

## NASD Notice to Members 00-31

### INFORMATIONAL

## FIPS Changes

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of March 23, 2000

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Corporate Finance
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Senior Management
- Trading & Market Making

### KEY TOPIC

- FIPS

As of March 23, 2000, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
ANCG.GB	Anker Coal Group Inc. Ser B	14.250	09/01/07
CFTR.GB	Conseco Fin'l Tr Inc.	8.796	04/01/27
CHBS.GA	Charles River Labs Inc.	13.500	10/01/09
DALY.GB	Dailey Int'l Inc.	9.500	02/15/08
DHI.GD	D.R. Horton Inc.	10.500	04/01/05
DLCA.GB	Dail Call Communications Inc.	12.250	04/15/04
DVSM.GA	Diva Systems Corp.	12.625	03/01/08
ECOC.GA	Easco Corp.	10.000	03/27/00
EXDS.GC	Exodus Communications Inc.	10.750	12/15/09
GSTF.GA	GST Equipment Funding Inc.	13.250	05/01/07
HCHM.GB	Huntsman ICI Chemicals LLC	0.000	12/31/09
HMTR.GC	Amtran Inc.	10.500	08/01/04
INST.GA	Instron Corp.	13.250	09/15/09
IRSP.GA	Intersil Corp.	13.250	08/15/09
JDN.GA	JDN Realty Corp.	6.800	08/01/04
JDN.GB	JDN Realty Corp.	6.950	08/01/00
KGEL.GA	Kansas Gas & Electric Co.	7.600	12/17/03
KGEL.GB	Kansas Gas & Electric Co.	6.500	08/01/05
KGEL.GC	Kansas Gas & Electric Co.	6.200	01/15/06
LEN.GA	Lennar Corp.	7.625	03/01/09
LTVP.GA	LTV Corp. New	11.750	11/15/09
PBY.GA	Pep Boys Manny Moe & Jack	7.000	06/01/05
PBY.GB	Pep Boys Manny Moe & Jack	6.625	05/15/03
PGTV.GC	Pegasus Communications Corp.	12.500	08/01/07
PNSU.GA	Peninsula Gaming LLC Ser B	12.250	07/01/06
PXD.GC	Pioneer Natural Resource	9.625	04/01/10
RPBT.GA	Republic Tech/RTI Capital Corp.	13.750	07/15/09
RYCK.GA	Royster-Clark Inc.	10.250	04/01/09
TMHL.GA	Team Health Inc. Ser B	12.000	03/15/09
TNAU.GA	Tenneco Automotive Inc. Ser B	11.625	10/15/09
USUW.GA	US Unwired Inc.	13.375	11/01/09
WCII.GF	Winstar Communications Inc.	12.750	04/15/10
WCII.GG	Winstar Communications Inc.	14.750	04/15/10
WCII.GH	Winstar Communications Inc.	12.500	04/15/08
WR.GA	Western Resources Inc.	6.875	08/01/04
WR.GB	Western Resources Inc.	7.125	08/01/09
WR.GC	Western Resources Inc.	6.875	08/01/04

## **NASD Notice to Members 00-31**

As of March 23, 2000, the following bonds were deleted from FIPS.

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
AEC.GA	Associated Estates Realty Corp.	8.375	04/15/00
CENU.GA	Cencall Communications Corp.	10.125	01/15/04
COHO.GA	Coho Energy Inc.	8.875	10/15/07
DOCI.GA	Decisionone Holdings Corp.	11.500	08/01/08
EGLE.GA	Eagle Food Ctrs Inc.	8.625	04/15/00
FALC.GA	Falcon Building Products Inc.	9.500	06/15/07
FCHM.GA	Freedom Chemicals Inc.	10.625	10/15/06
FCLT.GA	Facillcom Int Inc.	10.500	01/15/08
FFSH.GA	Farm Fresh Inc.	12.250	10/01/00
FFSH.GB	Farm Fresh Inc.	12.250	10/01/00
FLDP.GA	Florida Coast Paper Co.	12.750	06/01/03
FWTN.GA	FWT Inc.	9.875	11/15/07
GGSY.GA	Gross Graphic Sys Inc.	12.000	10/15/06
JCOM.GA	Jacor Communications Co.	9.750	12/15/06
JCOM.GB	Jacor Communications Co.	8.750	06/15/07
JOIN.GB	Jones Intercable Inc.	10.500	03/01/08
LUGM.GA	Lady Luck Gaming Fin Corp.	11.875	03/01/01
LUGM.GB	Lady Luck Gaming Fin Corp.	11.875	03/01/01
NXTL.GB	Nextel Communications Inc.	9.750	08/15/04
STO.GH	Stone Container Corp.	9.875	02/01/01
SVGC.GA	Sovereign Speciality Chem. Inc.	9.500	08/01/07
VCMK.GA	Victory Markets Inc.	12.500	03/15/00
WR.GA	Western Resources Inc.	6.875	08/01/04

As of March 23, 2000, changes were made to the symbols of the following FIPS bonds.

<b>New Symbol</b>	<b>Old Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
CFNI.GA	CFN.GA	Contifinancial Corp.	8.375	08/15/03
CFNI.GB	CFN.GB	Contifinancial Corp.	8.125	04/01/08
CFNI.GC	CFN.GC	Contifinancial Corp.	7.500	03/15/02
PKG.GA	PKCA.GA	Packaging Corp. Amer	9.625	04/01/09
ROIA.GA	RDIO.GA	Radio One Inc.	7.000	05/15/04
TNAU.GA	TEN.GA	Tenneco Automotive Inc.	11.625	10/15/09

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, Market Regulation, NASD Regulation<sup>SM</sup>, at (301) 590-6447.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq<sup>®</sup> Market Operations, at (203) 385-6310.

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## INFORMATIONAL

### Decimalization

#### SEC Suspends Decimalization Deadline And Requests Comment On Extended Deadline

## SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Legal & Compliance
- Operations
- Options
- Registered Representatives
- Senior Management
- Technology
- Trading & Market Making

## KEY TOPICS

- Decimalization

### Executive Summary

The Securities and Exchange Commission (SEC or Commission) recently suspended the July 3, 2000 deadline for decimal trading and requests comment on two alternative plans which would revise the securities industry's decimal implementation schedule.

The SEC order announcing the deadline suspension is included with this *Notice*.

### Questions/Further Information

Questions regarding this *Notice to Members* may be directed to the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Decimalization Program Management Office (DPMO) toll free at: (888) 227-1330 or via e-mail at [decimals@nasd.com](mailto:decimals@nasd.com).

Members should check the NASD Web Site ([www.nasd.com](http://www.nasd.com)) frequently for general information regarding decimalization and the Securities Industry Association (SIA) Web Site ([www.sia.com](http://www.sia.com)) for information on industry preparation testing (view the *Decimalization Testing & Implementation Guide*).

### Decimalization Deadline Extension

After extensive review and testing of Nasdaq<sup>®</sup> systems and in light of recent growth in quotation and trade volume, the NASD recently asked the Commission to delay the July 3, 2000 decimals implementation plan. Therefore, the Commission has suspended the original deadline and has proposed the following two alternative schedules for which it is seeking comment:

- 1) trade all exchange-listed securities in decimals by September 4, 2000;
- 2) phase in decimal trading in certain exchange-listed securities on a pilot basis. This pilot program would begin on September 4, 2000, and would initially include a small number of exchange-listed securities and would expand to all listed stocks by March 31, 2001.

Under both alternatives, the NASD would begin trading in decimals by March 31, 2001.

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Requests, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

#### Extension:

Rule 489 and Form F-N, SEC File No. 270-361, OMB Control No. 3235-0411  
Form 24F-2, SEC. File No. 270-399, OMB Control No. 3235-0456

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("Act") [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 489 under the Securities Act of 1933, Filing of Form by Foreign Banks and Certain of their Holding Companies and Finance Subsidiaries; and Form F-N, Appointment of Agent for Service of Process by Foreign Banks and Foreign Insurance Companies and Certain of Their Holding Companies and Finance Subsidiaries Making Public Offerings of Securities in the United States.

Rule 489 under the Securities Act of 1933 [17 CFR 230.489] requires foreign banks and insurance companies and holding companies and finance subsidiaries of foreign banks and foreign insurance companies that are excepted from the definition of "investment company" by virtue of Rules 3a-1, 3a-5, and 3a-6 under the Investment Company Act of 1940 to file Form F-N to appoint an agent for service of process in the United States when making a public offering of securities. Approximately seven entities are required by Rule 489 to file Form F-N, which is estimated to require an average of one hour to complete. The estimated annual burden of complying with the rule's filing requirement is approximately eight hours, as one of the entities has submitted multiple filings.

