

## NASD Notice to Members 00-83

### INFORMATIONAL

## Statutory Disqualification

### NASD Regulation To Make Statutory Disqualification Decisions Publicly Available In Redacted Format

### 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
- Senior Management

### KEY TOPICS

- Eligibility and Qualification Standards
- Statutory Disqualification
- Rule 9520 Series

### Executive Summary

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has commenced an initiative to make publicly available the text of statutory disqualification decisions (decisions) issued by the NASD Regulation National Adjudicatory Council (NAC). NASD Regulation believes that the availability of the decisions will assist National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) member firms to understand better the criteria that NASD Regulation uses in determining whether to permit disqualified member firms to retain their membership and in determining whether to permit disqualified persons to associate or to continue to associate with a member firm. The decisions will be issued in redacted format with the names of individuals, names of member firms, and other identifying information removed.

NASD Regulation intends to make all decisions issued after August 7, 1997, the effective date of the current NASD Code of Procedure, publicly available in redacted format. NASD Regulation will commence the release of the decisions to the public on January 10, 2001, or as soon thereafter as practicable. The decisions will be published on the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)).

### Questions/Further Information

Questions concerning this *Notice* may be directed to Bradford Ali, Attorney, Department of Member Regulation, NASD Regulation, at (202) 728-8402, or by e-mail at [bradford.ali@nasd.com](mailto:bradford.ali@nasd.com); or Gregory Dean, Assistant General Counsel, Office of General

Counsel, NASD Regulation, at (202) 728-8159, or by e-mail at [gregory.dean@nasd.com](mailto:gregory.dean@nasd.com).

### Discussion

Section 4 of Article III of the NASD By-Laws sets forth the circumstances that would make a member firm or a person subject to disqualification. Disqualified members that seek to retain their eligibility for membership must seek approval from NASD Regulation through NASD Regulation's Eligibility Proceedings pursuant to the NASD Procedural Rule 9520 Series (Eligibility Proceedings or Form MC-400 process). Similarly, persons subject to the disqualification are not permitted to associate or to continue to associate with a member firm unless the member firm seeks approval from NASD Regulation pursuant to the Form MC-400 process to permit the association despite the disqualification.

Generally, under the Eligibility Proceedings a review of and a hearing on the Form MC-400 application will be conducted by the NAC. If the NAC approves the continued eligibility of a member firm despite a disqualification, a notice will be filed by NASD Regulation with the SEC pursuant to Rule 19h-1 under the Securities Exchange Act of 1934 (Exchange Act). Similarly, if the NAC approves the association or continued association of a disqualified person with a member firm despite the disqualification, NASD Regulation also will file a notice with the SEC pursuant to Rule 19h-1. Generally, an approval becomes effective if the SEC does not object, within a specified time, to the approval.

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If after review of and a hearing on the Form MC-400 application the NAC decides not to permit the continued eligibility of a member firm due to a disqualification, NASD Regulation will file a notice with the SEC pursuant to Rule 19d-1 under the Exchange Act. Similarly, if the NAC decides not to permit a disqualified person to associate with or to continue their association with a member firm, NASD Regulation will file a notice with the SEC pursuant to Rule 19d-1. A member firm and/or disqualified person may appeal an adverse decision by NASD Regulation to the SEC.

Historically, statutory disqualification decisions issued by NASD Regulation have not been made available to the general public.<sup>1</sup> Under this initiative, NASD Regulation intends to make publicly available in redacted format the eligibility decisions issued by the NAC and filed with the SEC pursuant to Rules 19d-1 and 19h-1. NASD Regulation believes that there are three primary reasons for making the decisions publicly available:

- (1) The decisions will enable member firms and individuals to understand better the specific criteria used by NASD Regulation and the NAC in determining whether to permit a disqualified firm to retain its membership and in determining whether to permit a disqualified person to associate or to continue to associate with a member firm. In addition, the body of eligibility decisions may be one of the more useful tools for assisting members in considering whether to sponsor a disqualified person for association or continued

association. Specifically, the decisions will assist member firms to understand under what conditions an approval is likely to be granted and the supervisory requirements and/or business restrictions that have been imposed in prior comparable decisions;

- (2) The NAC and its Statutory Disqualification Committee look to relevant precedent for guidance in evaluating and deciding cases. Accordingly, member firms will have access to decisions and benefit from the same relevant precedents to assist them in preparing for eligibility hearings before the NAC; and
- (3) Making the decisions publicly available will further promote consistency in the Eligibility Proceedings process and will give the general public a greater understanding of the decision-making process of the Eligibility Proceedings.

To preserve the legitimate privacy concerns of member firms and persons involved in the Eligibility Proceedings, all of the publicly available decisions will be issued in redacted format. The names of the individuals, names of member firms, and other identifying information mentioned in the decisions will be redacted from the decisions.

Recently, NASD Regulation has taken similar steps to make another decision-making process more open to the public. Effective July 10, 2000, NASD Regulation now makes publicly available in redacted format all final litigated disciplinary decisions issued by the Office of Hearing Officers, the NAC, and the NASD Board.<sup>2</sup>

Under the current initiative, NASD Regulation intends to make all statutory disqualification decisions issued after August 7, 1997, the effective date of the current NASD Code of Procedure, publicly available. NASD Regulation will begin to release the redacted decisions to the public on January 10, 2001, or as soon thereafter as practicable. The decisions will be published on the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)).

### Endnotes

<sup>1</sup> Although NASD Regulation eligibility decisions have not been made available to the public, certain information contained in the decisions may be made public when an applicant appeals an adverse decision by NASD Regulation to the SEC and the SEC includes the information in its final order.

<sup>2</sup> See *NASD Notice to Members 00-36* (June 2000). See also NASD IM-8310-2 (governing the publication of disciplinary decisions).

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# NASD Notice to Members 00-84—Request For Comment

**ACTION REQUESTED BY  
JANUARY 11, 2001**

## Three Quote Rule

NASD Regulation  
Requests Comment On  
A Proposed Amendment  
To NASD Rule 2320(g)  
To Exclude Certain  
Transactions In  
Foreign Securities;  
**Comment  
Period Expires  
January 11, 2001**

### 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.*

- Executive Representatives
- Legal & Compliance
- Operations
- Trading and Market Making

### KEY TOPICS

- Three Quote Rule
- NASD Rule 2320(g)

### Executive Summary

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) requests comment from members, investors, and other interested parties on a proposed amendment to NASD Rule 2320(g) (the "Three Quote Rule") to exclude transactions in foreign securities effected by a National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) member as agent or riskless principal on a foreign market that is the primary market for the security. Under the proposal, primary market would be defined as either: (1) the market with at least 50 percent of the worldwide trading volume in the particular foreign security during the three-month period preceding the date of the transaction in question; or (2) any market whose quotations are part of a consolidated quotation system that includes quotations from the market that had at least 50 percent of the worldwide trading volume in the particular foreign security during the three-month period preceding the date of the transaction in question.

Included with this *NASD Notice to Members* are Attachment A (the text of the proposed rule change) and Attachment B (specific questions on which NASD Regulation requests comments from members and interested parties).

### Action Requested

NASD Regulation is seeking comment on a proposed amendment to NASD Rule 2320(g) (the "Three Quote Rule") to exclude transactions in foreign securities effected by an NASD member as agent or riskless principal on a foreign

market that is the primary market for the security. NASD Regulation encourages all members, investors, and other interested parties to comment on the proposed rule change. Comments must be received by, January 11, 2001.

Comments should be mailed to:

Joan C. Conley  
Office of the Corporate Secretary  
NASD Regulation, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500

or e-mailed to:  
[pubcom@nasd.com](mailto:pubcom@nasd.com)

**Important Note:** The only comments that will be considered are those submitted in writing or by e-mail.

Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission (SEC) following further public comment.

### Questions/Further Information

As noted, written comments should be submitted to Joan C. Conley. Questions concerning this *NASD Notice to Members—Request for Comments* may be directed to the Legal Section, Market Regulation Department, at (240) 386-5126; or Stephanie M. Dumont, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

# NASD Notice to Members 00-84—Request For Comment

## Background

Members have raised concerns regarding the potential adverse impact on obtaining best execution of customer orders in foreign securities as a result of the Three Quote Rule.<sup>1</sup> Specifically, members have indicated that the application of the Three Quote Rule to customer transactions in foreign securities executed on a foreign market is unnecessary and potentially harmful to the customer's best interests when a member, using reasonable diligence, has determined that the best market for a foreign security is a foreign market and sends the customer order to that market as agent or riskless principal for execution.

In this regard, the staff previously has granted exemptions from the requirements of the Three Quote Rule relating to transactions in foreign securities pursuant to its exemptive authority under Rule 2320(g)(5).<sup>2</sup> For example, the staff granted exemptive relief to a member firm for customer transactions in Canadian securities executed on a Canadian exchange, under the following conditions:

(1) the member periodically monitors and reviews customer executions to assure that the member is achieving best execution under NASD Rule 2320; and

(2) the customer transactions in Canadian securities are handled on an agency or riskless principal basis.<sup>3</sup>

The exemption granted was based on representations that executions on a Canadian exchange at the exchange price ordinarily result in customers obtaining best execution of their orders. In its letter seeking exemptive relief, the member stated that a recent analysis of dealer prices compared to

exchange prices indicated that, in virtually all cases, the exchange had the best price. The member, therefore, concluded that, under these circumstances, the function of contacting and obtaining quotes from three dealers would result in significant delays and would be a hindrance to achieving best execution for the customer.<sup>4</sup>

## Proposed Rule

To address these concerns, NASD Regulation is soliciting comment on a proposed rule change that would exclude from the Three Quote Rule's coverage transactions in foreign securities effected by an NASD member as agent or riskless principal on a foreign market that is the primary market for the security.

Under the proposal, primary market would be defined as either: (1) the market with at least 50 percent of the worldwide trading volume in the particular foreign security during the three-month period preceding the date of the transaction in question; or (2) any market whose quotations are part of a consolidated quotation system that includes quotations from the market that had at least 50 percent of the worldwide trading volume in the particular foreign security during the three-month period preceding the date of the transaction in question.

Among other issues, NASD Regulation staff is soliciting comment on whether the proposed definition of "primary market" adequately addresses the concerns raised in this area. For example, do active foreign markets exist, whereby no single market contains 50 percent of the worldwide trading volume, but where the transaction may be appropriate for exclusion from the requirements of the Three Quote Rule?

As under the current requirements, compliance with the Three Quote Rule, in and of itself, does not mean the member has met its best execution obligations. Best execution requires each member to use reasonable diligence to ascertain the best inter-dealer market for a security, and to buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.

## Endnotes

1 The Three Quote Rule requires members that execute transactions in non-Nasdaq securities on behalf of customers to contact a minimum of three dealers (or all dealers if three or less) and obtain quotations in determining the best inter-dealer market, unless two or more firm quotations are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis.

2 The SEC, in its approval order granting NASD Regulation exemptive authority with respect to the Three Quote Rule, specifically indicated that exemptive relief may be appropriate for transactions executed on a foreign exchange. The SEC stated that exemptive relief may be appropriate in such circumstances because the foreign exchange market may constitute the best market for securities that are listed on that market and the time delay involved in contacting three dealers in that market may, therefore, hinder a member from obtaining best execution for the customers. See Securities Exchange Act Release No. 39266 (Oct. 22, 1997), 62 Fed. Reg. 56217 (Oct. 29, 1997).

3 See letter dated May 29, 1998 to Mr. Kenneth W. Periman, General Counsel, Mayer & Schweitzer, Inc. from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, Inc.

4 The proposed rule change, if approved, would not supersede any exemptions that previously have been granted relating to the application of the Three Quote Rule to transactions in foreign securities. Further, the staff will continue to have exemptive authority with respect to the Three Quote Rule under Rule 2320(g)(5).

# NASD Notice to Members 00-84—Request For Comment

## ATTACHMENT A

### Proposed Rule Language

(Note: New language is underlined; deletions are in brackets.)

#### 2320. Best Execution and Interpositioning

(a) through (f) No Change.

(g)(1) Except as provided in subparagraph (3) below, [u]nless two or more priced quotations for a non-Nasdaq security (as defined in the Rule 6700 Series) are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis, in any transaction for or with a customer pertaining to the execution of an order in a non-Nasdaq security, a member or person associated with a member, shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) Members that display priced quotations on a real-time basis for a non-Nasdaq security in two or more quotation mediums that permit quotation updates on a real-time basis must display the same priced quotations for the security in each medium.

(3) In any transaction for or with a customer pertaining to the execution of an order in a non-Nasdaq security of a foreign issuer that is traded on a foreign securities market, a member or person associated with a member may execute the transaction without obtaining quotations from three deal-

ers, provided that the member executes the transaction on an agency or a riskless principal basis in a foreign market that is the primary market for the security, as defined herein.

#### (4) Definitions

For purposes of this paragraph (g):

(A) T[t]he term “inter-dealer quotation system” means any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

(B) [For purposes of this paragraph] T[t]he term “quotation medium” means any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(C) The term “primary market” means either:

(i) the market that had a minimum of 50% of the worldwide trading volume in the security during the three-month period preceding the date of the transaction; or

(ii) any market whose quotations are part of a consolidated quotation system that includes quotations from the market that had at least 50% of the worldwide trading volume in the security during the three-month period preceding the date of the transaction.

(5) Pursuant to the Rule 9600 Series, the staff, for good cause shown, after taking into consideration all relevant factors, may exempt any transaction or classes of transactions, either unconditionally or on specified terms, from any or all of the provisions of this paragraph if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest.

#### 3110. Books and Records

(a) No Change

(b)(1) No Change

(b)(2) A person associated with a member shall indicate on the memorandum for each transaction in a non-Nasdaq security, as that term is defined in the Rule 6700 Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if (A) two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD Regulation has access to historical quotation information; or (B) the transaction is effected in compliance with Rule 2320(g)(3).

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# NASD Notice to Members 00-84—Request For Comment

## ATTACHMENT B

### Request for Comment Checklist

The following list of questions provides a quick and easy means to comment on some of the provisions contained in the proposal. This list of questions does not cover all of the changes contained in the proposal; therefore, we encourage members and other interested parties to review the entire proposal and to comment separately on all aspects of the proposal.

#### Instructions

Comments must be received by **January 11, 2001**. Members and interested parties can submit their comments using the following methods:

- mailing in this checklist
- e-mailing written comments to *pubcom@nasd.com*
- mailing in written comments
- submitting comments online at the NASDR Web Site (*www.nasdr.com*)

The checklist and/or written comments should be mailed to:

Joan C. Conley  
Office of the Corporate Secretary  
NASD Regulation, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500

#### ***Proposed Amendment To NASD Rule 2320(g) To Exclude Certain Transactions In Foreign Securities***

1. Do you support the proposed rule change described in the *Notice*?

- Yes    No    See my attached written comments

2. To what extent, if any, does compliance with the Three Quote Rule hinder, rather than further, best execution with respect to customer transactions in foreign securities executed on a foreign market?

- See my attached written comments

3. Does the proposed definition of "primary market" adequately address the concerns raised with respect to excluding certain transactions in foreign securities from the requirements of the Three Quote Rule?

- Yes    No    See my attached written comments

#### **Contact Information**

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

#### **Are you:**

- An NASD Member  
 An Investor  
 A Registered Representative  
 Other: \_\_\_\_\_

## INFORMATIONAL

## Corporate Financing

### NASD To Deduct Delinquent Corporate Financing Filing Fees From CRD Account

## 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
- Internal Audit
- Legal & Compliance
- Operations
- Senior Management

## KEY TOPICS

- Filing Fees
- NASD Rule 2710
- Underwriting Compensation

### Executive Summary

Effective January 1, 2001, the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) will deduct delinquent Corporate Financing filing fees from funds maintained in a member's Central Registration Depository (CRD<sup>SM</sup>) account if payment is not received within 30 calendar days after the date of a second notice informing the member firm and counsel of record that Corporate Financing filing fees are due. If a payment is received prior to the established deadline, the NASD will not deduct funds from the member's CRD account. Members are responsible for replenishing the funds on deposit to ensure that there are no delays in processing registration applications or any other CRD-related obligation.

### Questions/Further Information

Questions regarding this *Notice* may be directed to Sheena Savoy, Corporate Financing Department, NASD Regulation, Inc., (NASD Regulation<sup>SM</sup>) at (240) 386-4645. Questions regarding the CRD Deductions Process may be directed to James Shelton, Regulator Billing/Collections Finance Department, NASD, Inc., at (240) 386-5386.

