



**Securities Industry Association**

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January 10, 2001

Ms. Margaret H. McFarland  
Deputy Secretary  
Securities and Exchange Commission  
450 Fifth St N.W.  
Washington, DC 20549-0609

Re: File No. SR-NASD-99-60  
Restrictions on the Purchase and Sale of Initial Equity Public Offerings

Dear Ms. McFarland:

The Syndicate Committee (Committee) of the Securities Industry Association (SIA) is pleased to take this opportunity to comment the proposed NASD Rule 2790 which would replace the Free-Riding and Withholding Interpretation, IM-2110-1, (Interpretation) that is currently in effect as part of the NASD Conduct Rules. The Committee has reviewed proposed Rule 2790 (Proposed Rule) published in the Federal Register, December 6, 2000 (Release) and we strongly support the thrust of the Proposed Rule although we have comments, which if incorporated would in our view avoid any confusion regarding the breadth of the Proposed Rules' "general prohibitions" and strengthen compliance with its "preconditions for sales". The evolution of sales and distribution practices which have occurred in the market and on the syndicate desks of broker-dealers, particularly the advent of on-line investing and order routing through electronic communications networks, has made compliance with the provisions of the Interpretation, with its focus on distributions of securities that trade to an immediate premium in the secondary market increasingly burdensome. As noted in the release the SIA advocated what we believe is a more straightforward approach to protecting the integrity of the public offering process; that of prohibiting allocations of new issue equity securities to restricted persons and to accounts in which they have a beneficial interest. Thus, we urge the Commission and the NASD to complete the rule making process expeditiously and adopt the Proposed Rule at the earliest possible time.

As noted above The Committee believes that the general prohibitions of the Proposed Rule may be too restrictive and thus cause compliance problems when underwriters and broker-dealers are engaged in inter-syndicate sales and accommodation sales. Paragraph (a)(2) restricts a member

from making new issue purchases in any account in which a member has a beneficial interest except as otherwise permitted by the Proposed Rule. This provision, if read strictly, would prohibit underwriters from making purchases from the issuer, and by and among other underwriters and selected dealers when they are engaged in the distribution of a new equity issue. It would also prohibit an underwriter or selected dealer from making a sale another broker-dealer, at the public offering price, so the purchasing broker-dealer could accommodate a customers desire to buy the new issue at the offer price. This practice permits customers of broker-dealers who receive fees for managing assists to participate in the new issue market. The Committee believes that the Proposed Rule could be amended by inserting a clause in paragraph (2)(a) that specifically recognizes that such broker-dealer purchases are not within the scope of the general prohibitions. The Committee offers the following language for consideration:

(Committee inserts in *Italics*)

(a)(2) A member or a person associated with a member may not purchase a new issue in any account (*except to facilitate the distribution of a new issue*) in which such member or person associated with a member has a beneficial interest, except as otherwise permitted herein.

The Committee is also pleased to note that NASD Regulation, Inc. has explicitly recognized that members could rely on data regarding the status of restricted persons when the data is contained in an information system maintained by a private vendor. The Committee believes the creation of such a database and information system accessible to NASD members over the Internet would simplify compliance with the provisions of the Proposed Rule relating to preconditions for sale. It would then be a simple matter for the member to access the web site, determine that the representation was current and if necessary download or print out the representation for record keeping purposes. The Committee would like NASD Regulation, Inc. to consider amending the Proposed Rule or clarifying in the adopting release that the private vendor can also act as a repository and maintain the certification or representation in its electronic files for the members' benefit. If the private vendor were permitted to act in such a capacity (and would agree to maintain the representations under the same requirements the SEC imposes on broker-dealers who maintain original records in electronic format) the full benefits of a web based system would be realized. A subcommittee of the Committee may be formed to pursue this issue and the creation of an information system both with NASD Regulation, Inc. and private vendors. Thank you for the opportunity to comment.

Sincerely,

Andy Blum  
Chairman  
Syndicate Committee