Under 17 CFR 270.24f-2, any open-end management companies ("mutual funds"), unit investment trusts ("UITs") or face-amount certificate companies (collectively, "funds") that are deemed to have registered an indefinite amount of securities must, not later than 90 days after the end of any fiscal year in which it has publicly offered such securities, file Form 24F-2 with the Commission. Form 24F-2 is the annual notice of

securities sold by funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year.

The Commission estimates that 8,203 funds file Form 24F-2 on the required annual basis. The average annual burden per respondent for Form 24F-2 is estimated to be one hour. The total annual burden for all respondents to Form 24F-2 is estimated to be 8,203 hours.

Compliance with the collection of information required by Form 24F-2 is mandatory. The Form 24F-2 filing that must be made to the Commission is available to the public.

The estimates of average burden hours are made solely for the purposes of the PRA and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

Dated: April 11, 2000.

**Jonathan G. Katz,**

Secretary.

[FR Doc. 00-9788 Filed 4-18-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42685; File No. 4-430]

### Order Staying the Deadlines for Decimal Implementation and Notice of Request for Comment on Revised Decimal Implementation Schedules

April 13, 2000.

On January 28, 2000, the Securities and Exchange Commission ("Commission") issued an order (the "Decimals Order")<sup>1</sup> requiring the American Stock Exchange LLC ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (collectively the "Participants")<sup>2</sup> to facilitate an orderly transition to decimal pricing in the United States securities markets. The Decimals Order prescribed a timetable for the Participants to begin trading some equity securities (and options on those equity securities) in decimals by July 3, 2000, and all equities and options by January 3, 2001.

On March 6, 2000, despite previous assurances of readiness, the NASD announced that The Nasdaq Stock Market Inc. ("Nasdaq") would not have sufficient capacity to meet the target dates for implementation.<sup>3</sup> The NASD also expressed concerns regarding overall industry readiness and requested that the Commission work with the industry and the markets to determine an appropriate time frame that would not impose unnecessary risks on investors.<sup>4</sup>

<sup>1</sup> See Securities Exchange Act Release No. 42360 (Jan. 28, 2000), 65 FR 5004 (Feb. 2, 2000) ("Decimals Order").

<sup>2</sup> Since the date of the Decimals Order, the Commission approved the registration of the International Securities Exchange ("ISE") as a national securities exchange. See Securities Exchange Act Release No. 42455 (Feb. 24, 2000), 65 FR 11388 (March 2, 2000). On March 10, 2000, the Commission included the ISE within the term "Participants" for purposes of the Decimals Order. See Securities Exchange Act Release No. 42516 (March 10, 2000), 65 FR 14637 (March 17, 2000) ("Extension Order").

<sup>3</sup> See Letters from Frank G. Zarb, Chairman and Chief Executive Officer, NASD, to Arthur Levitt, Chairman, Commission, dated March 6, 2000 and March 21, 2000.

<sup>4</sup> Nasdaq has committed to stepping up its efforts (including, at the Commission's request, hiring an independent consultant to advise on capacity issues) to help ensure that it manages its growth responsibly. The Commission expects, and has been assured, that Nasdaq will dedicate substantial

The Commission remains committed to implementing decimal pricing as expeditiously as possible. Decimal pricing could benefit investors by enhancing investor comprehension, facilitating globalization of our markets, and potentially reducing transaction costs. At the same time, however, the Commission believes that decimal pricing must be implemented in a manner that does not have a negative impact on the order routing, trading, and settlement systems of the markets and the securities industry, and that does not result in investor confusion.

In light of the NASD's announcement that it is unable to meet the original planned implementation schedule for decimalization, and subsequent communications with the Participants, the industry, and others, the Commission hereby suspends the deadlines in the Decimals Order.<sup>5</sup> The Commission also requests comment on two alternatives for initiating decimal trading in exchange-listed equity securities this year.

### I. Alternative Schedules To Implement Decimal Pricing

Since the NASD's announcement, the Commission, Participants, and other members of the securities industry have continued to discuss industry readiness and the feasibility and advisability of proceeding with the timetable set forth in the Decimals Order and the Extension Order without, or with the limited participation of, Nasdaq.<sup>6</sup> Based on these discussions, it appears that decimal pricing in at least some exchange-listed securities may be feasible this year. Specifically, the securities exchanges have indicated that their individual systems are prepared to convert to decimal pricing by July 3, 2000.<sup>7</sup> The NASD has also asserted that

resources and the attention of senior management to the conversion to decimal pricing. The Commission is monitoring Nasdaq's efforts closely.

<sup>5</sup> The two earliest deadlines set by the Decimals Order required the Participants to submit jointly by March 13, 2000 a decimals implementation plan, and each Participant to submit by March 28, 2000 proposed rule changes necessary to implement the decimals implementation plan. These deadlines were extended (to April 14, 2000 and April 28, 2000, respectively) as a result of the NASD announcing that it would be unable to begin implementing decimal pricing on July 3, 2000. See Extension Order, *supra* note 2.

<sup>6</sup> For example, Chairman Levitt recently wrote to each Participant asking for their views regarding, in part, the feasibility and advisability of trading simultaneously exchange-listed securities in decimals and Nasdaq securities in fractions. See Letter from Arthur Levitt, Chairman, Commission, to Participants, dated March 10, 2000.

<sup>7</sup> See Letters to Arthur Levitt, Chairman, Commission, from Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, dated March 22, 2000; Philip D. DeFeo, Chairman and Chief

Nasdaq has sufficient capacity to implement decimal pricing for exchange-listed securities (*i.e.* the third market) by September 4, 2000,<sup>8</sup> with full implementation of decimal pricing by March 31, 2001.<sup>9</sup> Two electronic communications networks stated that they are prepared for decimals, and that trading exchange-listed securities in decimals should not be delayed because of Nasdaq's inability to meet the July 3rd target date.<sup>10</sup>

The vast majority of the Participants and securities firms, however, believe that it would not be advisable to implement widespread trading of exchange-listed securities in decimals while trading of Nasdaq securities remains in fractions, due to concerns about investor confusion and systems implications.<sup>11</sup>

On April 6, 2000, Chairman Levitt received a letter from Congressmen Thomas Bliley, Michael Oxley, and Edward Markey, urging the Commission to order the markets to begin decimal pricing in all exchange-listed securities by September 4, 2000,<sup>12</sup> even though

Executive Officer, PCX, dated March 21, 2000; Charles J. Henry, President and Chief Operating Officer, CBOE, dated March 21, 2000; David Krell, President and Chief Executive Officer, ISE, dated March 21, 2000; William G. Morton, Jr., Chairman and Chief Executive Officer, BSE, dated March 21, 2000; Salvatore F. Sodano, Chairman and Chief Executive Officer, AMEX, dated March 21, 2000; Robert H. Forney, President and Chief Executive Officer, CHX, dated March 20, 2000; Meyer S. Frucher, Chairman and Chief Executive Officer, PHLX, dated March 20, 2000; and David Colker, President and Chief Operating Officer, CSE, dated March 17, 2000 ("March 2000 Letters to Arthur Levitt").

<sup>8</sup> See Letter from Richard Ketchum, President, NASD, to Annette Nazareth, Director, Division of Market Regulation ("Division"), and Robert L.D. Colby, Deputy Director, Division, Commission, dated April 12, 2000.

<sup>9</sup> *Id.*

<sup>10</sup> See Letter from Douglas Atkin, President and Chief Executive Officer, Instinet Corporation, to Annette Nazareth, Director, Division, Commission, dated March 21, 2000; see also Letter from Cameron Smith, General Counsel, Island ECN, to Annette Nazareth, Director, Commission, dated April 10, 2000.

<sup>11</sup> The Participants also noted that systems and applications software would have to be modified to handle a mix of decimal and fractional prices for a large number of securities over an extended period of time. See March 2000 Letters to Arthur Levitt, *supra* note 7. Order receiving, routing and processing systems at brokerage firms and service bureaus would have to create and maintain a table containing price formats for each security to perform price format checking. *Id.* The Participants and securities firms were generally concerned that bifurcating the markets without systems changes and testing could increase error and corresponding rejection rates. *Id.*

<sup>12</sup> See Letter from Chairman Thomas Bliley, Committee on Commerce, U.S. House of Representatives; Chairman Michael G. Oxley, Subcommittee on Finance and Hazardous Materials, U.S. House of Representatives; and Congressman Edward J. Markey, Ranking Member, Subcommittee on Telecommunications, Trade, and Consumer

Nasdaq securities would continue to be quoted in fractions.

