regulatory Processes that a ''company registration'' approach be adopted; [18]
- Modifications to the existing shelf registration system;
- Reforms that would liberalize the treatment of unregistered securities; and
- An approach that would involve deregulation of offers.

Comment also was requested about any other approaches that should be considered.

The participants will discuss the conceptual issues raised by the release and the comments received and consider any changes that should be made in the regulation of securities offerings.

E. Plain English; Disclosure Simplification

On March 5, 1996, the Commission published the Report of the Task Force on Disclosure Simplification (the ''Task Force Report''). The Task Force Report includes several recommendations intended to reduce the costs of raising capital by both smaller and seasoned companies.

One major concern of the Task Force Report was the lack of readability of prospectuses and other disclosure documents. The Task Force Report criticized prospectuses for their dense writing, legal boilerplate and repetitive disclosures and recommended using plain English disclosure to improve the readability of prospectuses. On January 22, 1998, the Commission adopted rule amendments that require the use of plain English writing principles when drafting the front part of prospectuses, namely, the cover page, summary and risk factors sections of these documents.[19] These principles include: Active voice; short sentences; everyday language; tabular presentation or ''bullet lists'' for complex material, if possible; no legal jargon or highly technical business terms; and, no multiple negatives. This change becomes effective October 1, 1998. Conferees will discuss the plain English initiative, including federal and state coordination needed to facilitate implementation of the initiative.

F. Electronic Delivery of Disclosure Documents

With the relatively recent growth in the popularity of the Internet, issuers of securities have begun to post securities offering materials on the Internet. Both the Commission and NASAA have addressed the impact of electronic media on the securities offering process. NASAA adopted a resolution concerning Internet communications in January 1996 that encouraged the states to exempt Internet offers from the registration provisions of their securities laws, if certain conditions are met. Based on state responses to the Uniformity Study, 33 states reported they have adopted NASAA's model exemption while three other states are planning to adopt or considering adoption of the model exemption. Another eight states said they have their own unique exemptions for Internet offers.

The Commission believes that the use of electronic media to deliver or transmit information under the federal securities laws should be at least equivalent to paper delivery. The Commission has issued interpretive releases and rules addressing the use of electronic media.[20]

The participants will discuss the impact of electronic technology on the capital formation process and consider the nature and extent of regulatory changes to accommodate the use of that technology in securities offerings.

G. Registration of Securities on Form S–8

Form S–8, generally speaking, is an abbreviated registration statement form under the Securities Act used to register the securities of an issuer to its employees in a primarily compensatory context. Form S–8 was expanded in 1990 to make the form available for offers and sales of securities to consultants and advisors who render *bona fide* services to the issuer if those services are not rendered in connection with offers or sales of securities in a capital-raising transaction. Since that change, the Commission has become aware of the improper use of the form to distribute securities to the public. To address this abuse, the Commission has proposed to expand the form requirements to provide that the services rendered by a consultant or advisor must not directly or indirectly promote or maintain a market for the issuer's securities.[21] Other changes to the form also were proposed. Participants will discuss this proposal and how it will affect coordination between the states and the Commission.

H. Year 2000 Disclosure Issues

The Commission published Staff Legal Bulletin No. 5 in October 1997 (revised in January 1998) which addresses the disclosure requirements of companies facing electronic problems caused by the Year 2000. The statement contains the Commission's views concerning companies' disclosure obligations about anticipated costs, problems, and uncertainties associated with this issue. Because of the potential effects of this matter on future operating results and financial condition, companies should consider whether the matter should be addressed in their ''Management's Discussion and Analysis'' and ''Description of Business'' disclosures. The conference participants will consider the extent of this issue and discuss how to require and review disclosures on this matter in a consistent manner.