### Background

A public offering filed with the Corporate Financing Department of NASD Regulation, Inc. for review must be accompanied by certain fees. Under Section 6 of Schedule A to the NASD By-Laws, Corporate Financing filing fees are \$500 plus .01 percent of the proposed maximum aggregate offering price or other applicable value of all securities registered on a

Securities and Exchange Commission (SEC) registration statement or included on any other type of offering document, with a maximum filing fee limitation of \$30,500 per offering. An additional fee will be imposed if any amendment increases the maximum aggregate offering price or other applicable value of all securities included on the offering document. The fee imposed in connection with such amendments is .01 percent of the net increase, subject to the \$30,500 limit.

### Deduction From Member's CRD Account

Many members maintain funds on deposit with the NASD in order to expedite processing of employee registrations, examinations, and fingerprint processing. In addition, on-deposit funds are allocated for payment of Advertising Department fees, gross income assessment fees, arbitration and mediation fees, and for purchasing Media-Source<sup>®</sup> materials, such as fingerprint cards or other reference materials.

The NASD sends out two notices regarding delinquent Corporate Financing filing fees. One notice is in the form of a letter and the other a letter with an attached invoice, both of which inform members and their counsel that Corporate Financing filing fees are due. The first notice is sent to the member firm and the counsel of record who submitted the public offering to the NASD's Corporate Financing Department for review. It provides 30 calendar days from the date of the notice for the member or counsel to pay the delinquent fee before a second notice is sent. If the fee is not paid within 30 days, the second notice is sent to the member firm and counsel of

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record, informing them that if the amount owed is not paid within 30 calendar days from the date of the notice, the delinquent fees will be deducted from the member's CRD account.

As of January 1, 2001, the NASD will initiate the deduction of the filing fees from funds maintained in the member's CRD account. For delinquent filing fees incurred prior or subsequent to January 1, 2001, the NASD will initiate the procedure for deductions from the member's CRD account only after a member has received two notices in accordance with the time periods described above. If a payment is received prior to the established deadline, the NASD will not deduct funds from the member's CRD account. If a payment is received from a member firm or counsel of record after the fees have been

deducted from the member's CRD account, the NASD will return the deducted fees back to the member's CRD account. Written confirmation of each CRD account deduction will be provided to the member's compliance officer after the funds have been deducted. The member is thereafter responsible for replenishing the funds on deposit to ensure that there are no delays in processing registration applications or any other CRD-related obligations.

### **Suspension/Cancellation Of Membership Or Registration**

On occasion, a member's CRD account may be depleted before all delinquent fees can be collected. If the NASD does not receive payment within 30 calendar days after the date of the second notice, and there are insufficient funds on

deposit in the member's CRD account to cover the unpaid fees, the NASD will pursue the suspension or cancellation of the member's membership pursuant to the NASD Rule 9530 series. The NASD, after a 15-day notice in writing, may suspend or cancel the membership of any member that is delinquent in the payment of Corporate Financing filing fees, unless the member files a written request with the Office of Hearing Officers for a hearing within five days of receiving the notice.

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## NASD Notice to Members 00-86

### ACTION REQUESTED

## Decimalization

### Review Of Decimalization Testing

### 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
- Registered Representatives
- Senior Management
- Technology
- Trading and Market Making

### KEY TOPICS

- Decimalization

### Executive Summary

A review of the decimalization testing mandate and plans for Nasdaq® decimalization testing are included in this *NASD Notice to Members*. A select number of market makers and clearing firms have been mandated to perform decimalization testing with Nasdaq. This Notice provides test registration information, testing dates, and Nasdaq testing strategy. Also, a summary of the industry critical dates is provided.

### Questions/Further Information

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

For the most recent decimalization news and developments, visit the NASD Web Site ([www.nasd.com](http://www.nasd.com)) and click on the decimalization link. Additional decimalization information is available on the Securities Industry Association's (SIA) Web Site located at [www.sia.com](http://www.sia.com).

### Decimalization Testing

The Decimal Pricing Test Program is designed to fulfill the NASD mission of investor protection and market integrity, and to mitigate the risk of market disruptions after conversion to decimal pricing. Testing will be mandated for certain, selected member firms. Those member firms that are not mandated to conduct testing may do so on a voluntary basis. All firms are encouraged to test with

Nasdaq, and any firms wishing to test on a voluntary basis should complete the registration process outlined below.

### Testing Mandate

On Tuesday, June 27, 2000, the Securities and Exchange Commission (SEC) approved a Mandatory Decimal Pricing Testing Rule (NASD Rule 3420). This rule "establish[es] the NASD's specific authority to require certain members to participate in Decimal Pricing tests and to require reporting on the tests."

The NASD is mandating decimal pricing testing, which is intended to ensure that all appropriate NASD member firms have completed designated levels of testing. The decimalization testing rule requires certain NASD members that are clearing firms and market makers to "conduct or participate in the testing of their computer systems to ascertain decimal pricing conversion compatibility of such systems in such manner and frequency as the Association may prescribe." Pursuant to this rule, impacted clearing firms and market makers identified by the Association to conduct or participate in testing of computer systems will provide to the NASD Decimalization Program Office reports relating to the testing required by the Association.

The NASD will provide each firm with a list of the tests in which their participation has been mandated; this information will be made available by December 4, 2000 via the Internet at [www.nasd.com](http://www.nasd.com). In addition, a notification letter will be mailed to NASD member firms mandated to test.

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### Nasdaq Decimalization Testing

Nasdaq has announced its initial plans for decimalization testing.

#### Testing Registration

Registration for Point-to-Point, Extended Point-to-Point, and Saturday Production testing is **required**. A registration form can be found by visiting the NASD Web Site ([www.nasd.com](http://www.nasd.com)), clicking on the decimalization link, and then the testing button. This form is also included in the Nasdaq Decimalization Guidelines found on the Nasdaq Trader Web Site (<http://www.nasdaqtrader.com/trader/hottopics/decimalguidelines.pdf>). Firms must register at least 48 hours in advance.

#### Point-to-Point

Point-to-Point testing in fractions will begin December 18, 2000, via the Customer Subscriber Test (CST) facility for CTCI and API/NWII participants. Full testing with decimal-priced securities in both penny and nickel minimum price variations (MPVs), as well as fractional-priced securities, will begin January 2, 2001, and continue through April 6, 2001. Nasdaq will issue an Alert detailing the availability of the various decimal releases on CST at a later date.

#### Extended Point-to-Point

Testing will take place the mornings of January 27 and February 10, 2001, and will be scripted. Nasdaq will provide test scripts at a later date.

#### Nasdaq Production Tests

Testing will take place the afternoons of January 27 and February 10, 2001, and will be unscripted.

#### Proxy Testing and Exemptions

The NASD is accepting proxy testing where feasible for firms that rely on service providers or

software purchased from vendors. Your firm's specific testing requirements, stated on the NASD Web Site or in the NASD letter your firm will receive, will show where proxy testing is acceptable.

To the extent possible, firms should test their systems in their own environment. However, it is not always feasible for firms that rely on service providers (serviced firms) or software purchased from vendors (turnkey firms) to test in their own environment. For this reason, firms may rely on proxy tests conducted by service providers. Proxy testing is a term used to refer to testing that is conducted on like systems and with like interfaces for the purpose of not having to repeat identical tests that would provide the identical results. Firms utilizing the proxy should ensure that the proxy testing was conducted with a firm of similar complexity and size as their firm, using similar operating systems and software. Since the objective of mandated firms is to conduct all testing and preparations necessary to transition its business to decimal pricing, each member should evaluate and determine when and where proxy testing is appropriate for its organization and risk profile. Listed below are a few helpful hints that firms should consider when evaluating the applicability of proxy testing:

- Proxy tests are conducted using the same version of decimal-ready software that will be used to service the firm.
- Proxy tests are conducted using the same hardware and operating systems that are used by the firm. Where there are differences, the firm should verify and document how the differences would affect processing.

- A firm also should test systems and interfaces under its direct control and those functions not covered in the proxy testing. These include items unique to the firm, as well as those for which there are an insufficient number of common users to develop acceptable proxy tests.

#### Testing Strategy

During full Point-to-Point testing, Extended Point-to-Point testing, and Production testing, Nasdaq will establish a list of securities for decimal testing with either an MPV of \$0.05 or \$0.01. The list of the Nasdaq 100 after the 2000 year-end re-ranking will be divided into two groups. The first 50, alphabetically, will be set with an MPV = \$0.01 and the remaining 50 securities will be set to an MPV = \$0.05. Nasdaq will issue a listing of the test securities with their associated MPVs after that time. Due to the possibility of additions and deletions, there is no guarantee that this list will remain static, and that all of these securities will be available for testing. If one of these securities is no longer available, it will not be replaced. Nasdaq is confident that such changes will be minimal and that a majority of these securities will be available.

Requests for exemptions from the NASD testing mandate should be made in writing and forwarded to the NASD Decimalization Program Management Office at 9513 Key West Avenue, Rockville, MD 20850, no later than January 10, 2000. The request must be signed by an officer of the organization. The NASD Decimalization Program Management Office will review all requests and reply to each firm in writing.

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### NASD & Exchanges' Decimalization Implementation Plan

On June 8, 2000, the national securities exchanges and the NASD submitted a comprehensive phase-in plan for decimal pricing in equity securities and options. Details of the plan are shown in the table below:

Checkpoint/Phase	Action	Date
Checkpoint I	Pre-Implementation Evaluation	August 15, 2000
Phase I	Limited Exchange-Listed Issues and Options	August 28, 2000
Checkpoint II	Determine Readiness for Additional Exchange-Listed Issues and Options	September 19, 2000
Phase IIA	Additional Exchange-Listed Issues and Options	September 25, 2000
Checkpoint III	Determine Readiness for Full Implementation of Exchange-Listed Issues and/or All Options	November 1, 2000
Phase IIA-2 <sup>1</sup>	Additional NYSE equities and associated options	December 4, 2000
Phase IIB	Full Conversion Exchange-Listed Issues and/or All Options	November 2000 - April 2001
Checkpoint IV	Limited Nasdaq Issues	March 5, 2001
<b>Phase III</b>	<b>Limited Nasdaq Issues</b>	<b>On or Before March 12, 2001</b>
Checkpoint V	Determine Readiness for All Markets, Full Implementation	April 2, 2001
<b>Phase IV</b>	<b>All Markets, Full Implementation</b>	<b>On or Before April 9, 2001</b>

To view the complete plan submission visit the SEC Web Site located at [www.sec.gov](http://www.sec.gov) (<http://www.sec.gov/rules/other/decimalp.htm>). The SEC has not given final approval to the plan.

1 Phase IIA-2 was not part of the original submission to the SEC. At Checkpoint III, held November 1, 2000, a decision was made to begin trading additional New York Stock Exchange equities and their associated options in decimals.

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## NASD Notice to Members 00-87

As of November 22, 2000, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>).

### FIPS Changes

Fixed Income Pricing System<sup>SM</sup> Additions, Changes, And Deletions As Of November 22, 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 and Market Making

#### KEY TOPICS

- FIPS

Symbol	Name	Coupon	Maturity
ACRP.GA	Actuant Corp	13.000	05/01/09
AGY.GC	Argosy Gaming Co	10.750	06/01/09
AKK.GB	Armstrong World Inds Inc	6.500	08/15/05
AKK.GC	Armstrong World Inds Inc	6.350	08/15/03
AKK.GD	Armstrong World Inds Inc	7.450	05/15/29
AZX.GA	Azurix Corp	10.750	02/15/10
AZX.GB	Azurix Corp	10.375	02/15/07
BRRY.GE	Berry Plastics Corp	11.000	07/15/07
BUNU.GA	Buhrmann US Inc	12.250	11/01/09
CKRN.GA	CKE Restaurants Inc	9.125	05/01/09
DCEL.GA	Dobson Communications Corp	11.750	04/15/07
DYSU.GA	Dayton Superior Corp	13.000	06/15/09
EXDS.GD	Exodus Communications Inc	11.625	07/15/10
FELP.GA	Felcor Lodging LTD Partnership	9.500	09/15/08
FLS.GA	Flowserve Corp	12.250	08/15/10
GBBL.GA	GBB Capital IV	10.750	06/01/30
GK.GA	Gentek Inc	11.000	08/01/09
HNP.K.GB	Huntsman Packaging Corp	13.000	06/01/10
HWSV.GA	Hollywood Casino Shreveport	13.000	08/01/06
IMDW.GB	Insight Midwest/Insight Cap	10.500	11/01/10
INYC.GA	Interact Systems Inc	14.000	08/01/03
JLAU.GA	JL French Auto Casting Ser B	11.500	06/01/09
KNEC.GA	Knowles Electronics Inc	13.125	10/15/09
MICT.GA	Microcell Telecommunications	12.000	06/01/09
MOAC.GA	Motor Coach Ind Intl Inc	11.250	05/01/09
MPWR.GB	MGC Communications Inc	13.000	04/01/10
NHDG.GA	Natg Hldgs LLC/Orius Cap Corp Ser B	12.750	02/01/10
NRI.GA	Nationsrent Inc	10.375	12/15/08
REGL.GD	Regal Cinemas Inc	8.875	12/15/10
RLTP.GA	Railamerica Transport Corp	12.875	08/15/10
RTHM.GC	Rhythms Netconnections Inc	12.750	04/15/09
RVBH.GA	Riviera Black Hawk Inc	13.000	05/01/05
SEG.GA	Seagate Technology Inc	7.125	03/01/04
SEG.GB	Seagate Technology Inc	7.370	03/01/07
SEG.GC	Seagate Technology Inc	7.875	03/01/17
SJKI.GA	St John Knits Intl Inc	12.500	07/01/09
SRV.GL	Service Corp Intl	6.500	03/15/08
TLCP.GB	Telecorp PCS Inc	10.625	07/15/10
THC.GI	Tenet Healthcare Corp Ser B	9.250	09/01/10
TWRS.GF	Crown Castle Intl Corp	9.500	08/01/11
URS.GB	URS Corp	12.250	05/01/09
VYTL.GD	Viatel Inc	11.500	03/15/09
VLUM.GA	Volume Services America Inc	11.250	03/01/09
WLRR.GA	Willis Corroon Corp	9.000	02/01/09
WDFG.GA	Worldwide Flight Service Inc	12.250	08/15/07
WRMA.GA	WRC Media Inc/Weekly Reader Corp	12.750	11/15/09
WSMB.GA	Windsor Woodmont Black Hawk	13.000	03/15/05

## NASD Notice to Members 00-87

As of November 22, 2000, the following bonds were deleted from the Fixed Income Pricing System.

<b>New Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
ARCH.GB	ARCO Chemical Co	9.900	11/01/00
AXHM.GA	Axiom Transaction Solutions Inc	9.750	10/01/07
BBBD.GA	Blue Bird Body Co	11.750	04/15/02
BVF.GA	Biovail Corp Intl New	10.875	11/15/05
BGFW.GB	Big Flower Press Hldgs Inc	8.625	12/01/08
CHCA.GE	Chancellor Media Corp	9.000	10/01/08
CHCA.GF	Chancellor Media Corp	8.000	11/01/08
DYPR.GA	Drypers Corp	12.500	11/01/02
LD.GA	Louis Dreyfus Nat Gas	9.250	06/15/04
PAGE.GB	Paging Network Inc	8.875	02/01/06
PAGE.GC	Paging Network Inc	10.125	08/01/07
PAGE.GD	Paging Network Inc	10.000	10/15/08
SCOM.GA	Shared Tech Fairchild Com Corp	12.250	03/01/06
UCO.GA	Universal Compression Hldgs Inc	11.375	02/15/09

As of November 22, 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>
EQIX.GA	EQXC.GA	Equinix Inc	13.000	12/01/07
NWB.GA	NWAC.GA	Northwest Airlines Inc	8.375	03/15/04
NWB.GB	NWAC.GB	Northwest Airlines Inc	8.700	03/15/07
NWB.GD	NWAC.GD	Northwest Airlines Inc	7.875	03/15/08
NWB.GE	NWAC.GE	Northwest Airlines Inc	8.520	04/07/04

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, Inc., at (301) 590-6447.