In response to the changed circumstances resulting from the NASD's announcement, the Commerce Committee Letter, and industry comments, the Commission is soliciting public comment on two alternative proposals. First, the Commission requests comment on beginning trading in all exchange-listed securities in decimals (in nickel or penny increments) by September 4, 2000. Second, if commenters believe that this implementation date for full decimalization of exchange-listed securities is not feasible, the Commission requests comment on phasing in decimal pricing in certain exchange-listed securities on a pilot basis ("Decimals Pilot"). The Decimals Pilot could begin by September 4, 2000, and would initially include a small number of exchange-listed securities, and options on those securities, selected by the Participants. The selected exchange-listed securities could be quoted on increments of a penny. The Decimals Pilot would expand to all listed stocks on March 31, 2001, at which time all exchange-listed securities and options on those securities would be traded in decimals. Nasdaq may add selected Nasdaq securities to the Decimals Pilot if it is feasible and would not delay Nasdaq's overall readiness for decimals. In any event, the Commission fully expects Nasdaq to be ready to initiate decimal pricing in Nasdaq securities by the termination of the Decimals Pilot on March 31, 2001.

### II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning both of the proposals discussed above. In particular, the Commission seeks comment on the following issues, particularly as they relate to the feasibility of simultaneously pricing exchange-listed securities in decimals and Nasdaq securities in fractions ("Dual Pricing"):

1. Is it feasible to begin Dual Pricing by September 4, 2000? If it is feasible, should trading in all exchange-listed securities be in nickel or penny increments? If it is not feasible to begin Dual Pricing by September 4, 2000, why not?

2. What, if any, systems changes or other steps would be necessary to implement Dual Pricing by this

Protection, U.S. House of Representatives; to Arthur Levitt, Chairman, Commission, dated April 4, 2000 ("Commerce Committee Letter").

September 4, 2000 deadline? What type of changes would need to be made to the systems of securities firms, investment companies, and vendors? What would be the impact on systems capacity? In light of your answers to the foregoing questions, what changes would need to be made to the current decimals testing schedule?

3. Is the risk of customer confusion because of Dual Pricing Significant, and if so, how should it be addressed?

4. If commenters believe that implementing Dual Pricing by September 4, 2000 is not feasible, what date(s) is(are) feasible to implement Dual Pricing? Commenters should include a discussion of the systems changes and testing schedules that would be needed for their alternative implementation date(s).

5. In addition, if commenters believe that implementing Dual Pricing by September 4, 2000 is not feasible, is the alternative Decimals Pilot proposal feasible or preferable? If commenters believe that the Decimals Pilot is feasible, what, if any, systems changes or other steps would be necessary to facilitate this schedule? In particular, what changes would need to be made to the current decimals testing schedule? What type of changes would need to be made to the systems of securities firms, investment companies, and vendors? What would be the impact on systems capacity? Is there a risk of customer confusion, and if so, how should it be addressed?

6. If commenters believe that the Decimals Pilot is not feasible, what alternative would expedite the implementation of decimal pricing in exchange-listed and Nasdaq securities? Commenters should include a discussion of the systems changes and testing schedules that would be needed for their alternative, including implementation date(s).

7. Commenters are requested to offer specific views on the optional schedule for implementing decimal pricing in options based on exchange-listed and Nasdaq stocks subject to decimal pricing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following E-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All submissions should refer to File No. 4-430 and should be submitted by May 10, 2000. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room. Electronically

submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

### III. Conclusion

Because Nasdaq is unable to meet the implementation schedules set forth in the Decimals Order and the Commission is seeking comments on alternative proposals for implementing decimal pricing, the Commission believes that it is in the public interest in maintaining fair and orderly markets and to protect investors to suspend the deadlines in the Decimal Order and the Extension Order.

Accordingly, it is hereby ordered that all deadlines in the Decimals Order and the Extension Order be suspended. After reviewing any comments received, the Commission intends to issue an order for the implementation of decimal pricing.

It is hereby further ordered that the Participants continue to discuss the implementation of decimal pricing collectively and with interested market participants, and work together and with others in developing an implementation plan in anticipation of decimal pricing. The Decimals Order directed the Participants to act jointly in discussing a plan to implement decimal pricing in the equities and options markets, and to discuss that plan with other interested market participants. While this order suspends all deadlines in the Decimals Order, the Order otherwise remains in effect.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00-9789 Filed 4-18-00; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42668, File No. 4-431]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of the Plan for Allocation of Regulatory Responsibilities Between the International Securities Exchange LLC and the National Association of Securities Dealers, Inc.

April 11, 2000.

Pursuant to section 17(d) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> Rule 17d-2 thereunder,<sup>2</sup> notice is hereby given that on April 3, 2000, the International Securities

Exchange LLC ("ISE") and the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission" a plan for the allocation of regulatory responsibilities.

### I. Introduction

Section 19(g)(1) of the Act<sup>3</sup> among other things, require every national securities exchange and registered securities association ("SRO") to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d) or 19(g)(2)<sup>4</sup> of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>5</sup> With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>6</sup> Rule 17d-1, adopted on April 20, 1976,<sup>7</sup> authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d-1 deals only with an SRO's obligations to enforce

<sup>3</sup> 15 U.S.C. 78s(g)(1).

<sup>4</sup> 15 U.S.C. 78s(g)(2).

<sup>5</sup> Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session. 32 (1975).

<sup>6</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2.

<sup>7</sup> Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18809 (May 3, 1976).

<sup>1</sup> 15 U.S.C. 78q(d).

<sup>2</sup> 17 CFR 240.17d-2.

### INFORMATIONAL

## Callable Common Stock

### NASD Regulation Adopts New Rule Interpretation To Require Confirmation Disclosure Of Callable Common Stock

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Internal Audit
- Legal & Compliance
- Operations
- Senior Management
- Trading & Market Making

### KEY TOPICS

- Callable Common Stock
- IM-2110-6

### Executive Summary

On April 24, 2000, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) adopted a new interpretation of high standards of commercial honor and just and equitable principles of trade, Rule 2110, addressing transactions in callable common stock. Specifically, new Interpretative Material (IM-2110-6) states that a member that provides a confirmation pursuant to Securities and Exchange Commission (SEC) Rule 10b-10 in connection with any transaction in callable common stock shall disclose on such confirmation that the security is callable and that the customer may wish to contact the member for more information regarding the security.

Questions regarding this *Notice* may be directed to Dorothy L. Kennedy, Director, Market Operations, The Nasdaq Stock Market, Inc., at (203) 385-6243; or Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8104.

### Background And Summary

An issuer's common stock generally continues to trade on a market until the issuer fails to meet the market's listing requirements, combines with another company, or voluntarily delists for another market. Occasionally, common stock will be callable, that is, subject to being called away from a shareholder, either by the issuer or a third party. Typically, the price at which callable common stock is called away from a shareholder is at a premium to the then prevailing market price or pursuant to a schedule of prices announced at the time the common stock is issued.

An investor purchasing callable common stock is subject to unique risks not typically associated with ownership of common stock, even where such stock is called away at a premium. Moreover, the ability of an issuer's common stock to be called away from a shareholder generally will be a material fact to an investor. Accordingly, high standards of commercial honor and just and equitable principles of trade require that any member that provides a written confirmation for a transaction involving callable common stock must disclose on the confirmation that the security is callable and that the customer may contact the member for more information. The staff emphasizes that the disclosure of the call feature on the confirmation in no way relieves a member of its obligation to consider the callable nature of the security when complying with any applicable suitability obligations.

### Text Of IM-2110-6: Confirmation Disclosure Of Callable Common Stock

Any member providing a customer confirmation pursuant to SEC Rule 10b-10 in connection with any transaction in callable common stock shall disclose on such confirmation that:

- the security is callable common stock; and
- a customer may contact the member for more information concerning the security.

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# Disciplinary Actions

## Disciplinary Actions Reported For May

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, May 15, 2000. The information relating to matters contained in this *Notice* is current as of the end of April 25, 2000.