(2) Market Regulation Issues

A. Broker-Dealer Books and Records

Section 103 of the 1996 Act prohibits any state from imposing broker-dealer books and records requirements that are different from or in addition to the Commission's requirements. In addition, the same section directs the Commission to consult periodically with state securities authorities concerning the adequacy of the Commission's requirements. The Commission's original proposal to amend Rules 17a–3 and 17a–4 [22] resulted from discussions between NASAA representatives and the Commission about the adequacy of the existing broker-dealer books and records

[17] Securities Act Release No. 7314 (July 25, 1996) (61 FR 40044).

[18] On July 24, 1996, the Advisory Committee on the Capital Formation and Regulatory Processes presented its report recommending a new approach to regulating securities offerings of public companies. This new approach would switch from the current transactional registration system to a company registration system.

[19] Securities Act Release No. 7497 (January 28, 1998) (63 FR 6370).

[20] Securities Act Release No. 7233 (October 6, 1995) (60 FR 53458), Securities Act Release No. 7289 (May 9, 1996) (61 FR 24652).

[21] Securities Act Release No. 7506 (February 17, 1998) (63 FR 9648).

[22] 17 CFR 240.17a–3 and 240.17a–4.

requirements.[23] The proposed amendments clarified, modified, and expanded the Commission's record-keeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. In addition, the proposed amendments specified certain types of books and records that broker-dealers must make available in their local offices. In consideration of the substantial number of organizations that expressed interest in commenting on the proposed amendments, the Commission extended the comment period through March 31, 1997.

The Commission received 175 written comments in response to the release proposing the amendments. Broker-dealers, trade associations, and law firms representing broker-dealers submitted 110 of the comment letters. State securities regulators and NASAA accounted for 33 of the comment letters. The majority of these comment letters opposed the proposed amendments. The balance of the comment letters received were from other individuals or entities interested in the proposed amendments and expressed varying degrees of support and opposition for the proposed amendments. The Commission staff has been analyzing the suggestions made in the comment letters, and will recommend that the Commission repropose the amendments. The participants at the Conference will discuss these efforts to amend Rules 17a–3 and 17a–4.

B. State Licensing Requirements

The 1996 Act directed the Commission to conduct a study of the impact of disparate state licensing requirements on associated persons of registered broker-dealers and the methods for states to attain uniform licensing requirements for such persons. The Commission was required to consult with the self-regulatory organizations (''SROs'') and the states, and to prepare and submit a report to Congress by October 11, 1997. During the latter part of 1996 and in 1997, the Commission staff consulted with the SROs, NASAA, the state securities authorities, and members of the securities industry to determine the extent to which state licensing requirements differed and the effect of different state requirements and procedures upon associated persons and broker-dealers. The Commission submitted its report to Congress on October 10, 1997.[24]

The Commission found that the states have achieved substantial uniformity in their licensing requirements and procedures. However, the Commission believes that state licensing procedures could be streamlined to a greater extent and that the states could attain this goal without sacrificing the protection of their citizens. Therefore, the Commission recommended in its report that the states work together to achieve greater uniformity in their licensing requirements and procedures and, in this regard, recommended certain areas that may benefit from the implementation of more consistent or uniform requirements, or from further study by the states. The participants at the Conference will discuss the states' views on achieving greater uniformity in their licensing requirements and procedures.

C. Central Registration Depository (''CRD'') Redesign

The CRD system is a computer system operated by the NASD that is used by the Commission, the states, and the SROs primarily as a means to facilitate registration of broker-dealers and their associated persons. The NASD is in the process of implementing a comprehensive plan to modernize the CRD and to expand its use by federal and state securities authorities as a tool for broker-dealer regulation. As a result of the NASD's efforts, the modernized CRD system ultimately is expected to provide the Commission, the SROs, and state securities authorities with: (i) streamlined capture and display of data; (ii) better access to registration and disciplinary information through the use of standardized and specialized computer searches; and (iii) electronic filing of uniform registration and licensing forms, including Forms U–4, U–5, BD, and BDW.

