

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Irving Williamson, Deputy General Counsel, Office of the United States Trade Representative, (202) 395-3432.

SUPPLEMENTARY INFORMATION: Section 314(f) of the Uruguay Round Agreements Act amended section 310(a) of the Trade Act to require the USTR, within 180 days of the submission in calendar year 1995 of the National Trade Estimate (NTE) report, to review United States trade expansion priorities and identify foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. A report on the review and the practices identified must be submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and published in the **Federal Register**. In addition, the USTR must initiate investigations under section 302(b)(1) of the Trade Act (19 U.S.C. 2412(b)(1)), no later than 21 days after submission of the report, with respect to all of the foreign country practices so identified. The USTR may also cite in the report practices that may warrant identification in the future or that were not identified because they are already being addressed and progress is being made toward their elimination.

Requirements for Submissions

The USTR invites submissions on foreign country practices that should be considered for identification pursuant to section 310 of the Trade Act. Submissions should indicate whether the foreign policy or practice at issue was identified in the 1995 NTE report published on March 31, 1995 by USTR (U.S. Government Printing Office: 1995-392-760/30253), and if so, should cite the page number(s) where it appears in the NTE and provide any additional information considered relevant. If the foreign practice was not identified in the NTE Report, submissions should (1) include information on the nature and significance of the foreign practice; (2) identify the United States product, service, intellectual property right, or foreign direct investment matter which is affected by the foreign practice; and (3) provide any other information considered relevant. Such information may include information on the trade agreements to which a foreign country is a party, and its compliance with those agreements; the medium- and long-term

implications of foreign government procurement plans; and the international competitive position and export potential of United States products and services. Because submissions will be placed in a public file, open to the public inspection at USTR, business-confidential information should not be submitted.

Interested persons must provide twenty copies of any submission to Sybia Harrison, Staff Assistant to the Section 301 Committee, Room 222, 600 17th Street, NW, Washington, D.C. 20508, by no later than 12:00 noon on Friday, August 4, 1995.

Public Inspection of Submissions

Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, D.C. An appointment to review the file may be made by calling Brenda Webb, (202) 395-6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Irving A. Williamson,
Chairman, Section 301 Committee.

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PENSION BENEFIT GUARANTY CORPORATION

Assessment of Penalties for Failure to Provide Required Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Statement of Policy.

SUMMARY: The Pension Benefit Guaranty Corporation is revising its policy on penalties for failure to provide required information in a timely manner. The revised policy is designed to promote voluntary compliance. It provides for lower penalties for plans of small businesses and for violations that are speedily corrected.

DATES: The revised policy takes effect on July 18, 1995 with respect to any matter for which a notice of final penalty assessment has not been issued as of that date.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: Section 4071 of the Employee Retirement

Income Security Act of 1974 authorizes the PBGC to assess a penalty of up to \$1,000 per day for failure to provide any required notice or other material information within the specified time limit. A decision to assess a penalty under section 4071 does not preclude other enforcement or remedial action by the PBGC.

On March 3, 1992, the PBGC issued its first statement of policy on how it would exercise this penalty authority. Pursuant to the President's April 21, 1995, directive on penalties, the PBGC has reviewed its experience under this penalty policy and has concluded that a revised policy statement is appropriate to promote voluntary compliance. This replaces the March 1992 statement, and applies to any notice or other material information required to be provided to the PBGC or other parties to which section 4071 penalties may apply (other than premium-related submissions).

The PBGC will amend Chapter 8, Section 1 of the PBGC Operating Policy Manual (and related departmental manuals) to reflect these general guidelines. The PBGC may amend these guidelines through changes to the Manual as the PBGC gains experience with the new policy.

Penalty Guidelines

The PBGC will continue to consider the facts and circumstances of each case to assure that the penalty fits the violation. Among the factors the PBGC will consider are the importance and time-sensitivity of the required information, the extent of the omission of information, the willfulness of the failure to provide the required information, the length of delay in providing the information, and the size of the plan. In most cases, the PBGC will: (1) increase penalties as the period of delinquency increases; (2) reduce penalties for small plans; and (3) limit total penalties based on plan size.