### **Firm Expelled, Individual Sanctioned**

**Lakeside Trading (CRD #39418, Metairie, Louisiana) and Thomas Griswold Russell (CRD #2669033, Registered Principal, Metairie, Louisiana)** were fined \$75,000, jointly and severally. The firm was suspended from association with any NASD member for 30 days for failing to file its audited financial statements and expelled from NASD membership for misuse of funds. Russell was fined an additional \$137,961.95, suspended from association with any NASD member in any capacity for a total of 14 months and 40 business days, barred from association with any NASD member, and ordered to pay restitution totaling \$316,005.48 to a member firm and a public customer. The fines and restitution are due and payable upon Russell's or the firm's re-entry into the securities industry. The sanctions are based on findings that Russell misused customer funds by improperly sharing in the profits in the customer's account. Russell also exercised discretion in the customer's account without a written agreement. The findings also stated that Russell guaranteed a customer against loss in margin

calls, made misrepresentations to his clearing firm, and engaged in unauthorized trading in a customer's account. In addition, the firm, through Russell, failed to file an annual audited statement and failed to file a FOCUS report in a timely manner. Furthermore, the firm and Russell failed to file its Web Site with the NASD before its first use and failed to pre-file its revised Web Sites in a timely manner. Russell failed to ensure the firm's compliance with NASD's advertising rules and distributed misleading advertisements on its Web Sites. Moreover, Russell failed to respond to NASD requests for information. **(NASD Case #C05990018)**

### **Firm Suspended, Individual Sanctioned**

**Kashner Davidson Securities Corp. (CRD #5319, Sarasota, Florida) and Victor Lawrence Kashner (CRD #264714, Registered Principal, Sarasota, Florida)**. The firm was fined \$25,000, suspended from participating in municipal securities transactions for six months, and required to continue to retain an independent consulting firm for 18 months to review and monitor the firm's compliance and written supervisory procedures. Kashner was fined \$50,000, suspended from association with any NASD member in a principal or supervisory capacity for two years, and required to requalify as a general securities principal by taking and passing the Series 24 exam after serving his suspension. In addition, Kashner was required to attend a compliance conference with the NASD within 60 days from the date this decision becomes final. The sanctions were based on findings that the firm effected municipal securities trades without having those trades approved by a

qualified municipal securities principal, and allowed Kashner to approve those trades when he was not qualified as a municipal securities principal. In addition, the firm sold shares of "hot issues" to potentially restricted accounts without inquiring into the beneficial ownership of the purchasers, and the firm and Kashner submitted inaccurate Free-Riding and Withholding questionnaires to the NASD for each of the "hot issues." Furthermore, the firm placed orders to sell securities on behalf of its customers and accepted "long" sell orders and failed to make the required notations on the order tickets. The firm also effected sell transactions on behalf of its customers without noting on the order ticket whether the sale was long or short and effected principal transactions with its customers where the order tickets reflected the time the order was executed but failed to reflect the time the orders were received. **(NASD Case #C07960095)**

### **Firms Fined, Individuals Sanctioned**

**I. C. Rideau, Lyons & Co., Inc. (CRD #17974, Los Angeles, California), Lamar Andrew Lyons, Sr. (CRD #1788438, Registered Principal, Marina Del Rey, California), and Joyce Ann Green (CRD #1880829, Registered Principal, Pasadena, California)** were fined \$20,000, jointly and severally, and Green was suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that the respondents failed to respond in a complete and timely manner to NASD requests for information. **(NASD Case #C02990034)**

**Peters Securities Co., L.P. (CRD #15970, Chicago, Illinois),**

**Reuben Donnelley Peters (CRD #1329222, Registered Principal, Evanston, Illinois), and John Walter Sobolewski (CRD #1327410, Registered Principal, Woodbridge, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$55,000, jointly and severally with Peters. Peters was suspended from acting in the capacities of a general securities principal and/or a financial and operations principal for 30 days and required to requalify by exam as a general securities principal and a financial and operations principal within 90 days of the end of the suspension or cease acting in such capacities until he has requalified. Sobolewski was censured, fined \$15,000, and required to requalify by exam as a financial and operations principal within 90 days of the date that the AWC was accepted by the National Adjudicatory Council (NAC) or cease acting in such capacity until he has requalified.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Peters and Sobolewski, effected securities transactions when it failed to maintain the minimum required net capital. The findings also stated that the firm, acting through Peters, executed transactions at locations but failed to register any of the locations as Offices of Supervisory Jurisdiction (OSJ) and failed to designate an appropriately registered principal in each of the locations. In addition, the firm, acting through Sobolewski, allowed an individual to act in the capacity of a general securities principal when the individual was not appropriately qualified or registered in such capacity. Furthermore, the NASD determined

that the firm, acting through Peters, failed to prepare, maintain, and/or enforce adequate written supervisory procedures regarding the Regulatory Element of the Continuing Education requirement and reviewing the activities and conducting an annual inspection of each OSJ office. **(NASD Case #C8A000023)**

### **Firms And Individuals Fined**

**Brookehill Equities, Inc. (CRD #7966, Westport, Connecticut) and Sarabeth Margolis Wizen (CRD #845499, Registered Representative, Randolph Township, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,182, jointly and severally, which included \$2,682 in commissions that the firm received. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wizen, failed to detect that an individual solicited new account forms and signed her name to the forms as a registered representative, solicited and completed order tickets for transactions with public customers, and generated approximately \$5,364 in commissions before the effective date of her registration. The findings also stated that the firm, acting through Wizen, failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to ensure the firm's compliance with the NASD membership and registration rule. **(NASD Case #C10000032)**

**G. W. Piper & Co., Inc. (CRD #22563, Florham Park, New Jersey), George Warren Piper (CRD #363944, Registered Principal, Ridgewood, New**

**Jersey), and Anthony Vincent Graziano (CRD #1853757, Registered Principal, Florham Park, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Piper were censured and fined \$157,500, jointly and severally; the firm and Graziano were fined \$7,500, jointly and severally; and Graziano was fined \$2,500, individually. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Piper, allowed an individual to act as a general securities representative and allowed Graziano to act as a general securities principal while both failed to register in the respective capacities. The findings also stated that the firm, acting through Graziano, failed to evaluate and prioritize its training needs and to implement a written training plan for its Firm Element training requirement. **(NASD Case #C9B000006)**

**Nutmeg Securities, Ltd. (CRD #18975, Westport, Connecticut) and Matthew Kent Rochlin (CRD #1629493, Registered Principal, Westport, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Rochlin were censured; fined \$5,000, jointly and severally; and required to pay \$18,816.28, plus interest, in restitution to public customers, jointly and severally. The firm was also individually fined \$3,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm inaccurately reported Nasdaq SmallCap<sup>SM</sup> transactions to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) as cross transactions when they

should have been reported as sell or buy transactions. The findings also stated that the firm failed to identify aggregated transaction reports in a Nasdaq SmallCap security to ACT using the required “.B” modifier, failed to report transactions to ACT, failed to designate a transaction as late, and reported transactions late using the required “.SLD” modifier. The firm also failed to designate as late to ACT transactions in Nasdaq National Market<sup>®</sup> (NNM) securities and Consolidated Quotation System and reported transactions late using the required “.SLD” modifier. In addition, the firm, acting through Rochlin, charged excessive markups to retail customers based on its contemporaneous cost in principal transactions in a Nasdaq SmallCap security resulting in a gross dollar profit to the firm of \$18,816.28. Moreover, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to trade reporting and recordkeeping. **(NASD Case #C11000006)**

#### **Firms Fined**

**D.E. Frey & Company, Inc. (CRD #23595, Denver, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report settlements of customer complaints and arbitration awards to the NASD as required. **(NASD Case #C3A000011)**

**Investment Services Capital Corp. (CRD #31271, Suffern, New York)** submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in certain securities, all of which were NNM securities, at or below the inside bid when the current inside bid was below the preceding inside bid in each of the securities, and executed short-sale transactions in certain securities and failed to maintain a written record of the affirmative determinations made for such orders. The findings also stated that the firm executed long-sale transactions and incorrectly reported each of these transactions to ACT with a short-sale indicator, and failed to maintain brokerage order memoranda for transactions. The firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable NASD rules. **(NASD Case #CMS000049)**

**LCP Capital Corporation (CRD #14469, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$17,500, and required to pay \$406.25, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market by failing to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions and by failing to execute customer orders fully and promptly. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory

procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding trading and market making. **(NASD Case #CMS000056)**

**Miller Tabak Hirsch & Co. (CRD #10384, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$12,500, and fined an additional \$5,000 jointly and severally with an individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it entered orders into the Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) on the same side of the market in securities, and in each instance, the order, based on a single investment decision, was larger than the maximum order size for SOES, and was broken up into small parts and entered into SOES exceeding the SOES maximum order size for that security if aggregated. The findings also stated that the firm entered orders for trades from its proprietary account as SOES orders for execution against a SOES Market Maker, and executed securities transactions for the accounts of its customers but failed to make and keep current a memorandum of each order received. In addition, the firm failed to establish or maintain adequate written supervisory procedures regarding its trading and market-making activities. **(NASD Case #C8A000021)**

**RBC Dominion Securities Corporation (CRD #6579, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures relating to trade reporting. Without admitting or denying the allegations, the firm

consented to the described sanctions and to the entry of findings that it reported transactions in NNM securities, Nasdaq SmallCap securities, and OTC equity securities to ACT late and without the appropriate .SLD modifier. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding trade reporting. **(NASD Case #CMS000052)**

**Standard & Poor's Securities, Inc. (CRD #5248, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to ensure that individuals actively engaged in the firm's securities business, or in its management, were properly registered with the NASD. **(NASD Case #C10000036)**