In the past year, the NASD decided that the Internet should become an integral component of the CRD modernization effort. Accordingly, the NASD submitted, and the Commission approved, a rule proposal that expands the NASD public disclosure program by amending the Interpretation of NASD Rule 8310 to include electronic inquiries as well as written and telephone inquiries.

Earlier this year, the NASD and the Commission issued releases adopting interim Forms U–4, U–5, and BD that incorporated previously-adopted language into a format compatible with current CRD technology. The NASD's proposed effective date of February 17, 1998, for these amended forms was changed to March 16, 1998, due to a request from the Securities Industry Association to allow firms more time to prepare their systems. The Commission also has made March 16, 1998, the effective date for implementation of the interim Form BD. The NASD expanded their public disclosure program also to reflect the additional disclosure requirements of the interim Forms U–4 and BD.

The participants at the Conference will discuss the CRD modernization process, including the interim Forms U–4, U–5, and BD.

D. Penny Stocks/Micro-cap Fraud

Rule 15c2–11 under the Securities Exchange Act of 1934 (the ''Exchange Act'') requires a broker-dealer to review current information about an issuer before it publishes a quotation for the issuer's security in the non-Nasdaq over-the-counter markets. Because of the rule's ''piggyback'' provision, generally only the first broker-dealer has to review this information. Once the security is quoted regularly for 30 days, other broker-dealers can ''piggyback'' off those quotes without reviewing any information about the issuer.

On February 17, 1998, the Commission proposed amendments to Rule 15c2–11 that would strengthen the rule by: (1) Eliminating the piggyback provision, so that *all* broker-dealers must review issuer information before initiating or resuming quotations for OTC securities and thus independently evaluate that information; (2) requiring market makers publishing *priced* quotations to review updated issuer information annually, so that they are made aware of recent significant changes in the issuer's ownership, operations or financial condition; (3) requiring broker-dealers to document their compliance with the rule; (4) requiring broker-dealers to document information about significant relationships involving the issuer and the broker-dealer (including any arrangements involving the payment of compensation by the issuer or others for the purpose of publishing quotations); (5) requiring broker-dealers to review more information than is currently required when they publish quotes for non-reporting issuers' securities, including information about insiders' and promoters' recent disciplinary histories, so that broker-dealers will be alert to possible ''red flags'' involving the issuer, and about recent significant events involving the issuer, such as a

[23] Securities Exchange Act Release No. 37850 (October 22, 1996) [61 FR 55593].

[24] Study of State Licensing Requirements for Associated Persons of Broker-Dealers (October 10, 1997).

change in control, merger or acquisition, bankruptcy proceedings, or the delisting from an exchange or Nasdaq; (6) eliminating the requirement to obtain financial statements for prior years for those issuers that are emerging from bankruptcy; (7) allowing broker-dealers to review and retain issuer information electronically for information available on EDGAR; and (8) promoting greater availability of Rule 15c2–11 information by requiring broker-dealers to provide the information to anyone who requests it and by encouraging the development of central repositories for this information.[25]

The goals of the amendments are to deter fraudulent or manipulative quotations for OTC securities, improve the integrity of quotations for OTC securities, enhance broker-dealer responsibility for quotations for OTC securities, and provide market professionals, investors, and others with greater access to issuer information. The participants will discuss the recent proposals and the effects of such proposals, if adopted, and other ways to promote investor protection in the OTC market arena.

E. Arbitration

The NASD submitted to the Commission rule filings that focus on the eligibility rule, whether punitive damages should be capped in arbitration, whether fees should be increased, and whether employees should be required under NASD rules to submit statutory employment discrimination disputes to arbitration. In May 1997, the Commission approved a proposal by the NASD that: (1) Raises the ceiling for disputes to be eligible for resolution by a single arbitrator under simplified arbitration procedures to $25,000, and (2) raises the ceiling for disputes eligible for resolution by a single arbitrator under standard arbitration procedures to $50,000.[26]

The NASD filings resulted in part from its work with the Securities Industry Conference on Arbitration (''SICA''). The SICA continues its efforts to develop, among other things, a ''list selection'' method for appointing arbitrators.