In general, the PBGC will assess a penalty of \$25 per day for the first 90 days of delinquency, and \$50 per day thereafter. In addition, the penalty will be proportionately reduced in accordance with the number of participants in the case of plans with fewer than 100 participants,¹ subject to a floor of \$5 per day. For example, the penalty for a plan with 25 participants

¹ The participant count calculation will be tied to the appropriate participant count. Thus, in the case of a post-distribution certification, the appropriate participant count will be the number of participants entitled to a distribution in the termination. Where there is no clearly appropriate participant count, the participant count generally will be determined using the most recently filed Form 1 for the relevant plan or plans.

would be \$6.25 per day (25% of \$25 per day) for the first 90 days, and \$12.50 per day (25% of \$50 per day) thereafter.

Under these general guidelines, the total penalty for any violation would not exceed \$100 times the number of plan participants. In the above example, because the plan has 25 participants, the total penalty would not exceed \$2,500.

The PBGC may assess a penalty larger than the general penalty if there is a willful failure to comply (e.g., where a plan administrator willfully fails to issue a notice to participants required under section 4011 of ERISA) or if there is a pattern or practice of failure to provide material information. Similarly, the PBGC may assess a penalty larger than the general penalty if the harm to participants or the PBGC resulting from a failure to timely provide material information is substantial. For example, a larger penalty may apply where there is a failure to provide the PBGC with timely post-event notice of a reportable event involving a large company or plan or with annual information required by section 4010 of ERISA.

The PBGC will generally assess the full \$1,000 per day penalty for failure to provide an advance notice of a reportable event under ERISA section 4043(b) or a notice to the PBGC of a missed contribution under ERISA section 302(f)(4). This information is so time sensitive and significant that a larger penalty is warranted.

Reasonable Cause Guidelines

The PBGC will waive all or part of a section 4071 penalty where reasonable cause is shown. The PBGC will evaluate each request for a waiver to determine whether the responsible person exercised ordinary business care and prudence and delay resulted from circumstances beyond that person's control.

Other Matters

The PBGC will continue to review initial penalty assessments if requested in writing within 30 days of the date of the notice of initial penalty assessment. Assignment of penalty assessment and review functions remains unchanged.

Issued in Washington, DC, this 12th day of July 1995.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 95-17629 Filed 7-17-95; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35956; File No. SR-NASD-95-16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment of the NASD Rules of Fair Practice Relating to a Customer Complaint Reporting Rule

July 11, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 6, 1995,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. 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

The NASD is proposing to amend the NASD Rules of Fair Practice to require NASD members to report to the NASD the occurrence of certain specified events and quarterly summary statistics concerning customer complaints. Below is the text of the proposed rule change. Proposed new language is italicized and deleted language is bracketed.

Rules of Fair Practice

Article III

Reporting Requirements Section

(1) Each member shall promptly report to the Association whenever such member or person associated with the member:

(1) has been found to have violated any provision of any securities law or regulation, any rule or standards of conduct of any governmental agency, self-regulatory organization, or financial business or professional organization, or engaged in conduct which is inconsistent with just and equitable

¹ The proposed rule change was initially submitted on May 1, 1995, but was amended twice prior to publication of this Notice: once on May 25, 1995, and again on July 6, 1995. The first amendment was a technical amendment intended to clarify the scope of the rule change. The second amendment added a time frame within which members would be responsible to report certain information. Both amendments are incorporated herein and are available for copying in the Commission's Public Reference Room.

principles of trade; and the member knows or should have known that any of the aforementioned events have occurred;

(2) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

(3) is named as a defendant or respondent in any proceeding brought by a regulatory or self-regulatory body alleging the violation of any provision of the Securities Exchange Act of 1934, or of any other federal or state securities, insurance, or commodities statute, or of any rule or regulation thereunder, or of any provision of the By-laws, rules or similar governing instruments of any securities, insurance or commodities regulatory or self-regulatory organization;

(4) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry regulatory or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;

(5) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any criminal offense (other than traffic violations);

(6) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution which was convicted of or pleaded no contest to, any felony or misdemeanor;

(7) is a defendant or respondent in any securities or commodities-related civil litigation or arbitration which has been disposed of by judgement, award, or settlement for an amount exceeding \$15,000. However, when the member is the defendant or respondent, then the reporting to the Association shall be required only when such judgement, award, or settlement is for an amount exceeding \$25,000;

(8) is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding \$15,000. However, when the claim for damages is against a member, then the reporting to the Association shall be required only when such claim