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

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## NASD Notice to Members 00-88

### INFORMATIONAL

## Trade Date— Settlement Date

### Trade Date—Settlement Date Schedule For 2001

### 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
- Municipal/Government Securities
- Operations
- Trading & Market Making

### KEY TOPIC

- Holiday Trade Date—Settlement Date Schedule

### Martin Luther King, Jr., Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, January 15, 2001, in observance of Martin Luther King, Jr., Day. “Regular way” transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Jan. 9	Jan. 12	Jan. 17
10	16	18
11	17	19
12	18	22
15	Markets Closed	—
16	19	23

### Presidents Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, February 19, 2001, in observance of Presidents Day. “Regular way” transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Feb. 13	Feb. 16	Feb. 21
14	20	22
15	21	23
16	22	26
19	Markets Closed	—
20	23	27

## NASD Notice to Members 00-88

### Good Friday: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Good Friday, April 13, 2001. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
April 9	April 12	April 17
10	16	18
11	17	19
12	18	20
13	Markets Closed	—
16	19	23

### Memorial Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, May 28, 2001, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
May 22	May 25	May 30
23	29	31
24	30	June 1
25	31	4
28	Markets Closed	—
29	June 1	5

## NASD Notice to Members 00-88

### Independence Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Wednesday, July 4, 2001, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
June 28	July 3	July 6
29	5	9
July 2	6	10
3	9	11
4	Markets Closed	—
5	10	12

### Labor Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, September 3, 2001, in observance of Labor Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Aug. 28	Aug. 31	Sept. 5
29	4	6
30	5	7
31	6	10
Sept. 3	Markets Closed	—
4	7	11



## NASD Notice to Members 00-88

### Columbus Day: Trade Date—Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 8, 2001. On this day, The Nasdaq Stock Market and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

Trade Date	Settlement Date	Reg. T Date*
Oct. 2	Oct. 5	Oct. 9
3	9	10
4	10	11
5	11	12
8	11	15
9	12	16

**Note:** October 8, 2001, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 8, will be combined with transactions made on the previous business day, October 5, for settlement on October 11. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 8.

## NASD Notice to Members 00-88

### Veterans Day And Thanksgiving Day: Trade Date—Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance of the financial community of Veterans Day, Monday, November 12, 2001, and Thanksgiving Day, Thursday, November 22, 2001. On Monday, November 12 The Nasdaq Stock Market and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed in observance of Veterans Day. All securities markets will be closed on Thursday, November 22, 2001 in observance of Thanksgiving Day.

Trade Date	Settlement Date	Reg. T Date*
Nov. 6	Nov. 9	Nov. 13
7	13	14
8	14	15
9	15	16
12	15	19
13	16	20
16	21	26
19	23	27
20	26	28
21	27	29
22	Markets Closed	—
23	28	30

**Note:** November 12, 2001, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on November 12 will be combined with transactions made on the previous business day, November 9, for settlement on November 15. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on November 12.

## NASD Notice to Members 00-88

### Christmas Day And New Years Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Tuesday, December 25, 2001, in observance of Christmas Day, and Tuesday, January 1, 2002, in observance of New Years Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Dec. 19	Dec. 24	Dec. 27
20	26	28
21	27	31
24	28	Jan. 2, 2002
25	Markets Closed	—
26	31	3
27	Jan. 2, 2002	4
28	3	7
31	4	8
Jan. 1, 2002	Markets Closed	—
2	7	9

Brokers, dealers, and municipal securities dealers should use the foregoing settlement dates for purposes of clearing and settling transactions pursuant to the National Association of Securities Dealers, Inc. (NASD®) Uniform Practice Code, the Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice, and the General and Floor Rules of the Rules of the Board of Governors of the American Stock Exchange®.

Questions regarding the application of those settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (203) 375-9609.

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\* Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

## NASD Notice to Members 00-89

### INFORMATIONAL

The National Association of Securities Dealers, Inc. (NASD®) will observe the following holiday schedule for 2001:

## NASD Holiday Schedule

### NASD 2001 Holiday Schedule

### 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
- Municipal/Government Securities
- Operations
- Trading & Market Making

### KEY TOPICS

- Holiday Schedule

January 1	New Year's Day
January 15	Martin Luther King Jr. Day (Observed)
February 19	Presidents' Day
April 13	Good Friday
May 28	Memorial Day
July 4	Independence Day
September 3	Labor Day
November 22	Thanksgiving Day
December 25	Christmas Day

Questions regarding this holiday schedule may be directed to NASD Human Resources, at (240) 386-4869.

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# Disciplinary Actions

## Disciplinary Actions Reported For December

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). The information relating to matters contained in this *Notice* is current as of the end of November 27, 2000.

### Firm Expelled

**Waldron & Co., Inc. (CRD #868, Irvine, California)** was expelled from NASD membership. The sanction was based on findings that the firm executed buy-ins of stock when the firm controlled the float of the stock. The findings also stated that the buy-ins were executed by having the firm supply the stock for the buy-ins at prices that far exceeded the inside ask price at the time of the transactions, resulting in unfair profits for the firm. **(NASD Case #CAF990023)**

### Firms Fined, Individuals Sanctioned

**Providential Securities, Inc. (CRD #31189, Fountain Valley, California)** and **Harry Dack Fahman (CRD #1952649, Registered Principal, Huntington Beach, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$115,000, required to offer rescission to public customers, and Fahman was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Fahman, offered and sold shares of

stock through a private “minimum-maximum” offering to public customers and made untrue statements of material facts and omissions in that the offering memorandum:

- failed to disclose that an officer of the firm could make contributions to help meet the minimum requirement;
- failed to disclose the firm’s and Fahman’s disciplinary history; and
- stated falsely that 50 percent of the minimum offering was to be used to register the firm as a New York Stock Exchange member self-clearing broker/dealer, when in fact, the funds were used to cover the firm’s regular operating expenses.

Moreover, the NASD found that the firm, acting through Fahman, disclosed on the offering memorandum that the firm had three branch offices and additional full-service satellite offices, failed to disclose that the firm’s membership agreement restricted the firm to only two branch offices, extended the offering date without providing prior written notification to its investors, and falsely represented individuals in the offering as being members of the Board when they were not.

The findings also stated that the firm, acting through Fahman, failed to deposit and retain customer funds received in the offering in a properly established bank escrow account, and transmitted funds to the firm’s operations bank account in the name of the issuer, failed to return customer funds when the terms of the contingency were not met, and continued to sell common stock through the private placement memorandum despite the expiration of the contingency.

Furthermore, the NASD found that Fahman violated the firm's restriction agreement with the NASD by opening more than two branch offices and failing to register these offices, and operated Offices of Supervisory Jurisdiction (OSJ) without a required on-site principal. In addition, the findings stated that the firm, acting through Fahman, permitted individuals to engage in the securities business and function as general securities representatives and limited representative-equity traders prior to being properly registered or qualified in the appropriate capacities, and distributed communications to the public through the Internet that failed to conform with the NASD's general and specific standards of conduct. **(NASD Case #C02000061)**

**Ridgewood Associates, Inc. (CRD #16727, Paramus, New Jersey)** and **Philip Patrick Marino (CRD #319926, Registered Principal, Paramus, New Jersey)** submitted an Offer of Settlement in which they were censured and fined \$20,000, jointly and severally. In addition, Marino was suspended from association with any NASD member in any principal capacity for 20 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Marino, failed to adequately and properly supervise the trading activity of an individual in the accounts of public customers to ensure compliance with the securities laws and applicable NASD rules. The NASD also found that the firm, acting through Marino, failed to prevent transactions in the customers' accounts that were excessive in size or frequency in view of the financial resources and character of such accounts.

Marino's suspension began November 6, 2000, and concluded on November 25, 2000. **(NASD Case #C9B000018)**

#### **Firms And Individuals Fined**

**Alex Moore & Company, Inc. (CRD #28062, Garden City, New York)** and **Frank John Gerage (CRD #2271507, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$12,500, jointly and severally. The firm was fined an additional \$3,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Gerage, failed to register with the NASD an individual who was actively engaged as a principal in the management of the firm. The findings also stated that the firm, acting through Gerage, participated in an underwriting that was not listed as a permissible activity in the firm's restriction agreement and conducted more principal transactions in a 12-month period than permitted in the agreement. The NASD also found that the firm, acting through Gerage, failed to maintain sufficient net capital while conducting a securities business and failed to notify the Securities and Exchange Commission (SEC) and the NASD in a timely manner that it was under its minimum net capital. In addition, the firm failed to timely submit a monthly FOCUS filing and failed to reconcile the balances in a FOCUS Part IIA Report with the firm's financial statements and supporting schedules. **(NASD Case #C10000175)**

**Beneficial Capital, Inc. (CRD #8219, Woodbridge, Connecticut)** and **Richard Schatz (CRD**

**#412683, Registered Principal, Woodbridge, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$20,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm employed Schatz as its financial and operations principal (FINOP) without being registered with the NASD as a FINOP. The findings also stated that the firm, acting through Schatz, engaged in the securities business while failing to have and maintain sufficient net capital. **(NASD Case #C02000057)**

**FFP Securities, Inc. (CRD #16337, Chesterfield, Missouri)** and **Roy Monroe Henry (CRD #243400, Registered Principal, Chesterfield, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$40,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm used a confidentiality clause that prohibited, or otherwise inhibited, the customer from disclosing the settlement terms and underlying facts of the dispute to a securities regulator in settlement agreements. The findings also stated that the firm failed to report, and failed to timely report, to the NASD specific disclosure events within 10 business days in accordance with NASD rules, and failed to file amended Forms U-4 or Forms U-5 for individuals subject to customer complaints within 30 days of becoming aware of the facts or circumstances giving rise to a need for the amendments. Furthermore, the NASD found that the firm commenced a best efforts

all-or-none offering of limited partnership units through the use of a private placement memorandum that represented that the offering period would terminate on a certain date if the required minimum units were not received. The NASD determined that the firm, acting through Henry, rendered false the representation of the contingency in the memorandum in that it failed to include a statement that the firm and persons associated with the firm would be purchasing a portion of the offering when, in fact, an affiliated company of the firm purchased units giving the appearance that the stated contingency was satisfied. Moreover, the findings stated that the firm, acting through Henry, failed to establish an escrow account in connection with the offering during the contingency period and, instead, transmitted investors' monies directly to the brokerage account under the issuer's control.

The findings also stated that the firm, acting through Henry, commenced an offering of securities in the form of government collateralized investment notes to investors when a registration statement had not been filed with the SEC for the securities nor were the securities otherwise exempt from registration. The firm also failed to establish an effective supervisory control system to ensure all transactions by the principals of its OSJ were being properly supervised by another supervisory principal. **(NASD Case #C04000033)**

**First Madison Securities, Inc. (CRD #38820, Boca Raton, Florida) and Ray Vahab (CRD #1041775, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were

censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Vahab, conducted a securities business while failing to maintain its minimum net capital. The findings also stated that the firm, acting through Vahab, failed to prepare an adequate Continuing Education written needs analysis for one year and a written needs analysis and training plan for two years. In addition, the NASD found that the firm, acting through Vahab, failed to report customer complaints and an arbitration to the NASD. **(NASD Case #C10000194)**

**Glenn Michael Financial, Inc. (CRD #37912, Melville, New York) and Francine Ann Lanaia (CRD #1415689, Registered Principal, Ft. Salanga, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the respondents were censured and fined \$10,500, jointly and severally. The firm was also fined \$4,000, jointly and severally with another individual, and \$19,500, individually. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm reported transactions late without the required symbol, executed transactions as bunched without reporting them as bunched, reported transactions with an incorrect modifier, and reported agency transactions as principal transactions. The firm also time-stamped order tickets inaccurately, and failed to include a notation of quotations from market makers on order tickets representing OTC Bulletin Board® (OTCBB) securities transactions. The firm, acting through Lanaia, permitted an individual to function as a

registered representative and paid commissions to another individual during periods that they were "inactive" due to failure to complete the Regulatory Element of the NASD Continuing Education Program. The findings also stated that the firm, acting through Lanaia, failed to report customer complaints to the NASD as required. In addition, the NASD found that the firm, acting through another individual, made markets in a greater number of securities and OTCBB securities than was permitted in the firm's membership agreement. **(NASD Case #C3A000039)**

**Joseph Matthews & Company (CRD #19605, Staten Island, New York) and Joseph Vincent Quattrocchi (CRD #1231465, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm knowingly maintained, through Quattrocchi, the registrations of individuals for periods of time when they were not actively engaged in the firm's securities business or were not functioning as registered representatives of the firm, thereby, avoiding a lapse in registration. **(NASD Case #C10000189)**

**Merrill Lynch, Pierce, Fenner & Smith Inc. (CRD #7691, New York, New York) and Arthur Joseph Matney (CRD #322913, Registered Principal, Santa Rosa, California)** submitted a Letter of Acceptance, Waiver, and Consent (AWC) in which Matney was censured, fined \$15,000, and required to requalify by exam as a general securities principal within

180 days from the date of acceptance of the AWC. The firm was censured and fined \$25,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Matney failed to reasonably supervise the trading activity of a registered representative. The findings also stated that the firm failed to reasonably enforce its written supervisory procedures concerning trading activity and the detection of potentially unsuitable and excessive trading. **(NASD Case #C11000026)**

#### **Firms Fined**

**Alexander Wescott & Company, Inc. (CRD #35935, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$9,000, jointly and severally with an individual, and fined \$7,000, individually. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted the premature breaking of escrow by releasing funds to the issuer when the escrow account had a balance of approximately \$640,000 and misrepresented to investors that the minimum contingency of \$1,000,000 had been satisfied. The findings also stated that the firm, acting through an individual, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain the minimum required net capital. The NASD also found that the firm, acting through an individual, failed to report a State of Minnesota cease and desist order and an \$86,000 arbitration judgment against the firm to the NASD within 10 business days, and failed to report quarterly statistical and

summary information relating to customer complaints to the NASD. In addition, the NASD found that the firm failed to report trades within 90 seconds of execution and with the “.SLD” modifier and reported transactions to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) as principal trades when they should have been reported as agency trades. **(NASD Case #C11000022)**

**Cambridge Capital, LLC (CRD #41464, Garden City, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$31,500, and ordered to pay \$9,702.50 in restitution to public customers. Satisfactory proof of restitution payment must be provided to the NASD no later than 90 days after acceptance of the AWC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to disclose in a private placement memorandum that affiliates of the issuer and/or the placement agent could invest in the offering. The findings also stated that the firm failed to disclose the difference between the price to the customer and the firm's contemporaneous purchase for customer purchases or sale price for customer sales in riskless principal transaction confirmations. The NASD also found that customers did not receive best execution, resulting in \$9,702 in damages to the customers and failed to record the correct time of entry on retail order tickets representing the offsetting purchase or sale transaction effected by the firm. In addition, the NASD found that the firm reported to the tape, via ACT, 100 percent of the customer side of its riskless principal transactions in Nasdaq National Market<sup>®</sup> (NNM) transactions when the firm was not

a market maker in the securities and was not required to do so and should not have reported the customer portion of riskless principal transactions. Moreover, the NASD found that the firm failed to have adequate written supervisory procedures in place to ensure that customer confirmations for riskless principal transactions contained the correct disclosures, failed to review periodically customer trades and verify for best execution, and failed to ensure that order tickets were promptly time stamped. **(NASD Case #C3A000038)**

**C.E. Unterberg, Towbin (CRD #24790, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in 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 an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size. The NASD found that the firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with SEC and NASD firm quote rules. **(NASD Case #CMS000215)**

**Direct Access Brokerage Services Inc. (CRD #30057, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in 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, within 90 seconds after execution, to



transmit through ACT, last sale reports of transactions in NNM securities, eligible securities, Nasdaq SmallCap<sup>SM</sup> securities, and OTC equity securities. The findings also stated that the firm failed to designate last sale reports as late through ACT, and incorrectly designated last sale reports of transactions in NNM, SmallCap securities, OTC equity securities, and eligible securities reported within 90 seconds of the execution as “.SLD” through ACT. **(NASD Case #CMS000218)**

**Goldman, Sachs & Co. (CRD #361, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, the firm entered a bid or ask quotation in The Nasdaq Stock Market, Inc. that caused a locked or crossed market condition to occur. **(NASD Case #CMS000202)**