The participants at the Conference are likely to address some or all of the above approaches for strengthening the securities arbitration process.

F. NASD Proposals

The NASD has undertaken several regulatory initiatives in the past year. A new proposed rule would require a member firm to tape record conversations between its customers and registered representatives if it hired a significant percentage of individuals from Disciplined Firms. Disciplined Firms are defined as firms that have been expelled by a self-regulatory organization or that have had their registrations revoked by the Commission.[27]

A proposed rule amendment would require clearing firms to (a) Forward customer complaints about an introducing firm to the introducing firm's designated examining authority, (b) notify complaining customers that they have the right to transfer their accounts to another broker-dealer, (c) provide introducing firms with a list of exception reports to help them supervise their activities, and (d) assume liability for any mistakes or fraud made by an introducing firm that issues checks drawn on the clearing firm's account.[28]

Another new rule (Rule 1150) would provide NASD members with a qualified immunity in arbitration proceedings for statements made in good faith in certain disclosures filed with the NASD on Forms U–4 and U–5. The proposal, as described in an NASD Notice to Members, would require firms to give a terminated employee an opportunity to review the proposed Form U–5 language at least 10 days before it was filed with the NASD; any amendments would also be given to the employee before being filed.[29]

These three NASD initiatives have been filed with the Commission, and are currently under review. Other initiatives still being considered by the NASD include the following three proposals.

A proposed interpretive rule would require all unregistered employees of an NASD member firm who cold call prospective customers, either to solicit the purchase of securities or to market the member firm's services generally, to register as representatives.[30] A proposed rule amendment would limit the securities that a member can quote on the OTC Bulletin Board to the securities of issuers that are registered under Section 12 of the Exchange Act, certain insurance companies, and registered closed-end investment companies, but only if they are current in their reporting obligations.[31] Finally, a proposed new rule would require a member to review current financial statements of an issuer prior to recommending a transaction in the issuer's OTC securities to a customer, and to deliver a disclosure statement to its customer prior to making an initial purchase of an OTC security for the customer and annually thereafter.[32]

The participants at the Conference will discuss the status of these proposals, the comments received to date, and their implications for small businesses and NASAA members.

G. Year 2000

The Commission has been very active in addressing the potential problems for securities industry computer systems as a consequence of the date change on January 1, 2000 (''Year 2000''). For example, in October 1997, Chairman Levitt sent a letter to all registered transfer agents and broker-dealers emphasizing the importance of implementing plans and devoting adequate resources to ensure that their computer systems are ready for the Year 2000. The Chairman encouraged firms to have all necessary modifications in place by the end of 1998 to allow for participation in industry-wide testing scheduled for 1999. On January 7, 1998, the Commission staff sent a letter to all non-bank registered transfer agents which requested documentation regarding their progress in Year 2000 preparations. The Commission is coordinating efforts with the NYSE and the NASD, both of which have surveyed their member firms for similar information on Year 2000 preparations. On March 5, 1998, the Commission issued releases to solicit comment on proposed rule amendments and a proposed rule under the Exchange Act which would require certain broker-dealers and all non-bank registered transfer agents to file reports with the Commission regarding their Year 2000 preparations.[33]

During the past year, the Commission supported the industry's efforts to establish a testing program to aid firms and SROs in preparing for potential computer problems associated with the Year 2000. The testing program involves bilateral testing, in which an SRO or utility conducts one-on-one testing with its members or another SRO or utility. Nasdaq, for example, intends to conduct

[25] Securities Exchange Act Release No. 39670 (February 17, 1998) (63 FR 9661).

[26] Securities Exchange Act Release No. 38635 (May 14, 1997) (62 FR 27819).

[27] Securities Exchange Act Release No. 39361 (November 26, 1997) (62 FR 64422).

[28] Securities Exchange Act Release No. 39349 (November 21, 1997) (62 FR 63589).

[29] NASD Notice to Members 97–77 (November 1997).

