ACTION REQUESTED BY JANUARY 21, 2002

Alternative Display Facility

Rule Proposal Regarding Nasdaq Separation And The Alternative Display Facility. **SEC Comment Period Expires January 21, 2002**

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
- Senior Management

KEY TOPICS

- Alternative Display Facility
- Nasdaq Rule Changes

Executive Summary

On December 14, 2001, the Securities and Exchange Commission (SEC or Commission) published for comment a proposed rule change filed by the National Association of Securities Dealers, Inc. (NASD®)[1] that would (1) revise the NASD rules to reflect Nasdaq's anticipated approval as a national securities exchange and its resultant separation from the NASD and (2) establish the rules that would govern trading otherwise than on an exchange, including the implementation and operation of the NASD Alternative Display Facility (ADF).

The NASD is in the process of spinning off its Nasdaq® subsidiary as an independent, for-profit company. Once Nasdaq separates from the NASD, each corporate entity will have its own set of rules applicable to its respective members. The rule proposal deletes Nasdaq-specific rules and otherwise revises existing NASD rules to reflect Nasdaq's separation. The rule proposal also establishes the rules for the ADF, a quotation collection, trade comparison, and trade reporting facility that is being developed by the NASD. Generally, the proposed rules closely track Nasdaq's rules, and the NASD intends, where possible, to keep the rules the same.

The Commission seeks comment on whether the proposed ADF rules are sufficient to meet the NASD's obligations with respect to the over-the-counter market under Sections 15A(b)(11)[2] and 11A(c)(1)[3] of the Securities Exchange Act of 1934 (the Act) and whether it provides market makers and electronic communication networks (ECNs) the ability to comply with the Commission's Order Handling Rules and Regulation ATS. The Commission also specifically seeks comment on proposed Rule 4300, which would require ADF market participants to provide direct or indirect quote and order access to NASD members. As proposed, the NASD generally would not provide an order routing capability.

Members are encouraged to read the SEC's notice of the rule proposal, the text of which can be found on the NASD Regulation Web Site's Rule Filings Page at *www.nasdr.com.*

Comments

Persons wishing to make written comments should submit six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. All submissions should refer to the File No. SR-NASD-2001-90 and should be submitted to the SEC by January 21, 2002.

Questions/Further Information

Questions concerning this *Notice* may be directed to Philip Shaikun, Assistant General Counsel, Office of General Counsel, NASD Regulation, or Kathleen O'Mara, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8071.

Background

On December 14, 2001, the SEC published for notice and comment a comprehensive proposal filed by the NASD that would revise the NASD rules when Nasdaq receives approval as a national securities exchange and contemporaneously separates from the NASD. The proposal also establishes rules to implement and operate the ADF, a facility being developed by the NASD in accordance with the

Commission's SuperMontage Approval Order[4] and in conjunction with Nasdaq's anticipated exchange registration. The ADF would provide members the ability to collect and view quotations and compare and report trades in exchange-listed securities.

Due to the size and scope of the rule filing, this *Notice* provides only an overview of the rule proposal and highlights those issues about which the SEC has specifically requested comment. As such, members are strongly encouraged to read carefully the entire rule filing and, to the extent members have comments on any of the proposed rule changes, to submit those comments to the SEC by January 21, 2002. Members should particularly read the "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change" portion of the rule filing, which identifies and discusses in more detail the most substantive proposed rule changes.

Proposed Rule Change Relating To The Separation Of Nasdaq

The NASD is in the process of spinning off its Nasdaq subsidiary as an independent, for-profit company. Through a series of private placements, the NASD's ownership interest in Nasdaq has been reduced to a minority interest. Before Nasdaq can fully separate from the NASD, it must become registered as a national securities exchange with the SEC. Nasdaq has filed a Form 1 with the SEC requesting such registration. Notice and a request for comments on Nasdaq's completed application for exchange registration was published for comment in the *Federal Register* on June 13, 2001,[5] and the comment period expired on August 29, 2001.

Upon Nasdaq's registration as a national securities exchange, the NASD will no longer control the voting rights in the common stock of Nasdaq. At that point, Nasdaq and the NASD will be unaffiliated corporate entities, and therefore each will need separate rules applicable to their respective members. The NASD rule proposal published by the SEC would modify existing NASD rules, effective upon Nasdaq's registration as an exchange, to reflect this corporate separation. Generally, the proposed changes are administrative: they would delete Nasdaq-specific rules, such as listing and qualification requirements; replace references to "Nasdaq" with "NASD" or "exchange," as applicable; and rename and renumber certain rules. The proposal also includes corrections of minor grammatical or typographical errors and other miscellaneous non-substantive changes.