**J.C. Bradford & Company (CRD #1287, Nashville, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent in 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 contemporaneously or partially execute customer limit orders in Nasdaq<sup>®</sup> securities after it traded each subject security for its own market-making account at a price that would have satisfied each

customer's limit order. The findings also stated that the firm reported to ACT the incorrect time of execution and an incorrect price for transactions in NNM securities. The findings also stated that the firm failed to immediately display customer limit orders in Nasdaq securities in its public quotation when each order was at a price that would have improved the firm's bid or offer for each security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each security. **(NASD Case #CMS000206)**

**OTA Limited Partnership (CRD #25816, Purchase, New York)** submitted a Letter of Acceptance, Waiver, and Consent in 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 engaged in a pattern or practice of late transaction reporting without exceptional circumstances by failing to report securities transactions to ACT within 90 seconds after execution. The findings also stated that the firm failed to transmit last sale reports of transactions in NNM securities, a transaction in a SmallCap security, and transactions in listed securities through ACT within 90 seconds after execution; and failed to designate each transaction as late to ACT. **(NASD Case #CMS000211)**

**Preferred Capital Markets, Inc. (CRD #10993, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent

in 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 transmit last sale reports of transactions in NNM securities through ACT within 90 seconds after execution, and failed to designate these reports as late to ACT. The findings also stated that the firm reported through ACT last sale reports of transactions in NNM securities and SmallCap securities it was not required to report, and incorrectly designated last sale reports of transactions in NNM securities as “.SLD” to ACT. In addition, the NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning trade reporting. **(NASD Case #CMS000209)**

**Prime Dealer Services Corporation (CRD #36142, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to submit to the NASD revised written supervisory procedures reasonably designed to prevent future violations of NASD Rule 3360. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report its short interest positions to the NASD. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short interest reporting. **(NASD Case #CMS000224)**

## Individuals Barred Or Suspended

*For individuals who have been both barred and suspended, only the date that the bar became effective is included.*

**Richard Gary Agran (CRD #854773, Registered Representative, Cupertino, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Agran consented to the described sanction and to the entry of findings that he participated in the purchase of common stock without providing written notification to his member firm. **(NASD Case #C01000027)**

**Farzan Ali (CRD #2631139, Registered Representative, Briar Wood, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was permanently barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ali consented to the described sanction and to the entry of findings that he received \$1,593 from public customers to pay their annual homeowner insurance policies and converted \$1,056 of the funds for his own use and benefit without the customers' prior knowledge, authorization, or consent. **(NASD Case #C10000181)**

**Harry Edward Bassett, III (CRD #2649512, Registered Representative, Valley Stream, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity provided that he may reapply for association after three years from the date of

the order accepting the Offer of Settlement. Without admitting or denying the allegations, Bassett consented to the described sanction and to the entry of findings that he was engaged in the solicitation and conduct of the securities business of a member firm while he was not registered with the NASD and was prohibited from being associated with a member firm because of his statutory disqualification. **(NASD Case #CAF000029)**

**Angus Deford Beal (CRD #2994227, Registered Representative, San Antonio, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Beal consented to the described sanctions and to the entry of findings that he exercised discretionary power to effect trades in the accounts of public customers without their prior written authorization for discretionary trading.

Beal's suspension began November 20, 2000, and concluded at the close of business on November 29, 2000. **(NASD Case #C3B000015)**

**William Edward Bergh (CRD #1409200, Registered Representative, Peoria, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bergh consented to the described sanction and to the entry

of findings that he engaged in private securities transactions without providing prior written notice to, and receiving approval from, his member firm in that he sold securities in the form of investment contracts or evidence of indebtedness. **(NASD Case #C02000060)**

**Larry Gene Brady (CRD #4152720, Registered Representative, Ogden, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Brady consented to the described sanctions and to the entry of findings that he failed to disclose on his Form U-4 that he had been charged and pled guilty to felony grand theft in the State of California.

The suspension began December 4, 2000, and will conclude at the close of business on December 3, 2001. **(NASD Case #C3A000043)**

**Vincent Michael Carrella (CRD #2321148, Registered Principal, Bellport, New York)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for three months and suspended from association with any NASD member firm in any registered capacity or from acting in any capacity for which he would be required to be registered for two years. In light of the financial status of Carrella, no monetary sanction has been imposed. Without admitting or denying the allegations, Carrella consented to

the described sanctions and to the entry of findings that he made fraudulent misrepresentations, omitted facts, and made baseless price predictions to customers; and caused an unauthorized sale in a customer account.

The suspension in any capacity began November 20, 2000, and will conclude at the close of business on February 19, 2001, and the suspension in any registered capacity will begin February 20, 2001, and conclude at the close of business on February 19, 2003. **(NASD Case #CMS960174)**

**Pasquale Detursi (CRD #1865313, Registered Representative, Arlington, Massachusetts)**

submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Detursi consented to the described sanction and to the entry of findings that he entered his name as primary beneficiary on a public customer's application for a single premium deferred annuity policy that was funded with a \$100,322.93 investment. **(NASD Case #C11000024)**

**Anthony Frederick DiMaria (CRD #2286669, Registered Principal, Bronx, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$48,740, suspended from association with any NASD member in any capacity for 30 business days, and ordered to disgorge \$1,090 in commissions to the NASD. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, DiMaria consented to the described sanctions and to the

entry of findings that he failed to make a bona fide public distribution of an initial public offering that traded at a premium in the immediate secondary market and sold shares of stock to relatives who are restricted persons. The findings also stated that DiMaria submitted customer new account documents to his firm's management for his relatives when he knew that the documents contained inaccurate information.

DiMaria's suspension began November 20, 2000, and will conclude at the close of business on January 3, 2001. **(NASD Case #C10000192)**

**Dennis Franklin Drescher (CRD #2965951, Registered Representative, Chesterfield, Missouri)**

submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 90 days. Also, for one year after the date Drescher reassociates with a member firm following the suspension, he will refrain from accepting or maintaining employment in any capacity with any NASD member unless the firm has formulated special supervisory procedures to oversee and monitor his activities. In light of the financial status of Drescher, no monetary sanctions have been imposed. Without admitting or denying the allegations, Drescher consented to the described sanctions and to the entry of findings that he caused his member firm to violate SEC Rule 17a-3 in that he accessed a member firm's internal accounting system to make a journal entry to facilitate the transfer of a sale of shares of stock from his personal securities account to the firm's average price account. The NASD also found that Drescher submitted via the firm's internal order system,

orders to sell shares short of the stock in the firm's average price account. Furthermore, the findings stated that Drescher did not mark these sales as short sales, although they were in fact short sales, and made notations on the firm's reconciliation reports for the average price account to the effect that the short position reflected for the stock had been "moved already" in order to conceal the fact that he improperly initiated a short position in the firm's average price account.

Drescher's suspension began December 4, 2000, and will conclude on March 3, 2001. **(NASD Case #C04000035)**

**Kevin Andrew Fleming (CRD #2615501, Registered Principal, Saddle Brook, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Fleming failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C9B000011)**

**Troy Joseph Flowers (CRD #2580057, Registered Principal, Lemon Grove, California)**

submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Flowers consented to the described sanctions and to the entry of findings that a former member firm, acting through Flowers, did not comply with the SEC penny stock rules with respect to customer purchases of stock because it incorrectly and improperly took the

position that a stock was not a penny stock.

Flowers' suspension began November 20, 2000, and will conclude at the close of business on November 19, 2001. **(NASD Case #C02000058)**

**Richard Alan Frondorf (CRD #2054157, Registered Representative, Abita Springs, Louisiana)** was fined \$7,500 and suspended from association with any NASD member in any capacity for two months. The sanctions were based on findings that Frondorf caused unauthorized withdrawals from the accounts of public customers and thereby created margin loan balances in their accounts. The findings also stated that Frondorf attempted to conceal his misconduct from his member firm by inducing the customers to provide false written statements concerning his activity to his firm.

Frondorf's suspension began November 6, 2000, and will conclude at the close of business on January 4, 2001. **(NASD Case #C05000002)**

**Michael Alan Gragnani (CRD #1280818, Registered Representative, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Gragnani consented to the described sanctions and to the entry of findings that he created and provided to a public customer a fictitious confirmation reflecting that a member firm had sold shares of stock for the account of other customers for proceeds of \$3,733, when in fact no sale of such securities had occurred.

Gragnani's suspension will begin December 18, 2000, and will conclude at the close of business on January 2, 2001. **(NASD Case #C01000028)**

**Darrin Bradford Greene (CRD #1175667, Registered Principal, New York, New York)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Green consented to the described sanctions and to the entry of findings that he assisted his member firm and other principals in repurchasing shares and warrants issued in an initial public offering during the immediate aftermarket. The findings also stated that since these securities did not come to rest in the hands of the investing public when the customers bought them, the purchase and resale of the shares and warrants constituted a continuation of the distribution. In addition, the NASD found that Greene assisted his member firm and other individuals in making markets in the common stock and warrants of a security and bid for, purchased, or induced others to purchase the securities at significantly higher prices.

Greene's suspension will begin December 18, 2000, and will conclude at the close of business on January 17, 2001. **(NASD Case #CAF000005)**

**John Edward Harper (CRD #2387102, Registered Representative, St. Petersburg, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Harper failed to respond to NASD requests for information. **(NASD Case #C05000028)**

**Javier Hernandez (CRD #2298668, Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 business days, and required to pay \$3,375, plus interest, in restitution to a public customer. The fine and restitution, plus interest, must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. In addition, proof of payment of the restitution must be provided to NASD Regulation no later than 90 days after the acceptance of this offer.

Without admitting or denying the allegations, Hernandez consented to the described sanctions and to the entry of findings that he used the means and instrumentalities of interstate commerce and engaged in manipulative, deceptive, and fraudulent practices in connection with securities transactions. The findings also stated that Hernandez made material misrepresentations and baseless performance predictions to a public customer, effected unauthorized transactions in the customer's account, and failed to execute the customer's order to sell his securities.

Hernandez' suspension began December 4, 2000, and will conclude at the close of business on January 17, 2001. **(NASD Case #C10970143)**

**Shek Wai Hui (CRD #2024873, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Hui misappropriated funds totaling \$38,977.01 for his own use from insurance policyholders at his

member firm and failed to respond to NASD requests for information. **(NASD Case #C10000078)**

**Evelyn Jackson (CRD #2142586, Registered Representative, Philadelphia, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Jackson failed to respond to NASD requests for information. **(NASD Case #C9A000023)**

**Kenneth Browning Karpf (CRD #1798596, Registered Representative, Spring, Texas)** was barred from association with any NASD member in any capacity and ordered to pay \$23,502.85, plus interest, in restitution to customers. The sanctions were based on findings that Karpf effected securities transactions in the accounts of public customers without their authorization. **(NASD Case #C06000011)**

**John F. Keegan (CRD #2125338, Registered Representative, Duluth, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000, suspended from association with any NASD member in any capacity for six months, and suspended from association with any NASD member in a supervisory capacity for two years. Keegan must also requalify by exam before acting again in the capacities for which he is suspended and is also ordered not to act as a Director of Compliance, or as the sole compliance representative, in a Compliance Department of any NASD member firm for two years. Without admitting or denying the allegations, Keegan consented to the described sanctions and to the entry of findings that he failed to report to the NASD statistical and summary information regarding

customer complaints. The findings also stated that Keegan failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with NASD rules regarding customer complaint reporting.

Keegan's suspensions began December 4, 2000. The suspension in all capacities will conclude on June 3, 2001, and the suspension in a supervisory capacity will conclude at the close of business on December 3, 2002. **(NASD Case #CAF000041)**

**David Michael Lamey (CRD #2127942, Registered Representative, Hempstead, New York)** was permanently barred from association with any NASD member in any capacity. The sanction was based on findings that Lamey failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10000110)**

**Edward Leccese (CRD #2847776, Registered Representative, Boca Raton, Florida)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days for opening an account without authorization and effecting an unauthorized trade, and barred from association with any NASD member in any capacity for failing to appear for an NASD on-the-record interview. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Leccese opened an account for a public customer at his member firm and effected a purchase of securities in the account without the customer's prior knowledge, authorization, or

consent. The findings also stated that Leccese failed to respond to NASD requests to appear for an on-the-record interview.

Leccese's bar became effective October 25, 2000. **(NASD Case #C10000058)**

**Anthony Alfred Maccarone, Jr. (CRD #2382616, Registered Principal, Hoboken, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity, including clerical or ministerial functions. Without admitting or denying the allegations, Maccarone consented to the described sanction and to the entry of findings that he effected unauthorized transactions in the account of a public customer and forged the customer's signature on Letters of Authorization causing the misappropriation of approximately \$123,419 from the customer's account. The findings also stated that Maccarone prepared and provided the customer with monthly account statements that contained false information in order to conceal his misconduct. **(NASD Case #C10000188)**

**Michael Joseph Markowski (CRD #844847, Registered Principal, Miami Beach, Florida)** and **Joseph F. Riccio (CRD #710502, Registered Representative, Palm Harbor, Florida)**. Markowski was censured, fined \$300,000, and barred from association with any NASD member in any capacity, and Riccio was censured, fined \$250,000, and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a July 1998 NAC decision. The sanctions were based on findings that Markowski and Riccio manipulated the market for

securities underwritten by a firm and published non-bona fide bids for those securities. In addition, Markowski failed to comply with a restriction agreement between the firm and the NASD and refused to timely submit to an NASD investigative interview. **(NASD Case #CMS920091)**

**Deborah Faye Morones (CRD #1779396, Registered Principal, Bowling Green, Kentucky)** submitted an Offer of Settlement in which she was suspended from association with any NASD member in any capacity for six weeks, suspended from association with any NASD member in any principal capacity for six months, and ordered to requalify by exam as a general securities principal by passing the Series 24 exam prior to acting again in that capacity. In light of the financial status of Morones, no monetary sanctions have been imposed. Without admitting or denying the allegations, Morones consented to the described sanctions and to the entry of findings that she engaged in the sale of unregistered securities to non-accredited investors in connection with an offering of units in which the offering was not exempt from registration under the Securities Act of 1933, and that she signed the acceptance of subscription for each of the non-accredited investors. The findings also stated that Morones published and distributed a public communications piece in connection with an offering of units that lacked a balanced presentation of the risks of the security, contained unwarranted and misleading statements, omitted material facts, and included exaggerated statements and claims. The NASD also found that Morones failed to enforce customer suitability requirements on offerings of securities and signed the acceptance of subscriptions for offerings for public cus-

tomers who did not provide sufficient information to determine suitability or who failed to meet suitability standards.

Morones' suspensions began December 4, 2000. The suspension in all capacities will conclude at the close of business on January 12, 2001, and the suspension in a principal capacity will conclude on June 3, 2001. **(NASD Case #C05000051)**

**Gary Eugene Morris (CRD #1044382, Registered Representative, Elysburg, Pennsylvania)** submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for two months, and required to disgorge \$1,850 in commissions earned to public customers. The fine and disgorgement must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Morris consented to the described sanctions and to the entry of findings that he participated in the offer and sale of a debt security to public customers outside the normal course or scope of his association with a member firm and failed to provide the firm with prior written notice of the security transaction.

Morris' suspension began November 20, 2000, and will conclude at the close of business on January 19, 2001. **(NASD Case #C9A000026)**

**Greg Alan Reinhold (CRD #2320935, Registered Representative, Portland, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from

association with any NASD member in any capacity. Without admitting or denying the allegations, Reinhold consented to the described sanction and to the entry of findings that he purchased securities for the account of a public customer without the knowledge or consent of the appointed guardian of the customer's estate and in the absence of the guardian's written or oral authorization to exercise discretion in the account. The findings also stated that Reinhold caused \$30,000 to be withdrawn from the account of a public customer, and he used the proceeds for his own use or benefit or for purposes other than the benefit of the customer. Reinhold also failed to respond to questions concerning, among other things, a public customer's account during an on-the-record interview. **(NASD Case #C8A000062)**

**Christopher William Rowland (CRD #2449043, Registered Representative, Richmond, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rowland consented to the described sanction and to the entry of findings that he received \$10,000 in cash to set up an annuity for a public customer. According to the findings, the money was delivered by a third party who acted as an intermediary between Rowland and the customer, and after several unsuccessful attempts to meet the customer through the third party, Rowland purchased the annuity for the customer but forged the customer's signature on several documents relating to the annuity. **(NASD Case #C07000079)**

**Samuel Colin Andrew Sampson (CRD #2881918, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sampson received \$290 from public customers as the initial premium payment for life insurance policies issued by his member firm. Sampson failed to forward these payments to his member firm and, instead, converted the funds to his own use and benefit without the customers' knowledge or consent. Sampson also failed to respond to NASD requests for information. **(NASD Case #C9B000012)**

**Donald Charles Sarin (CRD #411017, Registered Representative, Lenox, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$75,000, of which \$46,000 represents disgorgement of commissions; suspended from association with any NASD member in any capacity for 18 months; and required to requalify by exam as a general securities representative within 180 days from the date he becomes reassociated with a member firm following his suspension. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sarin consented to the described sanctions and to the entry of findings that he executed trades in the account of a deceased customer without the authority to do so and embarked upon aggressive short-term trading in the account. The findings also stated that Sarin engaged in excessive and unsuitable trading in the account and acted in reckless disregard of his client's interests when he disregarded the impact of his customer's

death on the account, the tax ramifications associated with the trading activity, and the risks the account incurred from the excessive and unsuitable trading.