[30] NASD Notice to Members 98–58 (September 1997).

[31] NASD Notice to Members 98–14 (January 1998).

[32] NASD Notice to Members 98–15 (January 1998).

[33] Securities Exchange Act Release Nos. 39724 (March 5, 1998) (63 FR 12056) and 39726 (March 5, 1998) (63 FR 12062).

bilateral testing with the NYSE, the National Securities Clearing Corporation, and several broker-dealers. This type of testing is expected to be completed by the end of 1998. Bilateral testing will help to ensure that communication and data exchanges between all involved entities will not be disrupted. The testing program also calls for industry-wide, or street-wide, testing, in which industry participants will test sample trades from the trade date through settlement. This latter type of testing will begin in March 1999 and end in September 1999. The Commission staff has encouraged all SROs to adopt appropriate testing plans to ensure that they and their member organizations are prepared for the millennium.

The participants at the Conference will discuss the issues, testing programs, and rule proposals involved in ensuring that the securities industry's computer systems are ready for the Year 2000.

H. Examination Issues

State and federal regulators also will discuss various examination-related issues of mutual interest, including: Summits and examination coordination; training; micro-cap issues; independent contractors and variable annuities.

(3) Investment Management Issues

A. Division of Regulatory Authority

Title III of the 1996 Act, the Investment Advisers Supervision Coordination Act, included amendments to the Investment Advisers Act of 1940 (''Advisers Act'') [34] that divided regulatory responsibility for investment advisers between the Commission and state securities regulators. The law generally requires advisers that have assets under management of $25 million or more, or that advise registered investment companies to register with the Commission; [35] and requires advisers that have assets under management of less than $25 million to register with the appropriate state securities authorities.

On May, 15, 1997, the Commission adopted rules to implement this division of regulatory authority,[36] including a requirement that each Commission-registered adviser file a Form ADV–T with the Commission not later than July 8, 1997, indicating whether the adviser was eligible for continued registration with the Commission and, if not, withdrawing from Commission registration.[37] As of January 30, 1998, the Commission had received Form ADV–T's from 7,476 advisers indicating that they were eligible for registration with the Commission, and from 11,764 advisers withdrawing their registrations. Most states have also now amended their securities laws and adopted new rules to implement the division of authority. The conferees will discuss and coordinate state and federal implementation of the 1996 Act.

B. Electronic Filing System

One of the requirements of the 1996 Act is for the Commission to establish and maintain a ''readily accessible telephonic or other electronic process'' to receive public inquiries about the disciplinary histories of investment advisers and persons associated with investment advisers.[38] In order to implement this provision and to provide an efficient and convenient means for filing and retrieving information about investment advisers, the Commission is working with NASAA and the state securities authorities to develop a one-stop electronic filing system to be used by investment advisers to submit their initial registrations and to update the information they are required to provide. Since the information will be filed electronically, it will create an electronic data base that will be easily accessible by both the regulators and the public. As currently planned, all of this information will be posted on an Internet web site and readily available to the public. This will allow clients and prospective clients of investment advisers to quickly obtain not only disciplinary information, but a broad range of other important information as well. The conferees will discuss the progress to date in creating this new electronic filing system and offer ideas about how the system can be made most efficient and effective.

C. Revised Disclosure Forms

The Commission and NASAA are also working on new, easier-to-use forms for investment adviser filings. These new forms should provide more useful information both to the Commission and the state securities regulators, and to clients and prospective clients of investment advisers. The new disclosure form for clients and prospective clients should also encourage advisers to provide clear and complete disclosures in plain English. Disclosures will not be effective if clients cannot understand them or if they are presented in a way that discourages clients from reading them. The conferees will consider and discuss ways in which the forms can be made most useful to clients and prospective clients of investment advisers, as well as to state and federal regulators.

D. Examination Issues

State and federal regulators also will discuss various examination-related issues of mutual interest, including: Cooperation between Commission and state adviser programs; sharing information about past examinations, advisers moving from federal to state registration and vice versa, and information potentially leading to cause examinations; and examinations to verify an adviser's qualification for federal or state registration.