**Starr Securities, Inc. (CRD #13336, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which the firm was censured, fined \$11,000, and required to submit revised written supervisory procedures concerning transaction reporting to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions in NNM securities late to ACT and failed to designate transactions as late and incorrectly designated NNM securities transactions as ".T" to ACT. The findings also stated that the firm incorrectly reported to ACT whether it executed trades as

principal or agent in transactions. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules regarding transaction reporting. **(NASD Case #CMS000053)**

### **Individuals Barred Or Suspended**

**Alberto Enrique Argomaniz (CRD #2518033, Registered Representative, Miami, Florida)** was fined \$62,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Argomaniz forged a public customer's endorsement to an insurance premium refund check and converted the \$7,500 proceeds to his own use and benefit. **(NASD Case #C07990013)**

**James Edward Bassano (CRD #2736206, Registered Representative, North Bellmore, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bassano deliberately opened accounts and executed purchases of stock for public customers without their knowledge or consent. **(NASD Case #C02990053)**

**Frank Paul Bavaro (CRD #1504493, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 days, and required to requalify as a general securities principal. Without admitting or denying the allegations, Bavaro consented to the described sanctions and to the entry of

findings that he changed a trading desk time clock to an earlier date, placed the new time stamp on an internal order ticket that reflected the cancellation of an order to buy a New York Stock Exchange (NYSE)-listed security on the earlier date. Bavaro sent the ticket to NYSE Market Surveillance as evidence of the canceled trade. **(NASD Case #C10000055)**

**Anyta Leigh Boroski (CRD #2983888, Registered Representative, Westerville, Ohio)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Boroski failed to respond to NASD requests for information. **(NASD Case #C8B990035)**

**William Thomas Breese (CRD #2542710, Registered Representative, Midlothian, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Breese converted funds totaling nearly \$300,000 from public customers for his own use and benefit. Breese also failed to respond to NASD requests for information. **(NASD Case #C8A990039)**

**Michael William Burke (CRD #1793662, Registered Representative, Mount Joy, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Burke consented to the described sanction and to the entry of findings that he provided fictitious account statements to a public customer to deceive him about the existence and value of investments. The findings also stated that Burke failed to respond to NASD requests

to provide documents. **(NASD Case #C9A000013)**

**Joseph Giulio Chiulli (CRD #1149276, Registered Principal, Lynbrook, New York)** was censured, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam before acting in any capacity requiring registration. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a December 1998 NAC decision. The sanctions were based on findings that Chiulli failed to preserve his member firm's books and records and failed to respond to NASD requests for information. **(NASD Case #C07970006)**

**Kelly Marie Denti (CRD #2279001, Registered Representative, Flemington, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Denti consented to the described sanction and to the entry of findings that she failed to disclose withdrawal penalties and surrender charges to public customers in connection with the sale of mutual funds and variable annuities. **(NASD Case #C10000051)**

**Gale Reich Donovan (CRD #70260, Registered Representative, New York, New York)** was fined \$39,000; suspended from association with any NASD member in any capacity for two years and 30 business days; required to pay \$4,488, plus interest, in restitution to a public customer for unsuitable recommendations; and barred from association with any NASD member in any capacity. The fines shall be

due and payable prior to Donovan's re-entry in the securities industry. The sanctions were based on findings that Donovan engaged in unsuitable and excessive trading in the accounts of a public customer and effected discretionary trades without the customer's prior written authorization. The findings also stated that Donovan acted as a general securities representative at a member firm without being registered with the NASD. In addition, Donovan failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10990142)**

**Alan Jay Eisenman (CRD #1532934, Registered Representative, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and suspended from association with any NASD member in any capacity for seven business days. Without admitting or denying the allegations, Eisenman consented to the described sanctions and to the entry of findings that, acting in his capacity as a registered representative, he caused to be entered two non-bona fide orders in an NYSE-listed security in his personal account at the close of the market to determine how orders would be treated and at what price they would be executed. The NASD found that at the time of placing the orders, Eisenman held a short position of contracts of call options in the security and such orders were executed and reported, causing the Pacific Stock Exchange-listed calls to move to the strike price. **(NASD Case #CMS000033)**

**Renato Carbonel Fernandez (CRD #2647861, Registered Representative, San Jose, California), Marie Soriano Delacruz (CRD #2547419,**

**Registered Representative, San Jose, California), and Alma Guiang Pontillas (CRD #283333, Registered Representative, San Jose, California)** submitted Offers of Settlement pursuant to which they were each fined \$10,000 and suspended from association with any NASD member in any capacity for three months. Payment of the fines shall be a prerequisite for consideration of any application for reentry by the respondents. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with an individual's attempt to reach a higher level of sales of variable life insurance at the member firm, Fernandez, Delacruz, and Pontillas signed as writing agent and/or witness attesting to information concerning applications for variable life insurance policies. The NASD determined that in fact, Fernandez, Delacruz, and Pontillas were neither the agent nor a witness, and had no idea as to whether the information on the application was correct, but were merely provided the applications for their signatures. **(NASD Case #C01990022)**

**Richmond Talbot Fisher (CRD #2994893, Registered Principal, Riverside, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in a principal capacity for 10 business days. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he functioned as the president and chief operating officer of his firm and was active in the management of the firm's securities business, including the supervision of employees and the conduct of business, without being

registered in the capacity of a general securities principal. **(NASD Case #C10000038)**

**Bruce Thomas Gmahle, Jr. (CRD #2044839, Registered Representative, Point Pleasant Beach, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$10,858, which includes the disgorgement of \$858 of commissions earned, and barred from association with any NASD member in any capacity with the right to reapply after two years. The fine, including disgorgement, shall be due and payable prior to reassociation with a member firm following the bar or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Gmahle consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C10990211)**

**Jennifer Lynn Gonzalez (CRD #2461482, Registered Principal, Houston, Texas)** submitted an Offer of Settlement pursuant to which she was suspended from association with any NASD member as a general securities principal for two years and barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, Gonzalez consented to the described sanctions and to the entry of findings that she failed to ensure the preparation and maintenance of accurate books and records for her member firm. The findings also stated that she allowed her firm to engage in a securities business when she knew, or should have known, that her firm's net capital was below the

required minimum and failed to provide appropriate notification. Gonzalez also failed to ensure the accurate preparation of FOCUS Part II filings for her firm. In addition, Gonzalez failed to ensure that unaudited financial statements in a private placement memorandum and financial information in a stock purchase agreement were not false and misleading. **(NASD Case #C05990026)**

**Jonathan David Gottfried (CRD #2647864, Registered Representative, Malverne, New York)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity, including clerical and administrative, for 15 business days. Without admitting or denying the allegations, Gottfried consented to the described sanctions and to the entry of findings that he failed to disclose a settled customer complaint on a Form U-4. **(NASD Case #C10990214)**

**Michael John David Halladay (CRD #2275159, Registered Representative, Belvidere, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Halladay participated in private securities transactions without providing prior written notification to his member firm. Halladay also failed to respond to NASD requests for information. **(NASD Case #C8A990006)**

**James Han (CRD #2710091, Registered Principal, Bayside, New York)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the

allegations, Han consented to the described sanction and to the entry of findings that he effected the unauthorized transfer of funds totaling \$6,600 from the day-trading account of a public customer to his own personal account maintained at his member firm, without the knowledge or consent of the customer. The findings also stated that Han transferred securities transactions from the day-trading account of another customer to his own personal account without the knowledge or consent of the customer. In addition, Han failed to respond to NASD requests for information. **(NASD Case #C05000005)**

**Boggie Hanczaruk-Harlow (CRD #2381253, Registered Principal, Woodbridge, Illinois)** was barred from association with any NASD member in any capacity and ordered to pay \$43,000 in restitution to a public customer. The sanctions were based on findings that he participated in private securities transactions that resulted in a customer loss of \$43,000, without prior written notice to, and approval of, his member firm. Hanczaruk-Harlow also failed to respond to NASD requests for information. **(NASD Case #C8A990041)**

**Steven Gerald Ives (CRD #2197745, Registered Representative, St. Paul, Minnesota)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Ives failed to respond to NASD requests for information. **(NASD Case #C04990046)**

**Garry Scott Ivey (CRD #801743, Registered Representative, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was

fined \$7,500, and suspended from association with any NASD member in any capacity for 30 business days. The fine shall be due and payable either prior to reassociation with a member firm following the suspension or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Ivey consented to the entry of findings that he exercised discretionary power in accounts held by a public customer without obtaining prior written authorization from the customer and without having the accounts accepted as discretionary accounts by his member firm. **(NASD Case #C07000018)**