Sarin's suspension began November 20, 2000, and will conclude on May 19, 2002. **(NASD Case #C11000025)**

**David Lee Sherman (CRD #1303348, Registered Representative, Ansonia, Ohio)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sherman consented to the described sanction and to the entry of findings that he engaged in private transactions and failed to provide his member firm with written notice describing the transactions and his role therein and failed to receive written acknowledgment and/or permission from his firm to participate in the transactions. The findings also stated that Sherman failed to respond to NASD requests for documents and information. **(NASD Case #C8B000011)**

**Aleksandr Shvarts (CRD #1718124, Registered Principal, Brooklyn, New York)** submitted an Offer of Settlement in which he was fined \$837,436.80, which includes restitution in the amount of \$837,436.80 representing the full amount of loss to bona fide customers of a member firm for which Shvarts is responsible, and barred from association with any NASD member in any capacity. Restitution, plus interest, must be paid before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Shvarts consented to the described sanctions and to the entry of findings that a member

firm, acting through Shvarts, through means or instrumentalities of interstate commerce or of the mails, intentionally, knowingly, or recklessly:

- employed a device, scheme, contrivance, and/or artifice to defraud and manipulative, deceptive, or other fraudulent device or contrivance;
- made untrue statements of a material fact and/or omitted to state material facts necessary to make the statements, in light of the circumstances under which they were made, not misleading; and
- engaged in acts, practices, or courses of business that operated as a fraud or deceit upon public investors.

The firm, acting through Shvarts, created a "boiler room" that encouraged associated persons of the firm to utilize baseless price and performance predictions and other misleading statements and to exert pressure on purchasers in connection with the solicitations of interest in an initial public offering (IPO). The findings also stated that the firm, acting through Shvarts, delivered to customers IPO prospectuses and other documents that failed to disclose the firm's securities purchasing policy and that the firm's associated persons were offered incentives to sell the securities. The NASD also found that the firm, acting through Shvarts, acted as a market maker in the securities when it was precluded from doing so under SEC Rule 10b-6 so as to prevent the possibility of manipulation and to ensure that the market prices of the newly distributed securities were determined by independent, competitive bidding until after the firm had completed its participation in the distribution. Further, the NASD found that the firm, acting

through Shvarts, executed the purchase of securities in the accounts of public customers when the securities were a "hot issue" and were then sold in the immediate aftermarket for a profit. Moreover, the NASD found that Shvarts failed to testify truthfully during an NASD on-the-record interview and failed to respond to NASD requests for information. **(NASD Case #C1000029)**

**Gene Miron Spektor (CRD #3073674, Registered Representative, Santa Monica, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with a member firm following the suspension. Without admitting or denying the allegations, Spektor consented to the described sanctions and to the entry of findings that he completed a Form U-4 for a member firm, and failed to disclose that he had been charged with and convicted of a felony involving receiving stolen property and charged with a felony involving forgery.

Spektor's suspension began November 20, 2000, and will conclude at the close of business on December 19, 2000. **(NASD Case #C02000018)**

**Robert Henry Stachura (CRD #1670434, Registered Representative, Niles, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to cooperate with the NASD in connection with its prosecution of any other disciplinary actions against other individuals subject to NASD jurisdiction who possibly

participated in the sale of promissory notes to members of the public. Without admitting or denying the allegations, Stachura consented to the described sanctions and to the entry of findings that he participated in private securities transactions by participating in the sale of securities in the form of promissory notes to members of the public, failed to give written notice of his intention to engage in such activities to his member firm, and failed to receive written receipt of such notice from the firm prior to engaging in such activities. **(NASD Case #C8A000063)**

**Paul Salim Tahan (CRD #2494916, Registered Representative, Boca Raton, Florida)** was suspended from association with any NASD member in any capacity for two years and fined \$20,000 for unsuitable omissions; suspended from association with any NASD member in any capacity for one year and fined \$20,000 for unsuitable recommendations; and barred from association with any NASD member in any capacity for failing to respond in any manner to NASD requests for information. The fine must be paid before any application for reentry into the securities industry will be considered.

Tahan's bar became effective October 27, 2000. **(NASD Case #C07000039)**

**Cristian Taverne (CRD #2860792, Registered Representative, Santiago, Chile)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before reassociating with a

member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Taverne consented to the described sanctions and to the entry of findings that he paid \$2,000 to settle a public customer's complaint without informing and obtaining authorization from his member firm.

Taverne's suspension began November 20, 2000, and will conclude at the close of business on December 18, 2000. **(NASD Case #C10000184)**

**Laura Lea Taylor (CRD #2719777, Registered Representative, San Angelo, Texas)** submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Taylor consented to the described sanction and to the entry of findings that she received money orders totaling \$1,153 that represented payment for a life insurance policy purchased by a public customer through Taylor's member firm. The NASD determined that Taylor made both money orders payable to herself, cashed both money orders, and without the authorization, knowledge, or consent of the customer, used the funds for her own use and benefit. **(NASD Case #C06000013)**

**Simon Piers Thurlow (CRD #2697252, Registered Representative, Scarsdale, New York)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five months. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any



statutory disqualification. In light of the financial status of Thurlow, a \$5,000 fine has been imposed. Without admitting or denying the allegations, Thurlow consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss in connection with the sale of shares. The findings also stated that Thurlow engaged in outside business activities without providing prompt written notice to his member firm and receiving written approval from the firm to engage in outside transactions.

Thurlow's suspension began November 20, 2000, and will conclude at the close of business on April 19, 2001. **(NASD Case #C10000045)**

**Matt Laroy Whitley (CRD #1438169, Registered Representative, San Antonio, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Whitley consented to the described sanction and to the entry of findings that, while associated with a member firm, he received checks from public customers and converted \$61,000 in underlying funds to his own use by applying fictitious endorsements on the checks. Whitley also failed to respond to NASD requests for information. **(NASD Case #C06000027)**

**Jonathan Daniel Winston (CRD #2483658, Registered Principal, Great Neck, New York), Douglas Keith Traynor (CRD #600138, Registered Principal, Pound Ridge, New York), Jason Alan Cohen (CRD #2483655, Registered Principal, Albertson, New York), and Robert Noonan Drake (CRD #1213804, Registered Principal, Pawling,**

**New York)** submitted Offers of Settlement in which Winston was fined \$70,000 and suspended from association with any NASD member in any capacity for two years, and Cohen was fined \$55,000 and suspended from association with any NASD member in any principal capacity for two years. Drake was suspended from association with any NASD member in any principal capacity for two years, and Traynor was suspended from association with any NASD member in any principal capacity for 18 months. In light of the financial status of Drake and Traynor, no monetary sanctions were imposed against them. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they permitted an individual whom they knew, or should have known, was subject to statutory disqualification to conduct activities at, and to be associated with, a member firm without approval from the NASD or the SEC. The findings also stated that Drake failed to timely and accurately report customer complaints, consent agreements with the States of Michigan and Indiana, and a reprimand by the State of Georgia to the NASD and failed to comply with the NASD's Firm Element of the Continuing Education Requirement for the firm's covered personnel. The NASD also found that Traynor failed to supervise Drake in regard to reporting customer complaints and reportable events to the NASD and to achieving compliance with NASD rules with respect to the Firm Element of the Continuing Education Requirement. Traynor also failed to timely and accurately report statistical and summary information regarding customer complaints to the NASD. In addition, the NASD found that

Cohen failed to respond adequately to NASD requests for information, and Winston failed to respond to NASD requests for information.

Winston, Cohen, and Drake's suspensions began December 4, 2000, and will conclude at the close of business on December 3, 2002. Traynor's suspension began December 4, 2000, and will conclude at the close of business on June 3, 2002. **(NASD Cases #C10990212 and C10000031)**

**Ervin Robert Witherspoon (CRD #1603697, Registered Principal, Hempstead, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Witherspoon consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without providing prior written notice to the member firm with which he was then associated.

Witherspoon's suspension began November 20, 2000, and will conclude at the close of business on November 19, 2001. **(NASD Case #C10000119)**

**Edmund Francis Zajack (CRD #1564561, Registered Principal, Debary, Florida)** submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Zajack consented to the described sanctions and to the

entry of findings that he failed to timely respond to NASD requests for information.

Zajack's suspension began December 4, 2000, and will conclude at the close of business on March 3, 2001. **(NASD Case #C07000044)**

### Individual Fined

**Donald Allen Dunworth (CRD #867655, Registered Principal, Upper Montclair, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$50,000, and required to requalify as a general securities principal. Without admitting or denying the allegations, Dunworth consented to the described sanctions and to the entry of findings that, as the head trader on the OTC trading desk at a member firm, he failed to reasonably and properly supervise the activities of traders on the OTC trading desk so as to detect and prevent violations of the limit order display rule. **(NASD Case #CMS000219)**

### 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 National Adjudicatory Council (NAC) as of November 10, 2000. The findings and sanctions imposed in the decisions 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*.

**Christopher Michael Block (CRD #2073057, Registered Principal, Houston, Texas)** and **Jeffrey**

**Schwartz Burke (CRD #2007369, Registered Principal, Houston, Texas)**. Block was fined \$50,000 and barred from association with any NASD member in any principal or supervisory capacity. Burke was fined \$15,000, suspended from association with any NASD member in any principal or supervisory capacity for 30 days, and ordered to requalify by exam for his Series 24 license. The sanctions were based on findings that Block knew of his firm's net capital deficiencies and failed to ensure the maintenance of proper books and records for his member firm and allowed his firm to conduct a securities business while its net capital was below the required minimum. The findings also stated that Block filed inaccurate FOCUS Reports. The NASD also found that Block induced the purchase of stock by providing false and misleading financial information and was responsible for the issuance of a private placement memorandum that failed to disclose the firm's true net capital. The NASD found that Burke allowed the firm to operate while in net capital violation and failed to supervise an individual properly, with respect to the firm's books and records.

Burke has appealed this action to the NAC and the action has been called for review for both Block and Burke by the NAC. The sanctions are not in effect pending consideration of the appeal and call for review. **(NASD Case #C05990026)**

**James Burling Chase (CRD #368743, Registered Representative, Milwaukee, Wisconsin)** was fined \$25,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by exam by taking the Series 7 exam within six months or

cease operating in that capacity until he so requalifies. The sanctions were based on findings that Chase recommended and effected transactions in a public customer's account without a reasonable basis for believing that such recommendations were suitable for the customer due to the nature of the securities, the concentration of the securities in the account, and the customer's investment objectives, financial situation, and needs.

Chase has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C8A990081)**

**Joseph Gaetano Gerace (CRD #1060223, Registered Representative, St. John's Antigua, West Indies)** was fined \$10,000 and suspended from association with any NASD member in a securities principal capacity for one year. The sanctions were based on findings that in connection with a contingency offering, Gerace permitted his firm to fail to establish an escrow account to protect investors' funds received pursuant to the offering. Gerace also failed to sell the minimum amount of securities to bona fide public investors prior to delivering the investors' funds to issuers of the offering.

Gerace has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C02990022)**

### 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.

**Robert Scott Cash (CRD #2063885, Registered Representative, St. Petersburg Beach, Florida)** was named as a respondent in an NASD complaint alleging that he recommended a public customer purchase a single premium deferred annuity outside of the scope of his employment with his member firm, and failed to provide prior written notice to, or receive written approval from, his member firm before such a recommendation. The complaint further alleges that Cash recommended to a public customer the purchase of securities and engaged in a series of transactions in the customer's account that were unsuitable for the customer in light of the customer's investment experience, objectives, and risk tolerance. **(NASD Case #C07000075)**

**Stephen Roy Connors, Sr. (CRD #726642, Registered Representative, Castaic, California)** was named as a respondent in an NASD complaint alleging that he informed a public customer that he would guarantee the customer against any loss arising from an investment in a stock. **(NASD Case #C02000062)**

**Claude Anthony Eatman, Jr. (CRD #1899070, Registered Principal, Jersey City, New Jersey)** was named as a respondent in an NASD complaint

alleging that he executed trades in the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization by the customer to exercise discretion in the account. The complaint also alleges that Eatman submitted change of address forms to his member firm in regard to the accounts of public customers, without their knowledge or consent, so that the firm's records reflected fictitious addresses. In addition, the complaint alleges that Eatman opened the account of a public customer and used a fictitious address without the customer's authorization or consent. **(NASD Case #C10000185)**

**James Gaberkorn a.k.a. Gennady Gaberkorn (CRD #1718031, Registered Representative, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that he executed transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Gaberkorn engaged in private securities transactions without providing prior written notice to his member firm. **(NASD Case #C10000187)**

**Christopher Daniel Geis (CRD #2177608, Registered Representative, Wood Ridge, New Jersey)** was named as a respondent in an NASD complaint alleging that he recommended to a public customer that she invest in tax-free investments with a mutual fund and, based on this recommendation, received checks totaling \$179,000. The complaint further alleges that Geis deposited the checks in an account in which he had signatory authority and converted the funds to his own use

and benefit, without the customer's knowledge or consent, and sent the customer confirmation letters that falsely stated that the funds had been invested. In addition, the complaint alleges that Geis failed to respond to NASD requests for information. **(NASD Case #C9B000030)**

**Magellan Securities Inc. (CRD #15986, Harper Woods, Michigan)** and **Terry M. Laymon (CRD #304342, Registered Principal, Grosse Pointe Woods, Michigan)** were named as respondents in an NASD complaint alleging that they prepared inaccurate blotters, ledgers, trial balances and net capital computations, and filed inaccurate FOCUS Part IIA Reports with the NASD. The complaint also alleges that the firm failed to comply with the terms of a restrictive agreement when it accepted customer checks for the purchase of limited partnerships in the secondary market, and deposited the checks into its general operation bank account. Furthermore, the NASD alleges that the firm received and held customer funds in its operating bank account, received and held customer funds in an account while failing to open and use a special reserve bank account for the exclusive benefit of customers, failed to compute its special reserve, and commingled customer funds with the firm's operating funds. Moreover, the complaint alleges that the firm improperly used funds prior to purchasing interests in limited partnerships, failed to return customer funds, deposited funds directly in the firm's bank checking account, and used the funds for operating expenses. The complaint also alleges that the firm purchased interest in partnerships for other customers and transferred excessive amounts

of funds considered commissions to its operating account prior to returning the funds to customers. **(NASD Case #C8A000060)**

**Anthony Armando Morelli (CRD #2561728, Registered Representative, Mineola, New York)** was named as a respondent in an NASD complaint alleging that he executed transactions in the account of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in their account. **(NASD Case #C10000199)**

**Royal Hutton Securities Corp. (CRD #14489, New York, New York)** was named as a respondent in an NASD complaint alleging that the firm, directly and/or indirectly, singly and in concert, by use of the means or instrumentalities of interstate commerce, or of the mails, and in connection with the purchase and sale of securities, knowingly or recklessly employed a device, scheme, or artifice to defraud; made untrue statements of material fact and/or omitted material facts necessary to make statements, in light of the circumstances, not misleading; and/or engaged in acts, practices, or courses of business that operated as, or would operate as, a fraud or deceit upon persons. The complaint also alleges that the firm, through employees, owners, and officers, made material misrepresentations and withheld material facts from public customers in connection with the sale of securities including the nature of the investment risk, the amount of commissions the broker would receive in connection with the transaction, and the limitations on the circumstances under which the securities could be sold. The complaint further alleges that the firm effected transactions in or

induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices and contrivances and failed to observe high standards of commercial honor and just and equitable principles of trade in connection with the conduct of its business. **(NASD Case #CAF000042)**

**Stephen Morris Wilkinson (CRD #718506, Registered Representative, Pace, Florida)** was named as a respondent in an NASD complaint alleging that he received checks totaling \$23,345.31 from a public customer intended for investment in mutual funds, recorded his own name as payee on the checks, endorsed the checks, and deposited the funds in his own bank account. The complaint also alleges that Wilkinson failed to respond to NASD requests for information. **(NASD Case #C07000074)**

#### **Firms Canceled**

The following firms were canceled from membership in the NASD for failure to comply with formal written requests to submit documents and 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.)

