

management contracts will be to reduce fees from Controlled Companies by approximately 56%. Applicant expects, however, a corresponding reduction of costs due to the restructuring that occurred. The immediate net effect of the change was the payment to applicant of termination fees under the agreements, which fees are included in extraordinary income as described above. While revenues from applicant's Direct Subsidiaries, Direct Assets, service agreements and other operations, and dividends from Controlled Companies' stock are a substantial portion of applicant's total revenue, they account for a significantly smaller portion of applicant's net income. This largely reflects (a) the strategy of applicant and its Controlled Companies to retain earnings for future operations and growth, rather than to distribute earnings to shareholders in the form of dividends, (b) the fact that gold sales made directly by applicant are relatively small in relation to applicant's total activities, which consist largely of exploration properties, and (c) the fact that virtually all of applicant's expenses relate to the activities of its Direct Subsidiaries and its Direct Assets.

8. In the alternative to exemptive relief under section 3(b)(2), applicant requests an order under section 6(c) exempting applicant from all provisions of the Act and the rules and regulations thereunder. Section 6(c) authorizes the Commission to issue a conditional or unconditional exemption from any provision of the Act or rule thereunder if the exemption is "necessary or appropriate in the public interest" and is "consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]." Applicant states that it was structured for valid economic and legal reasons and not with the Act in mind. Consequently, applicant believes that it would be inappropriate and detrimental to applicant and its shareholders to be treated as an investment company and made subject to the Act. Furthermore, applicant believes that it is not the type of company and does not engage in the activities the Act was designed to regulate. Accordingly, applicant submits that the requested exemption is necessary and appropriate in the public interest, is consistent with the protection of investors, and is consistent with the purposes of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.
Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-83821; File No. SR-NASD-97-06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Scope of the Uniform Practice Code

February 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ notice is hereby given that on February 20, 1997, the NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 11100 of the Uniform Practice Code ("Code") of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to clarify the scope of the Code and the exception for transactions settled through a clearing agency. Below is the text of the proposed rule change. Proposed new language is in italics.

11100. Scope of Uniform Practice Code

(a) All over-the-counter secondary market transactions in securities *(including restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933)* between members, *including the rights and liabilities of the members participating in the transaction, and those operational procedures that affect the day-to-day business of members* shall be subject to the provisions of this Code except:

¹ 15 U.S.C. § 78s(b)(1).

² The proposed rule change was originally filed on January 29, 1997. The NASD subsequently submitted Amendment No. 1 that removed certain unnecessary text. This document provides notice of the proposed rule change as amended. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated February 20, 1997.

(1) transactions in securities between members which are compared, cleared or settled through the facilities of a registered clearing agency, *except to the extent that the rules of the clearing agency provide that rules of other organizations shall apply.*

* * * * *

II. Self-Regulatory Organizations Statement of the Purpose of and Statutory Basis for, the proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The Code provides detailed requirements for many procedures and practices related to the operational aspects of members' securities business, including requirements for deliveries, payments, dividends, rights, interest, exchange of confirmations, assignments, powers of substitution, computation of interest, due bills, transfer fees, "when, as and if issued" trading, "when, as and if distributed" trading, market to market, buy-ins, close-outs, accounts transfers, settlement of syndicate accounts, etc.

The introductory language in paragraph (a) of Rule 11100 states the general standard that "all over-the-counter secondary market transactions in securities between members shall be subject to the provisions of this Code. * * *" The focus of the language only on "transactions in securities" does not encompass those provisions of the current Code that address the rights and liabilities of the members participating in the transaction and provide procedures that are not related to securities transactions, e.g., the setting of ex-dates and the transfer of customer accounts. In addition, the exception in subparagraph (a)(1) of Rule 11100 for securities transactions cleared through a registered clearing agency does not address the situation where the rules of the clearing agency require compliance with the rules of the applicable market. In this latter case, the clearing agency exception is technically not available since the clearing agency requires that

the Code or the rules of the relevant market apply to the transaction. Finally, since the SEC's adoption of Rule 144A in 1991, members have inquired as to whether the Code is applicable to transactions in restricted securities.

In order to provide clarity on the applicability of the Code, NASD Regulation is proposing to amend the Code to expand the introductory language of paragraph (a) of Rule 11100 to state that:

(i) the application of the Code to secondary market transactions in securities includes the regulation of the "rights and liabilities of the members participating in the transaction";

(ii) the Code also applies to "those operational procedures that affect the day-to-day business of members";³ and

(iii) the securities transactions covered by the Code include transactions in "restricted securities, as defined in Rule 144(a)(3) under the Securities Act of 1933."

As a result of this change, secondary market transactions in restricted securities that are not in a depository will be required to comply with the Code's operational procedures. In this connection, NASD Regulation is also clarifying the securities sold offshore pursuant to the exemption from registration provided by Regulation S are considered to be subject to the requirements of the Code when those securities are traded in the U.S. after the expiration of the restricted period. It is not believed any change to the Code is necessary with respect to this clarification, as the Code clearly applies to all registered and unregistered secondary securities market transactions between members, which would include securities formerly sold in a Regulation S transaction.

In addition, NASD Regulation is proposing to amend subparagraph (a)(1) of Rule 11100 to clarify that the exception for transactions in securities between members that are compared, cleared or settled through the facilities of a registered clearing agency does not apply where the rules of the clearing agency provide that the rules of other organizations shall apply.

NASD Regulation believes that these changes will make clear the broad scope and applicability of the Code and permit members to look to the Code for guidance regarding transactions settled through a clearing agency, where the

clearing agency has adopted a rule directing that the rules of the governing market apply to the transaction.

(b) NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁴ in that the proposed rule change clarifies the application of the Uniform Practice Code to establishing the liabilities of parties to a transaction, to restricted securities, to the operational procedures that affect the day-to-day business of members, and to transactions settled through a clearing agency where the rules of the clearing agency direct that the rules of the governing market apply to the transaction. NASD Regulation believes the proposed rule change is consistent with the Association's obligations to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities and, in general, in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-06 and should be submitted by March 20, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 97-4862 Filed 2-26-97; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2925; Amendment #2]

California; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency, dated February 14, 1997, the above-numbered Declaration is hereby amended to include Kings and San Luis Obispo Counties in the State of California as a disaster area due to damages caused by severe storms, flooding, and mud and landslides beginning on December 28, 1996 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Santa Barbara in the State of California may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named counties and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is March 5, 1997, and for loans for economic injury the deadline is October 6, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

³ This language is drawn from Article XV, Section 1 of the NASD By-Laws which authorizes the Association to adopt the Uniform Practice Code which states that the adoption of such a Code is for the purpose that "the transaction of day-to-day business by members may be simplified and facilitated * * *."

⁴ 15 U.S.C. § 78o-3.

⁵ 17 CFR 200.30-3(a)(12).