**Robert Joseph Kernweis (CRD #1392867, Registered Representative, Burbank, California)** and **William Pohn Willis (CRD #836417, Registered Principal, Rancho Palos Verdes, California)**. Kernweis was fined \$294,063, which shall be due and payable at such time as he seeks to reenter the securities industry, and barred from association with any NASD member in any capacity. Willis was fined \$10,000, suspended from association with any NASD member in any supervisory capacity for 30 days and required to requalify by exam as a principal by taking and passing the Series 24 exam. The sanctions were based on findings that Kernweis engaged in trading in the account of a public customer that was not suitable based on the size, nature, and frequency of the recommended transactions, and engaged in excessive trading in the customer's account. Willis, as manager, had the authority and the obligation to prevent the unsuitable and excessive trading in the customer's account, and failed to take appropriate action to supervise

the firm. **(NASD Case #C02980024)**

**Joseph Jerry Lacertosa (CRD #2556113, Registered Representative, Pompano, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lacertosa failed to respond to NASD requests for information. **(NASD Case #C10990160)**

**Patrick Joseph Larkin (CRD #2597308, Registered Representative, Sarasota, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$35,000, suspended from association with any NASD member in any capacity for one year, and ordered to disgorge \$22,812.66 in commissions. Without admitting or denying the allegations, Larkin consented to the entry of findings that he sold promissory notes to public customers without providing prior written notice of his participation in such sales to his member firm. **(NASD Case #C07000022)**

**Albert Douglas Lassak (CRD #1633765, Registered Representative, West Palm Beach, Florida)** was fined \$50,000 and suspended from association with any NASD member in all capacities for two years for making unsuitable recommendations. Lassak was also fined \$10,000 and suspended from association with any NASD member in all capacities for 30 business days for improperly exercising discretion in a customer's account. In addition, Lassak was barred from association with any NASD member in all capacities for failure to respond. The sanctions were based on findings that Lassak

made unsuitable recommendations in a public customer's account and improperly used discretion in the customer's account. Lassak also failed to respond to NASD requests for information. **(NASD Case #C07990062)**

**Edwin Leslie Lawrence, Jr. (CRD #2282684, Registered Representative, Dix Hills, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lawrence made baseless and improper price predictions, guarantees, and misrepresentations to public customers about speculative stocks. The findings also stated that Lawrence engaged in unauthorized trading in the accounts of customers and failed to execute sell orders for customers. **(NASD Case #CAF980031)**

**Gary Vincent Leone (CRD #1092745, Registered Principal, Sarasota, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000, suspended from association with any NASD member in any capacity for 90 days, and ordered to disgorge \$4,141 in commissions. Without admitting or denying the allegations, Leone consented to the described sanctions and to the entry of findings that he sold promissory notes to public customers without providing prior written notice of his participation in such sales to his member firm. **(NASD Case #C07000021)**

**Paul Patrick McGlynn (CRD #2496302, Registered Principal, Middle Village, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that McGlynn failed to respond to NASD requests for information and to

appear for on-the-record interviews. **(NASD Case #C10990151)**

**Leonard Alan Neuhaus (CRD #1871294, Registered Principal, Roslyn Heights, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$6,400 and suspended from association with any NASD member in any supervisory capacity for 10 business days. Without admitting or denying the allegations, Neuhaus consented to the described sanctions and to the entry of findings that a member firm, acting through Neuhaus, caused the sale of units of a public offering to a general securities representative who, at the time of the sale, was a prohibited recipient of the hot issue. The findings also stated that the firm, acting through Neuhaus, failed to prepare, maintain, and enforce adequate written supervisory procedures in connection with the NASD's Free-Riding and Withholding Interpretation. **(NASD Case #C10000034)**

**William James O'Brien (CRD #350577, Registered Representative, Hawthorn Woods, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity and ordered to pay \$60,000, plus interest, in restitution to public customers. The restitution is due and payable prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, O'Brien consented to the described sanctions and to the entry of findings that he sold \$60,000 in promissory notes to public customers, and failed to provide written notice to, or receive written authorization from, his member firm of his participation in the private securities transactions. The

findings also stated that O'Brien misrepresented to the customers that their funds would be used to purchase property which would then be sold and the proceeds of the sale would be used to repay the customers when, in fact, the funds were used for his own benefit. The NASD determined that as a result of this misrepresentation, O'Brien received checks totaling \$60,000 payable to him, negotiated and cashed the checks, and used the funds for purposes other than the customers' benefit. O'Brien also filed a Form U-4 with the NASD that failed to disclose a bankruptcy petition filed in Illinois. **(NASD Case #C8A000016)**

**Valerie Remon Patterson (CRD #2350853, Registered Principal, Lanham, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Patterson consented to the described sanction and to the entry of findings that she received \$1,194 from individuals recruited to represent affiliates of her member firm and deposited the funds in her personal bank account instead of remitting them as required. **(NASD Case #C9A000011)**

**Donna Lorine Post (CRD #1271324, Registered Representative, Mentone, California)** was barred from association with any NASD member in any capacity and ordered to reimburse her former member firm \$165,182.73, plus interest, for restitution paid by the firm to her customers. The sanctions were based on findings that Post received approximately \$203,000 from public customers for the purpose of purchasing various investments, failed and neglected to execute the purchase of the

requested investments on the customers' behalf, and instead misappropriated these funds to her own use and benefit, without the customers' knowledge or consent. **(NASD Case #C02990026)**

**John Joseph Puglisi (CRD #1537482, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Puglisi failed to respond to NASD requests for information. **(NASD Case #C10990069)**

**Renato Gonzales Quiazon (CRD #2139458, Registered Representative, Union City, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Quiazon failed to respond to NASD requests for information. **(NASD Case #C01990018)**

**Nelson E. Ramosdiaz, Sr. (CRD #2359612, Registered Representative, Aguas Buenas, Puerto Rico)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Ramosdiaz failed to respond to NASD requests for information. **(NASD Case #C07990054)**

**Ricky Cecil Reed (CRD #1092905, Registered Representative, Watertown, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 months. Without admitting or denying the allegations, Reed consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or written approval

from, his member firm. Reed received \$19,378.43 in commissions as a result of the transactions.

Reed's suspension began with the opening of business on April 24, 2000, and will conclude at the close of business on July 23, 2001. **(NASD Case #C11000004)**

**Merlin Blaine Riley, III (CRD #1318026, Registered Principal, Dana Point, California)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Riley consented to the described sanction and to the entry of findings that he executed transactions in various securities in the accounts of public customers without their authorization and executed purchase and sale transactions for the account of a public customer pursuant to oral discretionary authority but without the requisite written authority from the customer nor the permission of his member firm. **(NASD Case #C02990050)**

**Paul Anthony Romero (CRD #2817671, Registered Representative, Littleton, Colorado)** was barred from association with any NASD member in any capacity and ordered to reimburse his member firm \$4,694.48, plus interest, for restitution the firm paid to a public customer. The sanctions were based on findings that Romero recommended that the customer purchase a life insurance policy. The customer completed the application and paid the initial premium of \$4,600 to purchase the policy. The findings further stated that the customer decided not to complete the purchase of the policy whereupon the firm canceled the application and issued the

customer a \$4,600 refund check. Romero intercepted the check, forged the customer's signature, endorsed the check over to himself, and converted the \$4,600 to his own use. **(NASD Case #C3A990058)**

**Bernard San Juan Rondez (CRD #2791324, Registered Representative, Marina, California)** was barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an Office of Hearing Officers decision. The sanction was based on findings that Rondez failed to respond to NASD requests for information. **(NASD Case #C01990002)**

**Don Anthony Rouzan (CRD #2933209, Registered Principal, New Orleans, Louisiana)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Rouzan consented to the described sanction and to the entry of findings that he induced the sale of and effected transactions in securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. Rouzan delivered an investment contract to a purchaser that contained fraudulent information regarding the uses to be made of invested funds and the risks of the investments. The findings also stated that Rouzan engaged in private securities transactions without prior written notice to, and approval from, his member firm. **(NASD Case #C05000006)**

**Brian Michael Rowland (CRD #1558510, Registered Representative, Bartlett, Illinois)** and **Nelida Vazquez-Rowland (CRD #1410094, Registered**

**Principal, Bartlett, Illinois)** submitted an Offer of Settlement pursuant to which Rowland was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine shall be due and payable either prior to reassociation with a member firm following the two year suspension or prior to any application or request from relief from any statutory disqualification. Vazquez-Rowland was barred from association with any NASD member firm. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in private securities transactions and failed and neglected to give written notice to, or receive written approval from, their member firm prior to engaging in such activities. **(NASD Case #C8A990065)**

**Philip Rubinovich (CRD #2615385, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 90 business days and required to requalify in all capacities. Without admitting or denying the allegations, Rubinovich consented to the described sanctions and to the entry of findings that he sold a private placement to a public customer and failed to disclose this activity to his member firm. Rubinovich received \$5,000 in compensation for the sale of the private placement. **(NASD Case #C10000041)**