**Bell Investment Group, Inc.**, New York, New York (November 6, 2000)

**J.P. Gibbons & Co., Inc.**, New York, New York (July 31, 2000)

**Lloyd G. Wilson Securities, Inc.**, Mount Hermon, California (November 6, 2000)

#### **Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With Arbitration Settlement Agreements (The date the suspension began is listed after the entry.)**

**Lucas, Timothy Doyle**, Lutz, Florida (November 7, 2000)

**VanCleave, Charles L.**, Seminole, Florida (November 7, 2000)

#### **Individuals Suspended Pursuant To NASD Rule Series 9540 For Failure To Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry.)**

**Crenshaw, Michael**, Brooklyn, New York (November 9, 2000)

**Hawley, Matthew Christopher**, Sleepy Hollow, New York (November 9, 2000)

**Mandrell, Frank Edward**, West Palm Beach, Florida (August 7, 2000)

**Taylor, Phuong Binh**, Seattle, Washington (November 10, 2000)

**Thomas, Christopher Lynn**, Pembroke Pines, Florida (August 7, 2000)

#### **NASD Regulation Charges Dean Witter Reynolds Inc. With Securities Fraud And Other Violations Related To The Marketing And Sales Of Term Trusts; Two Individuals Also Charged**

NASD Regulation announced that it

has issued a complaint against Dean Witter Reynolds Inc. for violations relating to its marketing and sale of proprietary bond funds known as Term Trusts. John B. Kemp and Lawrence J. Solari, Jr., executives with the firm, were also charged with violations relating to the marketing of the Term Trusts.

NASD Regulation's complaint alleges that Dean Witter sold over \$2 billion of TCW/DW Term Trusts to over 100,000 customer accounts through the use of a firm-wide internal marketing campaign that misrepresented the Trusts as safe, secure, low-risk investments. The complaint alleges that Dean Witter targeted certificate of deposit holders and other conservative investors, many of whom were elderly with moderate, fixed incomes, for sales of these securities. The marketing campaign failed to include critical information about the significant risks and potential volatility of the Term Trusts. In fact, the Trusts' portfolios contained a large percentage of risky and volatile mortgage derivative securities, known as inverse floaters, aggressively employed a risky borrowing strategy, were highly interest rate sensitive, and were dependent on a low interest rate environment to achieve their projected returns.

After interest rates rose in 1994, the Term Trusts lost over 30 percent in net asset value (a drop of over \$500 million) and were forced to reduce their dividends by nearly a third. The market prices of the Trusts also declined significantly, losing over \$600 million in market value. Nearly 30,000 customers sold at least some portion of their Term Trusts, suffering realized losses of approximately \$65 million. The complaint alleges that Dean Witter received over \$119 million in underwriting fees and sales

concessions from the sale of the Term Trusts, as well as approximately \$7 million annually in management fees.

Dean Witter conducted an extensive internal marketing campaign to encourage its brokers to sell the Term Trusts. The campaign presented the Term Trusts to brokers as a simple and safe investment, as an investment that was suitable for virtually all investors, and as a safe, high-quality alternative to CDs. The campaign failed to mention, or obscured, the significant risks associated with the Term Trusts.

Presentations made to branch offices at Dean Witter for one of the Term Trust offerings focused sharply on CD holders and money market investors and told brokers "CD investors are looking for safety and competitive yields – features available in Term Trust 2000." Internal newsletters provided to all brokers at Dean Witter also made numerous misleading claims about the Term Trusts. For instance, one newsletter stated: "What makes this closed-end investment so attractive? Three key features: Quality, safety and yield." Another stated:

*The timing couldn't be better!*  
Approximately \$110 billion in Certificates of Deposits are rolling over in April. That's a huge potential market for TCW/DW Term Trust 2003. Certificates of Deposit have traditionally been the choice of investors seeking safety and an attractive yield. . . . really spell out the exciting features of the TCW/DW Term Trust 2003 and you'll have yourself more sales than you can calculate the commissions on.  
***Everything you want from a CD and more!***

The internal newsletters also suggested misleading sales presentations. One suggested using a "simple" comparison of the Term Trusts with CDs, omitting any discussion of the differences between the Term Trusts and CDs or of the additional risks associated with the Term Trusts. The proposed sales presentation suggested that the Term Trusts were suitable for retirees for whom "safety" was a "major concern." Another newsletter suggested a sales approach for investors who "don't want the volatility associated with interest rate moves." Dean Witter's marketing effort for the Term Trusts also included high-pressure sales efforts at the regional and branch levels, including the use of sales contests and sales quotas. Dean Witter brokers also received higher commissions for the sale of the proprietary Term Trusts than for non-proprietary products.

The complaint also charges that Dean Witter sold a significant percentage of the Trusts to elderly customers seeking income as their primary investment objective. Over \$500 million of the Trusts were sold to investors 70 years of age and older.

The complaint charges Dean Witter with violations of the NASD's antifraud, suitability, and supervisory rules, and with violations of its rule requiring that members adhere to high standards of commercial honor and just and equitable principles of trade.

The Term Trusts were sold by Dean Witter in three separate offerings from October 1992 to November 1993.

Kemp, President of Dean Witter Distributors and Director of Sales for Dean Witter InterCapital, was charged with overseeing and

approving roadshow presentations for the Term Trusts that misleadingly portrayed the Trusts as safe, low-risk investments that should be sold to investors looking for certificate of deposit equivalents.

Solari, the former Regional Director for Dean Witter's Northeast Region, a region containing approximately 45 branches and 1,000 salesmen, was charged with sending sales memoranda to numerous Dean Witter branch managers that encouraged improper sales of the Term Trusts through misleading sales presentations.

Both Kemp and Solari were charged with violations of the NASD rule requiring that members adhere to high standards of commercial honor and just and equitable principles of trade.

NASD Regulation wishes to acknowledge the assistance provided in this matter by the New York State Attorney General's Office.

### **NASD Regulation Fines Merrill Lynch, Pierce, Fenner & Smith, Inc. \$97,000 For Limit Order, Best Execution, And Other Violations**

NASD Regulation announced that it has censured and fined Merrill Lynch, Pierce, Fenner & Smith, Inc., \$97,000 for rule violations that were discovered by NASD Regulation's Market Regulation Department through a combination of its automated surveillance systems and the onsite examination program. NASD Regulation determined that, from November 1997 to December 1999, Merrill Lynch on occasion violated the SEC limit order display rule, as well as NASD rules pertaining to best

execution, short sales, locked and crossed markets, and trade reporting. NASD Regulation also found that Merrill Lynch failed to have a reasonably designed supervisory system in place with respect to the correct reporting of short sales to ACT and in 1997, with respect to best execution, the SEC order handling rules, and ACT compliance. In settling this matter, Merrill Lynch neither admitted nor denied NASD Regulation's findings.

In its review, NASD Regulation found that Merrill Lynch failed to comply with the SEC limit order display rule in connection with 41 customer limit orders. Customers place limit orders to trade securities at a specific price. The SEC limit order display rule requires the immediate display of customer limit order prices, if they improve on the market maker's quotation. The Market Regulation Department also found that between 1997 and 1999 Merrill Lynch failed to provide best execution for 70 customer orders, and under NASD rules for best execution, members must execute customer orders at prices that are as favorable as possible under prevailing market conditions.

In another area, the NASD Regulation probe found that Merrill Lynch failed to comply with the NASD's rule for locked and crossed markets. A locked market occurs when the inside bid price equals the inside offer price in the same security, and a crossed market occurs when the inside bid is greater than the inside offer price of a security. NASD rules require that, before entering a quote during the trading day that will lock or cross the market in a Nasdaq security, a market maker must make reasonable efforts to avoid such a locked or crossed market by executing transactions with all market makers whose quotations

would be locked or crossed. According to its review, the Market Regulation Department found that, in 73 instances, Merrill Lynch did not make reasonable efforts to avoid locked and crossed markets.

The NASD Regulation Market Regulation Department also determined that Merrill Lynch engaged in a pattern of late transaction reporting into the ACT system without exceptional circumstances. Further, the NASD Regulation review found that the firm's supervisory system to ensure the correct reporting of short sales to ACT was inadequate.

In settling the matter, NASD Regulation took note that Merrill Lynch has taken steps to develop and implement highly automated systems to address best execution and short sale issues.

### **NASD Regulation Sanctions Asensio & Company; Manuel Asensio, For Short Selling, Trade Reporting, And Internet Advertising Violations**

NASD Regulation announced a settlement in which Asensio & Company, Inc. and its President, Chairman, Chief Executive Officer, and Compliance Officer, Manuel P. Asensio, were censured and fined \$75,000 for short selling, trade reporting, and Internet advertising violations.

NASD Regulation found that, from August 1, 1998, through July 31, 1999, Asensio & Company failed to record affirmative determinations in connection with 306 short sale transactions for itself or its customers. In 117 of those transactions, the firm failed to make affirmative determinations at all.

A short sale occurs when a security, not owned by the seller, is

sold in anticipation of a decrease in the stock's price. NASD rules require that when a member effects a short sale for its own account or accepts a short sale for a customer, the member must make an "affirmative determination," in writing, that it can borrow the security or will be able to provide it for delivery. At a later time, the seller purchases the stock to complete the transaction.

NASD Regulation also found that, from August 1, 1998, through July 31, 1999, Asensio & Company reported 331 sale transactions to ACT without indicating that they were short sales, as required.

In addition, NASD Regulation found that Asensio & Company's Web Site violated NASD's advertising rules. Seven research reports on the firm's Web Site, which recommended short selling, failed to disclose the associated risks. Also, certain graphs in the Selected Performances section of the firm's Web Site failed to provide a sound basis for evaluation, omitted material facts, or made misleading statements or claims. The Selected Performances section contained graphs showing the price performance over time of different securities. Each graph contained a downward facing arrow which appeared to show the date and the corresponding price when Asensio & Company issued its initial recommendation regarding the security. In addition, next to each graph were several sentences which appeared to be taken from Asensio & Company's research report on the company.

NASD Regulation found that:

- The Selected Performances section contained one graph of a security for which Asensio & Company did not issue a report

and several quotations which did not come from actual recommendations. The graph purported to show that the firm recommended buying a security on a specific date. Next to the graph were two sentences explaining why the security's price would likely rise. In fact, Asensio & Company never issued a written recommendation for that security. With respect to three other securities, the firm's research reports did not contain the statements which appeared next to their respective graphs.

- On several of the graphs, the arrows did not point to correct prices or dates. Six arrows did not point to the actual dates when the firm made its initial recommendations. For example, on one graph, the arrow pointed to approximately January 31, 1997, when the closing price was \$19.50. Asensio & Company, however, issued its initial "very strong sell recommendation" on that company on October 7, 1996, when the closing price was \$15.50. In addition, on six of the graphs containing strong sell or short sell recommendations, the arrow pointed to a price that was higher than the price of the security on the date of Asensio & Company's actual recommendation.
- On two of the graphs, after the time period illustrated on the charts, the price of the securities reversed direction.
- NASD rules require that members must cite all relevant past recommendations. Nonetheless, while the Selected Performances section contained graphs covering the time period from January 1994 to August 1998, it excluded one sell and four buy recommendations made by Asensio & Com-

pany during that same time period. Those five recommendations were not included anywhere on the Web Site.

NASD Regulation further found that, through Manuel Asensio's Internet account, associated persons of Asensio & Company posted at least 14 bulletin board messages which did not disclose any connection with the firm but, instead, used unrelated screen names. One posting stated, in part: "Asensio & Company's research is precise. ... I have no affiliation with, and have no interest in Asensio or [the issuer]." Another posting was entitled: "Asensio stands for the truth." Communications posted by members or their associated persons on electronic bulletin boards or message boards are considered "advertisements" under NASD rules and, as such, they are subject to approval, recordkeeping, filing, and content requirements.

NASD Regulation also found that Asensio & Company failed to file, with NASD Regulation's Advertising Regulation Department, 43 research reports regarding nine issuers and a brochure regarding the firm, all of which were contained on the Web Site. In addition, the firm failed to file at least 71 messages which were posted on bulletin boards run by America Online and The Motley Fool.

Asensio & Company and Manuel Asensio also failed to establish, maintain, and enforce procedures reasonably designed to achieve compliance with the advertising rules, the rules relating to short selling, and the rules relating to trade reporting.

In settling this matter, Manuel Asensio and Asensio & Company neither admitted nor denied NASD Regulation's findings.

In addition to a fine and a censure, Manuel Asensio and Asensio & Company will remove all advertisements that are the subject of the settlement from the firm's Internet Web Site and any other Web Sites under their control. Before those advertisements may be used in the future, they must be filed with the Advertising Regulation Department of NASD Regulation. Manuel Asensio must requalify by examination as a registered General Securities Principal (Series 24). The firm also agreed to retain an outside consultant to review and make recommendations concerning the firm's current policies and procedures as they relate to the settlement.

This case was brought by NASD Regulation's Enforcement Department with assistance from NASD Regulation's Market Regulation and Advertising/Investment Companies Regulation Departments.

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# For Your Information

## Filing Due Dates For Web-Based FOCUS, Annual Audits, Customer Complaint Information, And Short Interest Reporting

NASD Regulation, Inc. would like to remind member firms of their obligation to file the appropriate FOCUS reports, Annual Audits, Customer Complaint information, and Short Interest Reporting by their due dates. The following schedule outlines due dates for 2001. Questions regarding the information to be filed can be directed to the appropriate District Office. Business questions as to how to file the FOCUS report, resetting passwords & technical questions concerning system requirements, file uploads, submission problems for Web-Based FOCUS and Customer Complaints can all be directed to (800) 321-NASD. Business questions regarding the 2001 Short Interest Reporting deadlines should be directed to Yvonne Huber at (240) 386-5034 or Jocelyn Rena at (240) 386-5091.

### **2001 FOCUS Due Dates**

<b>Annual Schedule I for 2000 Year End</b>	<b>Due Date</b>
2000 FOCUS Schedule I	January 25, 2001

<b>Annual Schedule I for 2001 Year End</b>	<b>Due Date</b>
2001 FOCUS Schedule I	January 25, 2002

<b>Quarterly FOCUS Part II/IIA for 2000</b>	<b>Due Date</b>
<b>Period Ending</b> December 31, 2000	January 25, 2001

### **Monthly And Fifth FOCUS II/IIA Filings For 2001**

A Fifth FOCUS report is an additional report that is due from a member whose fiscal year end is a date other than the calendar quarter.