(4) Enforcement Issues

In addition to the above topics, state and federal regulators will discuss various enforcement-related issues which are of mutual interest.

(5) Investor Education

The participants at the Conference will discuss investor education and potential joint projects in some of the working group sessions. The Commission currently pursues a number of programs to educate investors on how to invest wisely and to protect themselves from fraud and abuse. The states and NASAA have a longstanding commitment to investor education, and the Commission intends to coordinate and complement those efforts to the greatest extent possible. Our most recent joint effort includes the launch of the ''Facts on Saving and Investing Campaign,'' a national public awareness campaign to motivate Americans to save and invest wisely. During the week of March 29 to April 4, 1998, federal agencies, securities regulators, consumer groups, the financial industry, and the media will join together to conduct educational events in our communities and schools and to announce future initiatives. Securities regulators from twenty-one nations in North, Central, and South America and the Caribbean will also offer investor education programs in their countries that week.

[34] 15 U.S.C. 80b–1 *et seq.*

[35] Advisers Act section 203A(a), 15 U.S.C. 80b–3a. The Advisers Act also provides for registration with the Commission of advisers that have their principal office and place of business in a state that has not enacted an investment adviser statute (currently, Colorado, Iowa, Ohio, and Wyoming), or that have their principal office and place of business outside the United States. In addition, the Commission has adopted rules exempting four categories of investment advisers from the prohibition on registration with the Commission. *See* Rule 203A–2, 17 CFR 275.203A–2.

[36] Investment Advisers Act Rel. No. 1633 (May 15, 1997) (62 FR 28112).

[37] Rule 203A–5, 17 CFR 275.203A–5.

[38] 1996 Act section 306.

(6) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include EDGAR, the Commission's electronic disclosure system, rulemaking procedures, training and education of staff examiners and analysts and sharing of information.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulation, while helping to maintain high standards of investor protection.

By the Commission.

Dated: April 9, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–9883 Filed 4–14–98; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39846; File Nos. SR–NYSE–98–06; SR–Amex–98–09; BSE–98–06; SR–CHX–98–08; SR–NASD–98–27; and SR–Phlx–98–15]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the American Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the Boston Stock Exchange, Inc., Chicago Stock Exchange, Inc., and National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc.; Relating to Modifications to the Market-Wide Circuit Breaker Provisions (''Trading Halts Due to Extraordinary Market Volatility'')

April 9, 1998.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] the New York Exchange, Inc. (''NYSE''), the American Stock Exchange, Inc. (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Philadelphia Stock Exchange, Inc. (''Phlx'') (individually, ''Exchange'' and collectively, ''Exchanges''), and the National Association of Securities Dealers, Inc. (''NASD''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), proposed rule changes relating to certain market-wide circuit breaker provisions.

Notices of the NYSE's and Amex's proposed rule changes were published for comment in the **Federal Register** on February 23, 1998 and February 27, 1998, respectively.[3] Four comment letters were received on the proposals.[4] On April 1, 1998, Amex filed an amendment to the proposed rule change.[5] On April 6, 1998, Phlx also filed an amendment to the proposed rule change.[6] This order approves the proposed rule changes of the NYSE and the Amex. This order also approves, on an accelerated basis, Amex's amendment to the proposed rule change. As discussed below, the Commission is also granting accelerated approval of the proposed rule changes of the BSE, CHX, NASD, and Phlx (as amended).

II. Background

Circuit breakers are coordinated cross-market trading halts that are intended to help avoid systemic breakdown when a severe one-day market drop of historic proportions prevents the financial markets from operating in an orderly manner. A decade ago, the securities and futures markets, in response to the most destabilizing U.S. market drop in over half a century,[7] introduced circuit breakers in order to offer investors and the markets an opportunity to assess information and positions when the markets experienced a severe, rapid decline.

