



SUTTER SECURITIES INCORPORATED

May 1, 2006

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number SR-NASD-2005-080

Dear Ms. Morris:

Sutter Securities Incorporated appreciates the opportunity to address the SEC's request for comments on proposed NASD Rule 2290. I am Chairman of Sutter, which provides fairness opinions as part of its investment banking services. From 1970 through 1995, I was Chairman of the Valuation Committee at Bear, Stearns & Co. Inc., where I supervised all fairness opinions issued by the firm. I am also the author of several book chapters on fairness opinions.

Although we support the disclosures and procedures in the proposed Rule, we believe that the Rule should be augmented by addressing another important issue: the updating of fairness opinions.

Unfortunately, it has become common practice for opinion letters to be included in proxy statements, information statements, or tender offer documents that are sent to shareholders several weeks or even months later than the date of the opinion letter. Changes in market conditions and/or in the performance and prospects of individual companies often impact the fairness of a transaction.¹ Yet the proxy statements and similar documents do not state whether the firm that issued the opinion has reexamined its conclusion as to fairness. It is questionable practice for investors to be supplied with an opinion that may no longer be valid as of the mailing date.

¹ See Gilbert E. Matthews, "Fairness Opinions: Common Errors and Omissions," in *The Handbook of Business Valuation and Intellectual Property Analysis*, R. Reilly and R. Schweih, eds. (McGraw Hill, 2004), pp. 230-1.

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We would urge the NASD to require members to establish procedures with respect to their policies on updating fairness opinions. Members should establish procedures (a) to determine under what circumstances their fairness opinions should be updated, and (b) to address, prior to public distribution of a fairness opinion in a proxy statement or similar document, whether that particular opinion should be reaffirmed or withdrawn. We also believe that when a member's fairness opinion is included in a proxy statement or similar document and the opinion letter's date of the opinion is not proximate to the mailing date, the member should be required to disclose the basis on which it determined not to update its opinion.

Thank you for the opportunity to comment. If you have any questions, please call me at (415) 352-6336.

Sincerely yours,



Gilbert E. Matthews, CFA
Chairman
Sutter Securities Incorporated

cc:
Barbara Z. Sweeney
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