<b>Period Ending</b>	<b>Due Date</b>
January 31, 2001	February 26, 2001
February 28, 2001	March 23, 2001
April 30, 2001	May 23, 2001
May 31, 2001	June 25, 2001
July 31, 2001	August 23, 2001
August 31, 2001	September 26, 2001
October 31, 2001	November 26, 2001
November 30, 2001	December 26, 2001

### **Quarterly FOCUS Part II/IIA Filings For 2001**

<b>Quarter Ending</b>	<b>Due Date</b>
March 31, 2001	April 25, 2001
June 30, 2001	July 25, 2001
September 30, 2001	October 23, 2001
December 31, 2001	January 25, 2002

### 2001 Annual Audit Filings Due Dates

<u>Period End</u>	<u>Due Date</u>
January 31, 2001	April 1, 2001
February 28, 2001	April 29, 2001
March 31, 2001	May 30, 2001
April 30, 2001	June 29, 2001
May 31, 2001	July 30, 2001
June 30, 2001	August 29, 2001
July 31, 2001	September 29, 2001
August 31, 2001	October 30, 2001
September 30, 2001	November 29, 2001
October 31, 2001	December 30, 2001
November 30, 2001	January 29, 2002
December 31, 2001	March 1, 2002

### 2001 Customer Complaint Due Dates

January 16, 2001 ( <i>January 15th is Martin Luther King Day</i> )
April 16, 2001
July 16, 2001
October 15, 2001

### Market Regulation Department—2001 Short Interest Reporting Deadlines

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Exchange-Listed Short Interest Due*</u>	<u>Nasdaq Short Interest Due*</u>
Tues. January 9	Fri. January 12	Wed. January 17 1:00 p.m.	Wed. January 17 6:00 p.m.
Mon. February 12	Thurs. February 15	Tues. February 20 1:00 p.m.	Tues. February 20 6:00 p.m.
Mon. March 12	Thurs. March 15	Mon. March 19 1:00 p.m.	Mon. March 19 6:00 p.m.
Mon. April 9	Thurs. April 12	Tues. April 17 1:00 p.m.	Tues. April 17 6:00 p.m.
Thurs. May 10	Tues. May 15	Thurs. May 17 1:00 p.m.	Thurs. May 17 6:00 p.m.
Tues. June 12	Fri. June 15	Tues. June 19 1:00 p.m.	Tues. June 19 6:00 p.m.
Tues. July 10	Fri. July 13	Tues. July 17 1:00 p.m.	Tues. July 17 6:00 p.m.
Fri. August 10	Wed. August 15	Fri. August 17 1:00 p.m.	Fri. August 17 6:00 p.m.
Tues. September 11	Fri. September 14	Tues. September 18 1:00 p.m.	Tues. September 18 6:00 p.m.
Wed. October 10	Mon. October 15	Wed. October 17 1:00 p.m.	Wed. October 17 6:00 p.m.
Mon. November 12	Thurs. November 15	Mon. November 19 1:00 p.m.	Mon. November 19 6:00 p.m.
Tues. December 11	Fri. December 14	Tues. December 18 1:00 p.m.	Tues. December 18 6:00 p.m.

\*Eastern Standard Time

### Correction To Notice to Members 00-73

On page 571, the second sentence under the subhead *Updated Financial Information* should read: "The updated information shall be prepared as of a date that is within **45 days** before the interview." The online version of this Notice has been corrected.

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**ACTION REQUESTED**

**NASD By-Law Amendments**

Mail Vote—NASD Solicits Vote On Amendments To The NASD By-Laws On Selected Corporate Governance Issues; **Last Voting Date: January 22, 2001**

**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
- Senior Management

**KEY TOPICS**

- Corporate Governance
- NASD By-Laws

**Executive Summary**

The National Association of Securities Dealers, Inc. (NASD® or Association) invites members to vote to approve certain amendments to the NASD By-Laws. The amendments address several corporate governance issues: the treatment of staff Governors for purposes of Industry/Non-Industry balancing; the role of the National Nominating Committee (NNC) in contested elections; the petition process by which individuals and slates can be included in the election process; and the industry classifications that must be represented on the Board. Additionally, the amendments reflect the new NASD corporate structure, including the impending separation of The Nasdaq Stock Market, Inc. (Nasdaq®) and NASD and the creation of NASD Dispute Resolution, Inc., a wholly owned subsidiary. The amendments also incorporate certain technical changes. Attachment A is a summary of the proposed changes. Attachment B is the text of the amendments.

It is anticipated that these By-Laws, as amended, will be effective for elections preceding the 2001 annual NASD membership meeting.

The last voting date is January 22, 2001.

**Questions/Further Information**

Questions concerning this *Notice* may be directed to T. Grant Callery, Senior Vice President and General Counsel, Office of General Counsel, NASD, at (202) 728-8285.

**Background**

The proposed amendments have several purposes and are described in detail as follows:

**Composition, Classification, And Qualifications Of The Board Of Governors**

The NASD Board of Governors has both Industry and Non-Industry members and is required by the By-Laws to have a majority of Non-Industry Governors. In 1998, the NASD effected a substantial corporate restructuring which included the acquisition of the American Stock Exchange, LLC (Amex®). As part of this restructuring, the NASD moved to an overlapping Board structure whereby all members of the NASD Regulation, Inc. (NASDR) and Nasdaq Boards became members of the NASD Board. As a result of the 1998 restructuring, the number of Governors serving on the Board by virtue of their status as staff increased to five (the NASD Chief Executive Officer, the NASD Chief Operating Officer, the Presidents of NASDR and Nasdaq and the Chairman of Amex).

In accordance with current NASD By-Laws, these five Governors have counted as Industry Governors for balancing purposes. With this current composition and classification of staff Governors, the only realistic manner for NASD to satisfy its obligation to ensure fair representation of all relevant constituencies has been to increase the number of Industry seats on a given Board, and, in order to maintain the required absolute majority of Non-Industry/Public seats on the Board, increase in the number

of Non-Industry seats as well. These increases have made it extremely difficult for the NASD Board to be small enough to function with optimum efficiency while still satisfying NASD's obligation to ensure fair representation of the relevant constituencies.

To improve the efficiency of the Board while maintaining fair representation of the relevant constituents, the Board has approved an amendment to reclassify the NASD CEO and President of NASD Regulation Governor positions as neutral Governors—that is, neither Industry nor Non-Industry Governors. The reclassification of these Governor positions as neutral is consistent with the neutrality classification other self-regulatory organizations assign to their Board staff members. Additionally, since these neutral Governors will no longer be treated as Industry Governors, the two Industry seats the staff occupied will now be available to Industry candidates elected by the NASD membership.

The approved amendments also reduce the number of staff Governors from the current five to a maximum of four (the NASD CEO, the Presidents of NASD Regulation and Amex, and up to one additional NASD officer appointed by the Board in its discretion should the Board deem it appropriate to name a second staff member). In recognition of the separation of Nasdaq from NASD, the President of Nasdaq will no longer be included on the Board.

The approved amendments also reduce the overall number of Governors to no fewer than 17 nor more than 27. This amendment will result in a smaller, more efficient Board of Governors.

#### ***National Nominating Committee - Participation In Contested Elections***

The amendments will allow limited National Nominating Committee (NNC) participation in contested elections. Under the current By-Laws, the NASD, NASD staff, the NNC, and other corporate committees are prohibited from taking a position in contested elections. As a result of this prohibition, in contested elections, the NNC has been unable to explain the reasons an NNC-nominated candidate is worthy of support, and has been unable to respond to statements made by other candidates or parties about the NNC nominees. The NNC's current inability to support its candidates in contested elections is a deterrent to qualified individuals accepting nominations.

To remedy this problem, the Board approved an amendment allowing the NNC to provide limited support to NNC nominated candidates. This proposal to limit NNC's support to "responsiveness" has a goal of allowing the NNC to support its candidates but not to unilaterally wage a significant electoral campaign on behalf of those candidates. Specifically, the amendment will allow the NNC to distribute two mailings to NASD voting members in support of its candidates. The amendment will also allow the NNC to respond in kind to vote solicitations and additional mailings by other candidates.

The absolute prohibition on participation in the electoral process by the NASD Board, the staff, and other committees remains in place.

#### ***National Nominating Committee - Nominees Proposed By Nasdaq And NASDR***

With the departure of Nasdaq as a wholly owned NASD subsidiary, there is no longer a need for NASD Regulation and Nasdaq to propose two candidates each to the NASD Board for appointment to the NNC. The requirement was originally put in place to ensure limited and balanced influence by the regulatory and market subsidiaries. With the departure of a Nasdaq representative from the NASD Board, the Board approved an amendment to eliminate this provision.

#### ***Access To The Ballot By Petition***

The amendments revise the NASD By-Laws with regard to inclusion on the ballot by petition. Under the current process, Industry candidates seeking nomination by petition can "coattail" other Industry and/or Non-Industry candidates in the same petition-gathering process. This process essentially allows the creation of a "slate" through the use of a single set of petitions signed by three percent of the membership. The Board approved an amendment to allow the nomination by petition of an individual, signed by 3 percent of NASD's voting members, and to permit each member to endorse only one such nominee. The amendments do specifically recognize the validity of slate petitions, but require that the slate be endorsed by 10 percent of NASD's voting members. The Board's adoption of separate thresholds for petition candidates and slate petitions is reasonable given the size and diversity of NASD's membership and is consistent with the practice of other industry organizations, namely the New York Stock Exchange.

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### ***Industry Segment Representation***

To more accurately represent the full range of relevant industry constituents, the Board approved a proposal to amend the NASD By-Laws and require representation by three additional industry segments: a national retail firm, a regional retail or independent financial planning member firm, and a clearing firm. These segments are in addition to required representation by an investment company, an insurance affiliate, and a small firm. The proposed By-Law amendments require that the Board periodically adopt resolutions establishing the criteria for national retail and regional retail or independent financial planning member representatives. By allowing the Board to establish the

criteria for these categories through Board Resolutions, the Board will be better able to respond to changes in the industry structure and demographics.

### ***Changes To Board Or Committee Composition***

In order to ensure balanced representation, the Board approved a proposal to clarify that, when the NASD Regulation Board consists of nine Directors, at least two must be Public Directors. The Board also approved a proposal to provide that any committee appointed by the Board, which may exercise all powers and authority of the Board in the management of the business affairs of the NASD, be balanced.

### ***References To NASD Dispute Resolution And Nasdaq***

To set forth the new NASD corporate structure and the change in the NASD-Nasdaq relationship, the Board approved amendments that make several technical changes reflecting the current corporate structure. The changes primarily consist of adding references to the newly formed NASD Dispute Resolution subsidiary, and deleting references to Nasdaq.

The Board asks that you vote in favor of these amendments.

## **ATTACHMENT A**

### **Amendments To The NASD By-Laws**

Substantive changes to the NASD By-Laws are set forth below. Key changes related to the corporate governance of NASD and the new corporate structure are found in Article I; Article IV, Section 1; Article V, Section 2; Article VI, Section 1; Article VII, Sections 1, 3-5, 7, 9-11, 13-14; Article VIII, Section 6; Article IX, Sections 1 and 4; Article X, Section 1; Article XIII, Section 1; and Article XV, Section 4. Stylistic changes and other minor, non-substantive changes are not described.

#### **Article I. Definitions**

New definitions have been added, and the terms Industry, Non-Industry and Public "Director" "Governor" and "committee member" have been amended, to reflect the new corporate structure, namely, the inclusion of NASD Dispute Resolution, Inc., within the family of companies and the changed NASD-Nasdaq relationship.

#### **Article IV. Membership**

##### **Application for Membership**

Section 1 has been amended to reflect the new corporate structure, namely, the inclusion of NASD Dispute Resolution within the family of companies and the changed NASD-Nasdaq relationship.

#### **Article V. Registered Representatives and Associated Persons**

##### **Application for Registration**

Section 2 has been amended to reflect the new corporate structure, namely, the inclusion of NASD

Dispute Resolution within the family of companies and the changed NASD-Nasdaq relationship.

#### **Article VI. Dues, Assessments, and Other Charges**

##### **Power of the NASD to Fix and Levy Assessments**

Section 1 has been amended to reflect the new corporate structure, namely, the inclusion of NASD Dispute Resolution within the family of companies and the changed NASD-Nasdaq relationship.

#### **Article VII. Board of Governors**

##### **Powers and Authority of Board**

Section 1 has been amended to reflect the new corporate structure, namely, the inclusion of NASD Dispute Resolution within the family of companies and the changed NASD-Nasdaq relationship.

##### **Authority to Take Action Under Emergency or Extraordinary Market Conditions**

Section 3 has been amended to reflect the new corporate structure, namely, the changed NASD-Nasdaq relationship.

##### **Composition and Qualifications of the Board**

Section 4 has been amended to adjust the overall Board composition to no fewer than 17 nor more than 27 Governors, including no more than four staff Governors. This section has also been amended to require representation by three additional industry segments: a national retail firm, a regional retail or independent financial planning member firm and a clearing services firm. Finally, this section has been amended to

allow the Board, by resolution, to specify the criteria for representatives of national retail and regional retail or independent financial planning firms.

##### **Term of Office of Governors**

Section 5 has been amended to reflect the changed NASD-Nasdaq relationship and to recognize the Board's discretion in limiting the term of a second NASD officer serving as a Governor.

##### **Filling of Vacancies**

Section 7 has been amended by clarifying that the provision applies to elected Governor positions.

##### **The National Nominating Committee**

Section 9 has been amended to specify that the NNC may support Governors in contested elections. This section has also been amended to reflect the new corporate structure and to eliminate the requirement that NASDR and Nasdaq propose two candidates each to the NASD Board for appointment to the NNC.

##### **Procedure for Nomination of Governors**

Section 10 has been amended to allow nomination by petition for individual ballots by three percent of NASD voting membership, to limit voting members from endorsing more than one individual nominee, and to allow nomination by petition for slates by ten percent of the NASD voting membership.

##### **Communication of Views**

Section 11 has been amended to detail the NNC's limited support of NNC nominees.

**Election of Governors**

Section 13 has been amended by clarifying that the provision applies to elected Governor positions.

**Maintenance of Compositional Requirements of the Board**

Section 14 has been amended by clarifying that the provision applies to elected Governor positions.

**Article VIII. Officers, Agents, and Employees****Resignation and Removal of Officers**

Section 6 has been amended to allow the Board to remove an officer of the NASD by a resolution adopted by a majority of Governors or a consent adopted by all Governors.

**Article IX. Committees****Appointment**

Section 1 has been amended to ensure that the Industry/Non-Industry balance of any committee given powers of the Board reflects the same balance of the Board.

**Executive Committee**

Section 4 has been amended to reflect the changed NASD-Nasdaq relationship.

**Article X. Compensation of Board and Committee Members**

Section 1 of this Article has been amended to allow member reimbursement of expenditures related to the limited NNC nominee support in contested elections.

**Article XIII. Powers of Board to Impose Sanctions**

Section 1 has been amended to reflect the new corporate structure, namely, the inclusion of NASD Dispute Resolution within the family of companies and the changed NASD-Nasdaq relationship.

**Article XV. Limitation of Powers****Conflicts of Interest**

Section 4 has been amended to reflect the new corporate structure, and to allow a decision by majority vote of disinterested Governors, regardless of whether or not the disinterested Governors constitute a quorum.

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**ATTACHMENT B**

**Deletions** appear as Overstrike text surrounded by { }. **Additions** appear as Bold text surrounded by [ ]. **Unmodified** sections have not been included.