In addition to the ADF rules discussed in more detail below, the rule proposal contains several substantive changes relating to the following rules: IM-2110, Trading Ahead of Customer Orders; IM-2310-2, SEEDS Transactions; Rule 2840, Trading in Index Warrants; Rules 2850 through 2885, Position Limits and Options Trading; proposed Rule 5100 and IM-5100, Short Sale Rule; Rule 4612, Primary Market Maker Standards; proposed Rule 5200, Trading Halts; Rule 4619, Withdrawal of Quotations and Passive Market Making; Rules 4614 and 4624, Stabilizing Bids and Penalty Bids; Rules 4613 and 6330, relating to market maker obligations; Rule 4620, Voluntary Termination of Registration; Rules 4633 and 6420, relating to transaction reporting; proposed Rule 6100, the TRACS Trade Comparison Service; and Rule Series 6600 and 6700, relating to trading in non-exchange-listed securities. Members should refer to the rule filing for a more detailed discussion of the changes related to these rules.

Proposed Rule Change Relating To Trading Otherwise Than On An Exchange—The Alternative Display Facility

The rule proposal generally would clarify that NASD rules that relate to trading practices (*e.g.*, quotations, trade reporting, short selling, trading halts) apply only to transactions otherwise than on an exchange. The term "otherwise than on an exchange" is defined in the proposal to mean a trade effected by an NASD member otherwise than on or through a national securities exchange. The determination of what constitutes a trade "on or through" a national securities exchange would be left to the respective exchanges and applicable statutes, rules and regulations, as approved by the SEC.

The ADF is a facility that the NASD will build to facilitate trading otherwise than on an exchange in listed securities. As proposed, the facility would provide market participants—market makers, ECNs, and order entry firms—the ability to collect and view quotations, and to report transactions to the appropriate Securities Information Processor (SIP)[6] for consolidation and dissemination of data to vendors and ADF market participants. The facility also would provide for trade comparison and for real-time data delivery to NASD Regulation for regulatory purposes. The NASD or a vendor (other than Nasdaq) would maintain and operate the facility. NASD Regulation would enforce the proposed rules and provide market surveillance.

For the most part, the proposed ADF rules closely track existing Nasdaq rules (or rules proposed by Nasdaq in its exchange registration) and existing rules that govern trading in the Consolidated Quotation Service (CQS).[7] The ADF would provide trade comparison and trade reporting services that would be similar to Nasdaq's Automated Confirmation Transaction Service (ACT) system.[8] However, the proposed ADF rules have been refined to reflect the more limited functionality of the ADF, most particularly the absence of an automatic execution or order routing system. Instead, the proposed rule change would require ADF market participants to provide direct or indirect access to their quotations, as described in more detail below.

As required by existing Nasdaq rules, ADF participants would be required to register as market makers or ECNs for each security in which they make a market or display orders. Additionally, the proposed rule change tracks Nasdaq requirements that market makers maintain continuous two-sided, firm quotations and prescribes market maker obligations when a bid or offer locks or crosses the market. However, the rule proposal does not provide for stabilizing or penalty bids, as existing Nasdaq rules do. The proposal generally adopts Nasdaq's anticipated approach to trade reporting: the seller reports both intramarket and intermarket trades between market makers, the market maker reports trades between it and a customer, and an NASD member reports trades between it and a non-member. ECNs would report all trades effected within the ECN.

Order Access Rule

The ADF rules differ from existing Nasdaq rules most significantly with respect to participants' ability to reach quotes displayed in the ADF. The NASD would not provide ADF market participants an order routing capability, other than the Intermarket Trading System (ITS). Rather, proposed Rule 4300 would require market participants to provide direct electronic access to other market participants and direct or "readily available" indirect electronic access to all other NASD members seeking access. This quote access rule would facilitate ADF and other market participants' compliance with their best execution obligations and would further provide the means by which the NASD would enforce compliance with firm quote obligations and locked and crossed quotation obligations.[9]

The NASD does not intend to provide an order routing capability other than one to the ITS because it believes it can better perform its core investor protection mission by focusing on regulation rather than market operations. The NASD also believes that market participants already do, and can continue to, establish and run order linkage facilities that are more efficient and innovative than a facility the NASD could provide. The ITS "exception" is based upon the fact that ITS is in place and is the current accepted mechanism for intermarket linkage for CQS securities. The use of ITS by ADF market participants would be voluntary under the rule proposal.