In 1988, the Commission approved the Exchanges' circuit breaker proposals, along with the NASD's circuit breaker policy statement.[8] These rules provided for a one hour market-wide trading halt if the Dow Jones Industrial Average (''Dow'')[9] declined by 250 points from its previous day's close, and a two hour halt if, on that same day, it fell 400 points. Amendments approved by the SEC in July 1996 reduced the duration of the 250 and 400 points halts to one-half hour and one hour, respectively.[10] Amendments approved in January 1997 increased the trigger values to 350 and 550 points.[11] The Commission believed that the circuit breaker proposals would provide market participants with an opportunity during a severe market decline to reestablish an equilibrium between buying and selling interest in a more orderly fashion. The futures exchanges also adopted analogous trading halts to provide coordinated means to address potentially destabilizing market volatility.[12]

On October 27, 1997, the Dow (and U.S. markets generally) experienced a decline of 554 points, or 7.2%, to close at 7161.15. This marked the first time circuit breakers were triggered since their adoption. The first circuit breaker of one-half hour was triggered at 2:36

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Exchange Act Release Nos. 39666 (February 13, 1998), 63 FR 9034 (February 23, 1998) (NYSE); 39689 (February 20, 1998), 63 FR 10054 (February 27, 1998) (Amex).

[4] See letter to Kaye Williams, Congressional and Legislative Affairs Commission, from Mark I. Klein (forwarded by Senator Diane Feinstein), dated February 11, 1998 (''Klein Letter''). See letters to Margaret H. McFarland, Deputy Secretary, Commission, from Options Clearing Corporation, dated March 23, 1998 (''OCC Letter'') from Chicago Board Options Exchange, Inc. (''CBOE''), dated March 23, 1998 (''CBOE Letter''). See letter to Kathryn Fulton, Congressional and Legislative Affairs, Commission, from Charles Wayne Emerson (forwarded by Senator Richard Shelby), dated February 18, 1998 (''Emerson Letter'').

[5] Amex Amendment No. 1 corrects a spelling error in the text of the proposed rule change. See Letter to Christine Richardson, Division of Market Regulation, Commission, from Michael Cavalier, Amex, dated April 1, 1998 (''Amex Amendment No. 1'').

[6] Phlx Amendment No. 1 replaces the term ''below'' with the term ''before'' in paragraph (a)(i) of the text of the proposed rule. See Letter to Michael Walinskas, Division of Market Regulation, Commission, from Carla J. Behnfeldt, Phlx, dated April 6, 1998.

[7] On October 19, 1987, the Dow Jones Industrial Average declined 22.6%.

[8] See Exchange Act Release No. 26198 (October 19, 1988), 53 FR41637 (NYSE, Amex, NASD, and CBOE).

[9] ''Dow Jones Industrial Average'' is a service mark of Dow Jones & Company, Inc.

[10] See Exchange Act Release Nos. 37457 (July 19, 1996), 61 FR 39176 (NYSE); 37458 (July 19, 1996), 61 FR 39167 (Amex); and 37459 (July 19, 1996), 61 FR 39172 (BSE, CBOE, CHX, and Phlx).

[11] See Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) (NYSE, Amex, CBOE, CHX, BSE, and Phlx). The Commission approved each of the Exchanges' revised circuit breaker rules on a one-year pilot basis which expired on January 31, 1998. See *id.* at 5874.

[12] See letters to Jean A. Webb, Secretary, Commodity Futures Trading Commission (''CFTC''), from Todd E. Petzel, Vice President, Financial Research, Chicago Mercantile Exchange (''CME''), dated September 1, 1988; from Paul J. Draths, Vice President and Secretary, Chicago Board of Trade (''CBOT''), dated July 29, 1988; from Milton M. Stein, Vice President, Regulation and Surveillance, New York Future Exchange (''NYFE''), dated September 2, 1988; and Michael Braude, President, Kansas City Board of Trade (''KCBT''), dated August 10, 1988.