**Edward Thomas Rush (CRD #812872, Registered Representative, Hampton Bays, New York)** was fined \$48,096.89, suspended from association with any NASD member in any capacity

for 50 days, and barred from association with any NASD member in any capacity. The fine shall be due and payable prior to re-entry in the securities industry. The sanctions were based on findings that Rush made unsuitable recommendations to public customers in regard to short term trading in mutual funds and did so to reap commissions. The findings also stated that Rush exercised discretion in the accounts of public customers without written authorization from the customers and prior written acceptance of the accounts as discretionary from his member firm. In addition, Rush failed to respond to NASD requests for information. **(NASD Case #C05990043)**

**Thomas Edward Smith (CRD #2225515, Registered Representative, Bay City, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Payment of the fine shall be a prerequisite for consideration of any application for association with a member firm. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide written notice to, or receive written authorization from, his member firm of his participation in such transactions. The findings also stated that Smith executed transactions involving equity securities for the accounts of public customers when he was not properly qualified and registered in an appropriate capacity. **(NASD Case #C8A0000017)**

**Louis Joseph Sorrentino (CRD #2192207, Registered Representative, Marlboro, New**

**Jersey)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sorrentino consented to the described sanction and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10000010)**

**Eddy Ralph St. Louis (CRD #2358608, Registered Principal, Brooklyn, New York)** was barred from association with any NASD member in any capacity and ordered to pay \$1,300, plus interest, in restitution to a public customer. The sanctions were based on findings that St. Louis received \$2,000 from a public customer for investment in a company he controlled and, instead, converted the money to his own use and benefit without authorization from the customer. **(NASD Case #C10990196)**

**Cartha Lawrence Stroud, Jr. (CRD #1939827, Registered Representative, Arlington, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stroud consented to the described sanction and to the entry of findings that he converted two laptop computers from his member firm. **(NASD Case #C06000009)**

**Blaine Stanley Tarnecki (CRD #1042264, Registered Representative, Port Charlotte, Florida)** was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 days for participation in an outside business activity, and fined

\$10,000 and suspended from association with any NASD member in any capacity for six months for failure to respond. The fines shall be payable prior to Tarnecki's reentry into the securities industry. The sanctions were based on findings that Tarnecki participated in an outside business activity without providing prior notice to his firm, and failed to respond in a timely manner to NASD requests for information. **(NASD Case #C07990050)**

**Michael John Tindall (CRD #2630450, Registered Representative, Novi, Michigan)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine shall not be due and payable until Tindall seeks to re-enter the securities industry. The sanctions were based on findings that Tindall forged public customers' signatures on various forms he submitted in connection with their applications for variable appreciable life insurance policies, without their knowledge or consent. **(NASD Case #C8A990061)**

**Roberto Gonzalez Villasenor, Jr. (CRD # 1031313, Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine shall be due and payable prior to reassociation with a member firm following the suspension or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Villasenor consented to the described sanctions and to the entry of findings that he failed to provide his member firm with written or oral notice of his participation in outside business

activities. **(NASD Case #C10000005)**

**Andrew Neal Weber (CRD #2364164, Registered Representative, Rockville Centre, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Weber failed to respond to NASD requests for information. **(NASD Case #C10990166)**

**Horner Steven Williams (CRD #1884779, Registered Representative, Red Bank, New Jersey)** was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine is due and payable when Williams seeks to re-enter the securities industry. The sanctions were based on findings that Williams failed to respond timely and completely to NASD requests for information. **(NASD Case #C9B990033)**

**Andrew Richard Zimmer (CRD #1493072, Registered Representative, Stamford, Connecticut)** was barred from association with any NASD member in any capacity and ordered to pay \$10,000, plus interest, in restitution to a member firm. The sanctions were based on findings that Zimmer engaged in outside business activities without providing prompt written notification to his member firm. The findings also stated that Zimmer fraudulently induced a public customer to send him \$10,000 as an advance against fee, withheld repayment of the advance, and converted the funds to his own use and benefit. In addition, Zimmer failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10990191)**

## Decisions Issued

The following decisions have been issued by the District Business Conduct Committee or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of April 14, 2000. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

**Averell Golub (CRD #2083375, Registered Representative, Brooklyn, New York)** was fined \$50,175 and suspended from association with any NASD member in any capacity for one year. The fine is due and payable upon Golub's re-entry into the securities industry. The sanctions were based on findings that Golub made material misrepresentations and omitted material facts to solicit public customers to purchase a security.

Golub has appealed this case to the NAC and it has been called for review by the NAC. The sanctions are not in effect pending consideration of the review. **(NASD Case #C10990024)**

**Robert Tretiak (CRD #1416058, Registered Principal, Las Vegas, Nevada)** was fined \$10,000, suspended from association with any NASD member in any capacity for two years, and barred from association with any NASD member in any principal capacity for disseminating a false and misleading prospectus. In addition, Tretiak was fined \$15,000 and suspended from association with any NASD member in any capacity for six months for failing to require return of investor funds, and for causing his member firm to enter into an improper escrow

agreement. The sanctions were based on findings that Tretiak participated in an initial public offering of securities on a contingency basis to raise funds to acquire a parcel of land and provided a prospectus to public investors that was materially false and misleading in that it contained out of date and erroneous information and failed to disclose significant changes in the IPO's financial circumstances. The findings also stated that Tretiak failed to return investor funds when terms of the contingency were not met and failed to transmit investor funds promptly to a properly established escrow account.

Tretiak has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C02990042)**

**Robert Tretiak (CRD #1416058, Registered Principal, Las Vegas, Nevada)** was fined \$10,000, and suspended from association with any NASD member in any capacity until the arbitration award is satisfied (by payment or fully paid settlement), plus 30 additional business days. The NASD further ordered that the fine be increased by \$100 per day if the arbitration award is not satisfied within 30 days of the date this decision became final, until such time as the award is satisfied. The sanctions were based on findings that Tretiak failed to pay a \$52,360 arbitration award.

Tretiak has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C02980085)**

## Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Frank Anthony Cardia, Jr. (CRD #2808582, Registered Representative, Bogota, New Jersey)** was named as a respondent in an NASD complaint alleging that he and another individual caused their member firm to fail to maintain accurate books and records, and the individual permitted Cardia to use his account executive number to enter transactions in a customer's account when the transactions were solicited by and executed at the direction of Cardia. The complaint also alleges that in soliciting the purchase of shares in an initial public offering, Cardia recklessly informed the customer he would have to commit to buying shares in the aftermarket, and failed to execute a customer's sell limit offer. Furthermore, the complaint alleges that Cardia failed to respond truthfully to an NASD request for information and provided false and/or misleading testimony during an NASD on-the-record interview. **(NASD Case #C9B000007)**

**Paul Edward Carney (CRD #1943974, Registered Representative, Vernon Hills, Illinois)** was named as a respondent in an NASD complaint alleging that he concealed losses in

a public customer's accounts by preparing and delivering false statements concerning the accounts and engaged in transactions in the customer's account without the customer's knowledge or consent and in the absence of written or oral authorization to exercise discretion in the account. The complaint also alleges that Carney refused to answer questions by the NASD staff during an on-the-record interview. **(NASD Case #C8A000024)**

**Scott Mark Crane (CRD #1530938, Registered Principal, Boca Raton, Florida)** and **Robert Ian Siegel (CRD #1627931, Registered Representative, Boca Raton, Florida)** were named as respondents in an NASD complaint alleging that they executed unauthorized transactions in the accounts of a public customer. **(NASD Case #C07000023)**

**William Michael Cutrone (CRD #2542314, Registered Representative, Woodbury, New York)** was named as a respondent in an NASD complaint alleging that he misled public customers into investing in securities through misleading statements and omissions by making price predictions about speculative securities without an adequate, accurate, or reasonable basis in fact, omitted negative information about a security being recommended, and failed to make any disclosure about risk in purchasing the security. The complaint also alleges that Cutrone executed unauthorized trades in the accounts of public customers, prevented customers from selling stocks, or failed to disclose that he would refuse or discourage the sale of stocks. The complaint also alleges that Cutrone induced the purchase or sale of securities by means of manipulative, deceptive, and other fraudulent

devices and contrivances. The complaint further alleges that Cutrone failed to respond to NASD requests for information and documents. **(NASD Case #CAF000009)**

**Amir Leif Ecker (CRD #1253824, Registered Representative, Media, Pennsylvania)** was named as a respondent in an NASD complaint alleging that he excessively traded in the account of a public customer and purchased an unsuitable concentration of speculative securities in the account. The complaint also alleges that Ecker exercised discretion in the customer's account without prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. **(NASD Case #C9A000007)**

