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February 7, 1997

Ms. Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, N.W.
Washington, D.C. 20006

Re: NASD Regulation Request for Comment 96-82

Dear Ms. Conley:

PSA The Bond Market Trade Association ("PSA")¹ is pleased to provide its views concerning the above-referenced NASD Regulation, Inc. ("NASDR") Request for Comment 96-82 (the "Request for Comment"), issued by NASDR in December 1996. The Request for Comment solicits views on proposed amendments to NASD Conduct Rules 3010 (Supervision) and 3110 (Books and Records). For the reasons outlined below, PSA strongly supports adoption of these rule amendments in the form proposed by NASDR.

Summary of Proposed Rule Changes

NASDR proposes to amend Rule 3010(d)(1) to provide that a member firm must establish written procedures for review of outgoing and incoming manual and electronic correspondence of its registered representatives relating to the business of the member. The procedures must be designed to provide reasonable supervision of each registered representative. Implementation and execution of these procedures must be clearly evidenced. Amended Rule 3010(d)(2) would require each member firm to develop written procedures for review of incoming and outgoing correspondence tailored to its structure and the nature and size of its business and customer base. Any member that does not conduct prior review of correspondence will be required to regularly educate and train registered representatives regarding the firm's procedures governing review of communications, document such education and training, and conduct ongoing monitoring to ensure implementation and compliance with the procedures. Under proposed amendments to Rule 3010(d)(3), each member firm would be required to retain correspondence in accordance with amended Rule 3110. Rule 3110(a) would be amended to recognize that retention of records must be made and preserved as prescribed by Rule 17a-3 under the Securities Exchange Act of 1934 (the "Exchange Act"), and that the recordkeeping format, medium and retention period must comply with Rule 17a-4 of the Exchange Act.

Discussion

Similar to recent rule amendments filed by the New York Stock Exchange ("NYSE") with the Securities and Exchange Commission ("SEC") concerning supervision of NYSE members' communications with the public², the NASDR's proposed amendments respond to the SEC's request that various industry self-regulatory organizations adapt their supervision rules to accommodate the use of electronic communications. The Request for Comment observes that the NASDR's rule proposals would provide firms with flexibility in developing reasonable procedures for the review of correspondence, and that this proposed approach is designed to be consistent with the one adopted by the NYSE, thereby helping to ensure a coordinated regulatory framework for supervision of manual and electronic correspondence. PSA agrees with these observations, and supports the proposed rule changes.

As PSA has noted in prior correspondence with the SEC³, the usage of electronic media among securities firms and their customers is growing rapidly. This trend, which we believe is likely to accelerate, is having widespread economic and practical impacts on the way NASD member organizations and their registered representatives conduct business and communicate with each other, their customers and the general public. PSA believes that rules of the type proposed by the NASDR serve to accommodate, rather than impede, the growth of application of these emerging communications technologies. We further believe that NASDR's flexible and functional approach to regulation in this area is essential to maintaining the economic efficiency of securities firms at a time of rapid technological innovation, and increasing global competition.

The NASDR's proposals properly recognize that important differences exist among firms in terms of their size, operating structure, customer base, types of business and degree of utilization of electronic communication. Accordingly, it is both logical and necessary to enable member firms to integrate electronic communications into their business activities in a manner that is best calculated to meet their own unique business needs. This approach avoids inefficiencies that would result from inflexible or unnecessarily detailed regulatory requirements. At the same time, the proposals establish appropriate, general standards for supervisory review and monitoring of members' communications with customers and the public, thus providing NASDR with effective regulatory oversight capabilities.

As amended, Rule 3010(d)(1) would require members to review correspondence relating to the firm's overall business, unlike the NYSE requirements which pertain to the solicitation or execution of a securities transaction⁴. Similar to the NYSE rule amendments noted above, firms would no longer be required to review each item of correspondence. Instead, firms would be required to establish written procedures for supervisory review and monitoring of outgoing and incoming correspondence, including electronic communications. These procedures could involve reasonable sampling or spot-checking techniques. In addition, while written approval of correspondence would no longer be mandated, firms would be required to maintain evidence (such as electronically recording evidence of supervisory review of e-mail) that these written procedures have been implemented. PSA believes that these requirements strike an appropriate balance

between facilitating the use of electronic communication, and the need for reasonable supervision, monitoring and recordkeeping requirements related to such activities.