**BY-LAWS OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

**ARTICLE I**

**Definitions**

(n) "Industry Director" means a Director of the NASD Regulation Board or ~~(Nasdaq)~~ **[NASD Dispute Resolution]** Board (excluding the Presidents) who: (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (5) provides professional services to a director, offi-

cer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, **[NASD Dispute Resolution,]** Nasdaq, or Amex (and any predecessor), or has had any such relationship or provided any such services at any time within the prior three years;

(o) "Industry Governor" or "Industry committee member" means a Governor (excluding the Chief Executive Officer ~~and Chief Operating Officer of the NASD, the Presidents of NASD Regulation and Nasdaq, and the Chief Executive Officer of Amex~~) **[of the NASD and the President of NASD Regulation]** or committee member who: (1) is or has served in the prior three years as an officer, director~~{,}~~ or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the

day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (6) is a Floor Governor; or (7) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, **[NASD Dispute Resolution,]** Nasdaq or Amex (and any predecessor), or has had any such relationship or provided any such services at any time within the prior three years;

(v) **[**"NASD Dispute Resolution" means NASD Dispute Resolution, Inc.;

**(w)** "Nasdaq" means The Nasdaq Stock Market, Inc.;

~~**(w)** "Nasdaq Board" means the Board of Directors of Nasdaq;~~

~~**(x)** "Nasdaq Listing and Hearing Review Council" means a body appointed pursuant to Article V of the Nasdaq By-Laws;~~

~~**(y)**~~**(x)** "NASD Regulation" means NASD Regulation, Inc.;



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~~(z)~~(y) "NASD Regulation Board" means the Board of Directors of NASD Regulation;

~~(aa)~~(z) "National Adjudicatory Council" means a body appointed pursuant to Article V of the NASD Regulation By-Laws;

~~(bb)~~(aa) "National Nominating Committee" means the National Nominating Committee appointed pursuant to Article VII, Section 9 of these By-Laws;

~~(cc)~~(bb) "Non-Industry Director" means a Director of the NASD Regulation Board or ~~(Nasdaq)~~ [NASD Dispute Resolution] Board (excluding the Presidents of NASD Regulation and ~~(Nasdaq)~~ [NASD Dispute Resolution]) who is: (1) a Public Director; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director;

~~(dd)~~(cc) "Non-Industry Governor" or "Non-Industry committee member" means a Governor (excluding the Chief Executive Officer and ~~(Chief Operating Officer)~~ [any other officer] of the NASD ~~(and)~~, [the ~~(Presidents)~~ [President] of NASD Regulation ~~(and Nasdaq)~~, any Floor Governor, and the Chief Executive Officer of Amex) or committee member who is: (1) a Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Governor or committee member;

~~(ee)~~(dd) "person associated with a member" or "associated person of a member" means: (1) a

natural person who is registered or has applied for registration under the Rules of the Association; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;

~~(ff)~~(ee) "Public Director" means a Director of the NASD Regulation Board or ~~(Nasdaq Board)~~ [NASD Dispute Resolution] who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, [NASD Dispute Resolution,] or Nasdaq;

~~(gg)~~(ff) "Public Governor" or "Public committee member" means a Governor or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, [NASD Dispute Resolution,] or Nasdaq;

~~(hh)~~(gg) "registered broker, dealer, municipal securities broker or dealer, or government securities broker or dealer" means any broker, dealer, municipal securities broker or dealer, or government securities broker or dealer which is registered with the Commission under the Act;

~~(and)~~

~~(ii)~~(hh) "Rules of the Association" or "Rules" means the num-

bered rules set forth in the NASD Manual beginning with the Rule 0100 Series, as adopted by the Board pursuant to these By-Laws, as hereafter amended or supplemented~~(-);~~;

~~(jj)~~(ii) "Floor Governor" or "Amex Floor Governor" means a Floor Governor of Amex elected pursuant to Article II, Section .01(a) of the Amex By-Laws;

~~(kk)~~ "Nasdaq-Amex" means Nasdaq-Amex Market Group, Inc.;

~~(ll)~~(jj) "Amex" means American Stock Exchange LLC; [and]

~~(mm)~~(kk) "Amex Board" means the Board of Governors of Amex~~(-);~~;

### ARTICLE IV

#### MEMBERSHIP

##### Application for Membership

**Sec. 1.** (a) Application for membership in the NASD, properly signed by the applicant, shall be made to the NASD via electronic process or such other process as the NASD may prescribe, on the form to be prescribed by the NASD, and shall contain:

(1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, and ~~(Nasdaq)~~ [NASD Dispute Resolution], the Rules of the Association, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules of the Association;

**ARTICLE V**

**REGISTERED REPRESENTATIVES AND ASSOCIATED PERSONS**

**Application for Registration**

**Sec. 2.** (a) Application by any person for registration with the NASD, properly signed by the applicant, shall be made to the NASD via electronic process or such other process as the NASD may prescribe, on the form to be prescribed by the NASD and shall contain:

(1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the rules of the Municipal Securities Rulemaking Board and the Treasury Department, the By-Laws of the NASD, NASD Regulation, and ~~(Nasdaq)~~ **[NASD Dispute Resolution]**, the Rules of the Association, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules of the Association; and

**ARTICLE VI**

**DUES, ASSESSMENTS, AND OTHER CHARGES**

**Power of the NASD to Fix and Levy Assessments**

**Sec. 1.** The NASD shall prepare an estimate of the funds necessary to defray reasonable expenses of administration in carrying on the work of the NASD each fiscal year, and on the basis of such estimate, shall fix and levy the amount of admission fees, dues, assessments, and other charges to be paid by members of the NASD and issuers and any other persons using any facility or system which

the NASD, NASD Regulation ~~(, or Nasdaq)~~ **[or NASD Dispute Resolution]** operates or controls. Fees, dues, assessments, and other charges shall be called and payable as determined by the NASD from time to time; provided, however, that such admission fees, dues, assessments, and other charges shall be equitably allocated among members and issuers and any other persons using any facility or system which the NASD operates or controls. The NASD may from time to time make such changes or adjustments in such fees, dues, assessments, and other charges as it deems necessary or appropriate to assure equitable allocation of dues among members. In the event of termination of membership or the extension of any membership to a successor organization during any fiscal year for which an assessment has been levied and become payable, the NASD may make such adjustment in the fees, dues, assessments, or other charges payable by any such member or successor organization or organizations during such fiscal years as it deems fair and appropriate in the circumstances.

**ARTICLE VII**

**BOARD OF GOVERNORS**

**Powers and Authority of Board**

**Sec. 1.** (a) The Board shall be the governing body of the NASD and, except as otherwise provided by applicable law, the Restated Certificate of Incorporation, or these By-Laws, shall be vested with all powers necessary for the management and administration of the affairs of the NASD and the promotion of the NASD's welfare, objects, and purposes. In the exercise of such powers, the Board

shall have the authority to:

(c) To the fullest extent permitted by applicable law, the Restated Certificate of Incorporation, and these By-Laws, the NASD may delegate any power of the NASD or the Board to a committee appointed pursuant to Article IX, Section 1, the NASD Regulation Board, the ~~(Nasdaq)~~ **[NASD Dispute Resolution]** Board, or NASD staff in a manner not inconsistent with the Delegation Plan.

**Authority to Take Action Under Emergency or Extraordinary Market Conditions**

**Sec. 3.** The Board, or such person or persons as may be designated by the Board, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding:

(a) the trading in or operation of the over-the-counter securities market, the operation of any automated system owned or operated by the NASD ~~(, or)~~ **[or]** NASD Regulation, ~~(, or)~~ ~~(Nasdaq)~~ and the participation in any such system of any or all persons or the trading therein of any or all securities; and

**Sec. 4.** (a) The Board shall consist of **[no fewer than 17 nor more than 27 Governors, comprising (i)]** the Chief Executive ~~(Officer and the Chief Operating)~~ Officer of the NASD, ~~(the Presidents of NASD Regulation and Nasdaq,~~ **[(ii) if the Board of Governors determines, from time to time, in its sole discretion, that the appointment of a second officer of the NASD to the Board of Governors is advisable, a second officer of the NASD, (iii) the President of NASD Regulation, (iv)]** the Chair of the National

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Adjudicatory Council, [(v)] the Chief Executive Officer ~~{of Amex,}~~ **[and]** one Floor Governor **[of Amex]**, and [(vi)] no fewer than ~~{4}~~ **[12]** and no more than ~~{28}~~ **[22]** Governors elected by the members of the NASD. The Governors elected by the members of the NASD shall include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, ~~{and a Nasdaq issuer}~~ **[a representative of a national retail firm, a representative of a regional retail or independent financial planning member firm, a representative of a firm that provides clearing services to other NASD members]**, and a representative of an NASD member having not more than 150 registered persons. ~~{A majority of the}~~ **[The number of Non-Industry]** Governors shall ~~{be Non-}~~ **[exceed the number of]** Industry Governors. If the ~~{Board consists of 23 Governors, at least five shall be}~~ **[number of Industry and Non-Industry Governors is 15 to 17, the Board shall include at least four]** Public Governors. If the ~~{Board consists of 24 to 27 Governors, at least six shall be}~~ **[number of Industry and Non-Industry Governors is 18 to 19, the Board shall include at least five]** Public Governors. If the ~~{Board consists of 28 to 31 Governors, at least seven shall be}~~ **[number of Industry and Non-Industry Governors is 20-25, the Board shall include at least six]** Public Governors.

### Term of Office of Governors

**Sec. 5.** (a) The Chief Executive Officer and ~~{the Chief Operating Officer}~~, if appointed, the

**second officer]** of the NASD[,] the ~~{Presidents}~~ **[President]** of NASD Regulation ~~{and Nasdaq}~~, and the Chief Executive Officer of Amex shall serve as Governors until a successor is elected, or until death, resignation, or removal **[(or, in addition, in the case of a second officer of the NASD, until the Board of Governors, in its sole discretion, determines that such appointment is no longer advisable)]**.

(d) The Governors elected by the members of the NASD shall be divided into three classes and hold office for a term of no more than three years, such term to be fixed by the Board at the time of the nomination or certification of **[each]** such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor elected by the members of the NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two consecutive terms following the expiration of the Governor's initial term. The term of office of Governors of the first class shall expire at the January 1999 Board meeting, of the second class one year thereafter, and of the third class two years thereafter. At each annual election, commencing January 1999, Governors shall be elected for a term of three years to replace those whose terms expire.

### Filling of Vacancies

**Sec. 7.** If ~~{a}~~ **[an elected]** Governor position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the Board shall elect by majority vote of the remaining Governors then in office, a person satisfying the

classification (Industry, Non-Industry, or Public Governor) for the governorship as provided in Section 4 to fill such vacancy, except that if the remaining term of office for the vacant Governor position is not more than six months, no replacement shall be required. If the remaining term of office for the vacant Governor position is more than one year, the Governor elected by the Board to fill such position shall stand for election in the next annual election pursuant to this Article.

### The National Nominating Committee

**Sec. 9.** (a) The National Nominating Committee shall nominate **[and, in the event of a contested election, may, as described in Section 11(b), support]:** Industry, Non-Industry, and Public Governors for each vacant or new Governor position on the NASD Board for election by the membership; Industry, Non-Industry, and Public Directors for each vacant or new position on the NASD Regulation Board and the ~~{Nasdaq}~~ **[NASD Dispute Resolution]** Board for election by the ~~{Board}~~ **[stockholder; and]** Industry, Non-Industry, and Public members for each vacant or new position on the National Adjudicatory Council for appointment by the NASD Regulation Board; ~~{and Industry and Non-Industry members for each vacant or new position on the Nasdaq Listing and Hearing Review Council for appointment by the Nasdaq Board}~~.

(d) Members of the National Nominating Committee shall be appointed annually by the Board and may be removed only by majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties. ~~{The NASD Regulation~~

~~Board and the Nasdaq Board each shall propose two candidates to the NASD Board for appointment to the National Nominating Committee.]~~

### **Procedure for Nomination of Governors**

**Sec. 10.** Prior to a meeting of members pursuant to Article XXI for the election of Governors, the NASD shall notify the members the names of each nominee selected by the National Nominating Committee for each governorship up for election, the classification of governorship (Industry, Non-Industry, or Public Governor) for which the nominee is nominated, the qualifications of each nominee, and such other information regarding each nominee as the National Nominating Committee deems pertinent. A person who has not been so nominated may be included on the ballot for the election of Governors if: (a) within ~~{30}~~ **[45]** days after the date of such notice ~~{in 1997, or within 45 days after the date of such notice in 1998 and thereafter}~~, such person presents to the Secretary of the NASD **[(i) in the case of petitions solely in support of such person,] petitions in support of his or her nomination duly executed by three percent of the members[, and no member shall endorse more than one such nominee, or (ii) in the case of petitions in support of one or more persons, petitions in support of the nominations of such persons duly executed by ten percent of the members];** and (b) the Secretary certifies that (i) the petitions are duly executed by the Executive Representatives of the requisite number of members~~{,}]~~, and (ii) the person satisfies the classification (Industry, Non-Industry, or Public Governor) of the governor-

ship to be filled, based on such information provided by the person as is reasonably necessary to make the certification. The Secretary shall not unreasonably withhold or delay the certification. Upon certification, the election shall be deemed a contested election. After the certification of a contested election or the expiration of time for contesting an election under this Section, the Secretary shall deliver notice of a meeting of members pursuant to Article XXI, Section 3(a).

### **Communication of Views**

**Sec. 11.** ~~[(a)]~~ The NASD, the Board, ~~{the National Nominating Committee,}~~ a committee appointed pursuant to Article IX, Section 1, and NASD staff shall not take any position publicly or with a member or person associated with or employed by a member with respect to any candidate in a contested election or nomination held pursuant to these By-Laws or the NASD Regulation By-Laws. A Governor or a member of **[any committee (other than] the National Nominating Committee {for any other committee}[]]** may communicate his or her views with respect to any candidate if such Governor or committee member acts solely in his or her individual capacity and disclaims any intention to communicate in any official capacity on behalf of the NASD, the NASD Board, **[or any committee (other than] the National Nominating Committee {, or any other committee}[]]**. Except as provided herein, any candidate and his or her representatives may communicate support for the candidate to a member or person associated with or employed by a member.

**[(b) In a contested election, the National Nominating Committee may support its**

**nominees under this Article by sending to NASD members eligible to vote up to two mailings of materials, in the manner set forth in Article VII, Section 12, in support of its nominees. In addition to such two mailings, in the event of mailings and or other communications to the NASD members by or on behalf of a candidate by petition in a contested election, the National Nominating Committee may respond in-kind, but shall not take a position unresponsive, to the contesting candidate's communications.]**

### **Election of Governors**

**Sec. 13.** Governors **[that are to be elected by the members]** shall be elected by a plurality of the votes of the members of the NASD present in person or represented by proxy at the annual meeting of the NASD and entitled to vote thereat. The annual meeting of the NASD shall be on such date and at such place as the Board shall designate pursuant to Article XXI. Any Governor so elected must be nominated by the National Nominating Committee or certified by the Secretary pursuant to Section 10.

### **Maintenance of Compositional Requirements of the Board**

**Sec. 14.** Each **[elected]** Governor shall update the information submitted under Section 9(e) regarding his or her classification as an Industry, Non-Industry, or Public Governor at least annually and upon request of the Secretary of the NASD, and shall report immediately to the Secretary any change in such classification.

**ARTICLE VIII**

**OFFICERS, AGENTS, AND EMPLOYEES**

**Resignation and Removal of Officers**

**Sec. 6.** (b) Any officer of the NASD may be removed, with or without cause, by resolution adopted by a majority of the Governors then in office at any regular or special meeting of the Board or by a ~~written~~ consent ~~signed~~ **[adopted]** by all of the Governors then in office **[in accordance with applicable law]**. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with the NASD.

**ARTICLE IX**

**COMMITTEES**

**Appointment**

**Sec. 1.** Subject to Article VII, Section 1(c), the Board may appoint such committees or subcommittees as it deems necessary or desirable, and it shall fix their powers, duties, and terms of office. Any such committee or subcommittee consisting solely of one or more Governors, to the extent provided by these By-Laws or by resolution of the Board, shall have and may exercise all powers and authority of the Board in the management of the business and affairs of the NASD. **[Any committee having the authority to exercise the powers and authority of the Board shall have a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the Board.]**

**Executive Committee**

**Sec. 4.** (b) The Executive Committee shall consist of no fewer than six and no more than nine Governors. The Executive Committee shall include the Chief Executive Officer of the NASD, at least one Director of NASD Regulation, ~~at least one Director of Nasdaq,~~ at least one Governor of Amex, and at least two Governors who are not members of either the NASD Regulation Board, ~~the Nasdaq Board, or the Amex Board. The number of Directors of the NASD Regulation Board and the number of Directors of the Nasdaq Board serving on the Executive Committee shall be equal at all times.~~ **[or the Amex Board.]** The Executive Committee shall have a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the whole Board.

**ARTICLE X**

**COMPENSATION OF BOARD AND COMMITTEE MEMBERS**

**Sec. 1.** The Board may provide for reasonable compensation of the Chair of the Board, the Governors, and the members of any committee. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the NASD, **including those expenses incurred in connection with the support of a candidate or candidates by the National Nominating Committee in contested elections in accordance with the By-Laws.**

**ARTICLE XIII**

**POWERS OF BOARD TO IMPOSE SANCTIONS**

**Sec. 1.** The Board is hereby authorized to impose appropriate sanctions applicable to members, including censure, fine, suspension, or expulsion from membership, suspension or bar from being associated with all members, limitation of activities, functions, and operations of a member, or any other fitting sanction, and to impose appropriate sanctions applicable to persons associated with members, including censure, fine, suspension or barring a person associated with a member from being associated with all members, limitation of activities, functions, and operations of a person associated with a member, or any other fitting sanction, for:

(b) violation by a member or a person associated with a member of any of the terms, conditions, covenants, and provisions of the By-Laws of the NASD, NASD Regulation, or ~~Nasdaq~~ **[NASD Dispute Resolution]**, the Rules of the Association, or the federal securities laws, including the rules and regulations adopted thereunder, the rules of the Municipal Securities Rulemaking Board, and the rules of the Treasury Department;

**ARTICLE XV**

**LIMITATION OF POWERS**

**Conflicts of Interest**

**Sec. 4.** (b) No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its

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Governors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Governor's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinter-

ested Governors[, **even though the disinterested governors be less than a quorum**]; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors **[even though the disinterested governors be less than a**

**quorum]**. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction between the NASD and ~~(~~Nasdaq-Amex, Nasdaq~~)~~ **[NASD Dispute Resolution]**, or Amex.