**Andrew James Finnegan (CRD #1398403, Registered Representative, Philadelphia, Pennsylvania)** was named as a respondent in an NASD complaint alleging that he received \$5,625 from public customers to purchase stock in a company, failed to execute the purchases, and, instead, converted the funds to his own use and benefit without the customers' knowledge or consent. The complaint also alleges that Finnegan failed to respond to NASD requests for information and documentation. **(NASD Case #C9A000015)**

**George Michael Goritz (CRD #226024, Registered Representative, New York, New York)** was named as a respondent in an NASD complaint alleging that he engaged in private securities transactions without prior written notice to, or written approval from, his member firm. The complaint also alleges that Goritz distributed an offering memoranda in connection with the sale of limited

partnership interests that contained a material misstatement in regard to Goritz's investment banking experience. **(NASD Case #C10000037)**

**Christopher Lee Miano (CRD #2847056, Registered Representative, Deerfield Beach, Florida)** was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, unauthorized transactions in the accounts of public customers and misrepresented to a customer that he had purchased and sold shares and warrants. The complaint also alleges that Miano altered or created trade confirmations to reflect the false transactions. In addition, the complaint also alleges that Miano failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C07000025)**

**Adnan Ali Mirza (CRD #2953565, Registered Representative, Lomita, California)** was named as a respondent in an NASD complaint alleging that he acted in a principal capacity of a member firm when he was never registered with the NASD to act in any such capacity. The complaint also alleges that Mirza received funds totaling \$226,262 from public customers for investment purposes and used the funds for some purpose other than the benefit of the customers. The complaint further alleges that Mirza failed to respond to NASD requests for information. **(NASD Case #C02000009)**

**Quentin Thomas Quintana (CRD #2317118, Registered Representative, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that he executed the purchase of shares or warrants in the joint accounts of public customers without their prior

knowledge, authorization, and consent. The complaint also alleges that Quintana failed to execute a customer's order to sell shares of stock and sent the customer a false or misleading confirmation letter advising him that the shares had been sold. **(NASD Case #C10000046)**

**Michael Anthony Scaramellino (CRD #2497751, Registered Representative, Boca Raton, Florida)** was named as a respondent in an NASD complaint alleging that he made intentional or reckless material misrepresentations to public customers to induce them to purchase shares of stock and effected an unauthorized purchase of stock in the account of a public customer. **(NASD Case #C07000024)**

**Michael Robert Schiller (CRD #1531515, Registered Representative, New York, New York)** was named as a respondent in an NASD complaint alleging that he received an \$8,109.34 check to purchase a variable annuity for public customers, failed to execute the purchase, and, instead, converted the funds to his own use and purpose without the customers' knowledge or consent. **(NASD Case #C10000039)**

**Simon Piers Thurlow (CRD #2697252, Registered Representative, Scarsdale, New York)** was named as a respondent in an NASD complaint alleging that he guaranteed a public customer against loss with the sale of shares of stock. The complaint also alleges that Thurlow failed to provide written notice to, or receive written approval from, his member firm prior to engaging in a private securities transaction and failed to provide prompt written notice of outside business activities to his

firm. In addition, Thurlow impeded an NASD investigation by guaranteeing a customer against loss prior to the customer submitting a signed affidavit in regard to Thurlow's activities. **(NASD Case #C10000045)**

**Joseph Stanley Williams (CRD #1455909, Registered Representative, College Park, Georgia)** was named as a respondent in an NASD complaint alleging that he made misrepresentations and omissions to public customers concerning the future price, nature, and financial condition of a speculative company and its common stock, and made unsuitable recommendations to the customers to use margin for the purchase of the stock. The complaint also alleges that Williams failed to respond to NASD requests for information. **(NASD Case #C07990032)**

### **Firms Suspended**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**BSR Securities, Inc.**, Boca Raton, Florida (April 12, 2000)

**Canterbury Securities Corporation**, Chicago, Illinois (April 12, 2000)

**Chadbourn Securities, Inc.**, Jacksonville, Florida (April 12, 2000)

**Continuum Capital Inc.**, New York, New York (April 12, 2000)

**Kensington, Bentley & Barnes, Inc.**, Dallas, Texas (April 17, 2000)

**Pegasus Capital Investments LC**, Greensboro, North Carolina (April 12, 2000)

**Sterling Capital Group Limited**, Westport, Connecticut (April 17, 2000)

**Whitestone Capital Markets, L.P.**, New York, New York (April 12, 2000)

### **Firms Canceled**

The following firms were canceled from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the cancellation commenced is listed after the entry.

**Murphy & Lopes & Co., Inc.**, New Bedford, Massachusetts (April 7, 2000)

**MZB Select Management, L.L.C.**, New York, New York (April 7, 2000)

**RBG Investments, Inc.**, Chicago, Illinois (April 7, 2000)

**TAP Capital, Inc.**, Plano, Texas (April 7, 2000)

### **Suspension Lifted**

The NASD has lifted the suspension from membership on the date shown for the following firm because it has complied with formal written requests to submit financial information.

**Bright Cove Securities, Inc.**, Virginia Beach, Virginia (March 24, 2000)

**Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/OR Provide Proof Of Restitution In Connection With Violations**

**Balbirer, Mark S.**, Sunrise, Florida (March 31, 2000)

**Biondo, Anthony V.**, Valley Stream, New York (March 31, 2000)

**DeForrest, Jeffrey M.**, Medway, Massachusetts (March 31, 2000)

**Gunn, James R.**, Ada, Michigan (March 31, 2000)

**Higgins, Bryan**, Long Island City, New York (March 31, 2000)

**Hollister, David B.**, New York, New York (March 31, 2000)

**Stricklin, Kevin H.**, Warwick, Rhode Island (March 31, 2000)

**Seven Brokerage Firms Settle NASD Regulation Charges Of Yield Burning**

NASD Regulation announced that it has censured seven brokerage firms for engaging in the practice of yield burning. Additionally, NASD Regulation ordered them to pay a total of \$21.4 million to the U.S. Treasury, under an agreement with the Internal Revenue Service and the United States Attorney for the Southern District of New York, and to pay disgorgement directly to 38 municipal issuers. In settling the charges, the seven firms named in these actions, A.G. Edwards & Sons, Inc.; CS First Boston Corporation; J.C. Bradford & Co.; U.S. Bancorp Piper Jaffray, Inc.; Raymond James & Associates, Inc.; Southwest Securities, Inc.; and Wheat, First Securities, Inc., neither

admitted nor denied NASD Regulation's findings.

NASD Regulation found that each firm had violated the NASD rule governing just and equitable principals of trade that requires members to observe high standards of commercial honor, as well as federal securities laws, by selling U.S. Treasury securities to municipalities at prices not reasonably related to the current wholesale market prices for those securities. NASD Regulation found that the excessive markups jeopardized the tax-exempt status of those municipalities' refunding bonds and diverted money from the U.S. Treasury to the firms in certain transactions and reduced the savings available to the municipalities from the refundings in other transactions.

In a falling interest rate environment, state and local governments often seek to reduce their borrowing costs by paying off outstanding bonds through the issuance of new bonds at lower interest rates. When the old bonds cannot be paid off until a future call date, the municipality can still take advantage of lower interest rates through an "advance refunding." In an advance refunding, the proceeds of the bond issuance are invested in U.S. Treasury securities, which are placed in an escrow account to pay the principal and interest obligations on the old bonds. Brokerage firms sell U.S. Treasury securities to municipalities for these escrow accounts. To prevent abuse of the benefit the federal government gives municipal issuers by not taxing interest on their bonds, federal law limits the yield an issuer can earn on Treasury securities bought for advance refundings. The practice known as "yield burning" occurs when a brokerage firm charges

excessive markups on the sale of U.S. Treasury securities to municipalities for refundings to reduce the yield on those securities so they do not violate the yield restrictions. If yield burning occurs, holders of the new refunding bonds can be required to pay federal income tax on the bond interest they receive.

The cases are the result of extensive NASD Regulation examinations conducted over a three-year period coordinated with the Securities and Exchange Commission, which announced similar settlements with an additional 10 firms. The examinations were conducted by NASD Regulation Offices in New Orleans, Dallas, and New York, and with the Department of Enforcement. The disciplinary actions were filed by the District Office in New Orleans.

Each firm was censured and ordered to make payments to the U.S. Treasury, under an agreement with the Internal Revenue Service and the United States Attorney for the Southern District of New York, and to pay disgorgement directly to 38 municipal issuers, if required as a part of the settlement.

**NASD Regulation Charges Millennium Securities and Execs with Fraudulent Trading Activity Following IPO**

NASD Regulation announced that it has filed a complaint charging Millennium Securities Corporation, New York, New York, its Chief Executive Officer, Richard A. Sitomer; and its President, Todd M. Rome with the unlawful distribution and fraudulent after-market trading of an initial public offering (IPO) of common stock and warrants in December of 1996. NASD