Similarly, amended Rule 3010(d)(2) would, in requiring firms to develop written procedures for correspondence review, nevertheless allow firms to implement either uniform procedures or procedures that are tailored to specific functions, offices or locations, individuals, groups of persons or specific registration categories. The NASDR's proposals would thus allow firms to develop reasonable procedures that are tailored to their individual, and in some cases, unique, needs and circumstances. PSA believes that this approach is far more efficient and effective than one which relies upon a single set of specific, detailed requirements that may be inappropriate for many firms, or that may quickly prove outmoded or obsolete.

PSA particularly wishes to commend NASDR for its efforts to harmonize the requirements of its supervisory review and recordkeeping requirements governing electronic and other communications, with those of the SEC and NYSE. The efficiency that is achieved by such a uniform and coordinated approach far outweighs any policy rationale that might support a fragmented or individualized approach among the SEC and the various SROs. In this regard, we specifically endorse the NASDR's goal of achieving consistency between its proposed amendments to Rules 3010, and recently enacted amendments to the NYSE's Rules 342 and 472. We also support NASDR's proposed amendments to Rule 3110(a) which, in a manner similar to amended NYSE Rule 440, would specify that records must be made and preserved in a manner that complies with Rules 17a-3 and 17a-4 under the Exchange Act.

PSA wishes to note, however, that its support for consistency between and among SRO and SEC record keeping and retention rules should not be equated with universal support for all substantive aspects of those rules. For example, we continue to believe that the SEC should revise its rules to eliminate unnecessary and burdensome recordkeeping requirements with respect to electronic communications.⁵ Informal means of electronic communications such as e-mail are more akin to oral communications, to which record retention requirements have never applied. PSA therefore believes that the imposition of the entire complement of recordkeeping requirements that have traditionally been associated with written forms of communications would be inappropriate and unnecessary in the case of electronic communications. Requiring retention of all electronic communications, regardless of their content or function, would impose substantial burdens on market participants. E-mail and other forms of electronic communications are largely informal and conversational in nature. The usage and volume of such communications are increasing, and significant costs are associated with storing and retrieving this information. In light of this, PSA continues to believe it important for the SEC and the SROs to work together to develop substantive record retention requirements that adopt a similarly flexible and functional approach. Under such an approach, recordkeeping requirements would be triggered by the content of the communication, rather than the mere fact that a "communication" has occurred, or the form by which it is delivered.

Again, PSA appreciates the opportunity to comment on the matters addressed in the Request for Comment, and we commend NASDR for its thoughtful and timely actions in this important area. Should you have any questions or desire any clarification of the issues discussed in this letter, please contact either of the undersigned, or George Miller, Vice President and Deputy General Counsel of PSA at (212) 440-9403, or Paul Saltzman, Senior Vice President and General Counsel of PSA at (212) 440-9459.

Sincerely,

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Oppenheimer & Co., Inc.
Co-Chairman
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R. May Lee
Goldman, Sachs & Co.
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cc: The Honorable Arthur Levitt, Chairman,
Securities and Exchange Commission
The Honorable Steven M.H. Wallman, Commissioner,
Securities and Exchange Commission
The Honorable Norman S. Johnson, Commissioner,
Securities and Exchange Commission
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1 PSA represents approximately 220 securities firms and banks that underwrite, trade and sell debt securities, both domestically and internationally. PSA's member firms account for in excess of 95% of all primary issuance and secondary trading activity in the domestic debt capital markets. More information about PSA can be obtained from our website at www.psa.com.

2 SEC Release No. 34-37941; File No. SR-NYSE-96-26, 61 Fed. Reg. 58919 (November 19, 1996).

3 PSA letter to Jonathan G. Katz, dated October 16, 1996, concerning Use of Electronic Media by Broker Dealers... (File No. S7-13-96).

4 In this respect, PSA believes that it would be helpful for NASDR to conform its definition of what constitutes a "communication" to that of the NYSE.

5 See, for example, Exchange Act Rule 17a-4(b)(4), which applies recordkeeping and retention requirements to "originals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such."