Proposed Rule 4300 defines "direct electronic access" as the ability to deliver an order for execution directly against an individual NASD market participant's best bid and offer without the need for voice communication, and with the equivalent speed, reliability, availability and cost as are made available to the NASD market participant's own customer broker/dealers or other active customers or subscribers. The proposal would not preclude market participants from charging more for the access required by the rule—sometimes called "hit or take" access—than for full service access. However, the proposed rule would prohibit market participants from discriminatorily charging for hit or take access, *i.e.*, charging differently for one group of users (*e.g.*, subscribers) than for others (*e.g.*, non-subscribers). While "hit or take" is more limited functionally than full book access, it also is a liquidity taking function and some markets—including Nasdaq—charge more for taking liquidity than providing it.[10]

The proposed rule change defines "indirect electronic access" as the ability to route an order through customer broker/dealers of an NASD market participant for execution against the NASD market participant's best bid and offer, without the need for voice communication, and with equivalent speed, reliability, availability, and cost as are available to the market participant's customer broker/dealer providing the indirect access or other active customers or subscribers. Market participants would be prohibited from influencing the prices that customer broker/dealers impose for providing indirect access or in any way discouraging the provision of indirect access.

ADF market participants could satisfy these requirements either by providing their own bilateral linkages or by participating in multilateral linkage facilities provided by private vendors. In addition, with respect to links with exchanges, market participants could satisfy these requirements

either by linking with the exchange or by linking with market participants operating within those exchanges.

To allow NASD Regulation to monitor compliance with certain trading rules, such as the firm quote rule and "trade or move" rules, the proposed rule also requires that all NASD market participants that display quotations or orders in the ADF record specified items of information pertaining to orders they receive via direct or indirect electronic access, and report this information to NASD Regulation on a real-time basis. The proposed rule requires this information to be provided to NASD Regulation within 10 seconds of the receipt of an order and, if applicable, when an order is acted upon or responded to. As part of the subscriber agreement approval process, market participants would be required to provide the terms and methods by which they would comply with these rules. The NASD would review these terms prior to approving a subscriber agreement.

SEC Comment Request

In its SuperMontage Approval Order, the SEC mandated that the ADF facility "provide a market neutral linkage to the Nasdaq and other marketplaces, but not an execution service."[11] The NASD believes that proposed Rule 4300 satisfies the Commission's directive because it provides a market neutral linkage by requiring market participants to link, either directly or indirectly, to all those seeking access to the market participants' quotations. The SEC has specifically requested comment on whether this rule will provide potential users with adequate access to quotations displayed through the ADF and will allow the NASD to effectively enforce its access requirements. In particular, the Commission requests comment on what it means to make indirect electronic access "readily available" under proposed Rule 4300(a)(2).

The SEC has also requested comment on whether the proposed rules are sufficient to meet the NASD's obligations under Sections 15A(b)(11) and 11A(c)(1) of the Act. Section 15A(b)(11) of the Act states that the rules of a registered securities association must include:

> Provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

Section 11A(c)(1) of the Act generally sets forth the obligations of self-regulatory organizations with respect to trading securities over-the-counter. Among other things, the statute requires a self-regulatory organization to ensure that it, and its members, comply with rules to prevent fraud and deceit; assure accurate, reliable and fair collection and dissemination of quotations; and prohibit discrimination in obtaining information related to quotations and transactions.

As noted above, comments on the proposed rule change must be submitted to the SEC by January 21, 2002.

Endnotes

1 Securities Exchange Act Release No. 45156 (December 14, 2001).

2 15 U.S.C. 78o-3(b)(11).

3 15 U.S.C. 78k-1(c)(1); *see also* Section 11A(c)(3)(A) of the Act.

4 Securities Exchange Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001).

5 Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001) (File No.10-131).

6 Nasdaq initially will be the designated SIP for all transactions in Nasdaq securities, while the Securities Industry Automation Corporation will continue to function as the SIP for transactions in listed securities.

7 Should Nasdaq amend its exchange registration with respect to matters such as trade reporting, short selling, or quotation obligations, the NASD anticipates making similar amendments to the proposed NASD rules.

8 The rule proposal would require members that effect trades otherwise than on an exchange in non-exchange-listed securities to enter into contractual agreements to use Nasdaq's ACT system for trade comparison and trade reporting.

9 While this rule would require inter-market links with other market centers, as well as intra-ADF links, the proposed locked and crossed rule, Rule 4612(d), unlike other market center locked and crossed rules, is based on the ADF's own quotations. In the event that the markets agree on a locked and crossed rule approach that encompasses quotations in all markets, proposed Rule 4300 would still facilitate compliance.

10 Securities Exchange Act Release No. 44918 (Oct. 10, 2001), 66 FR 52814 (Oct. 17, 2001).

11 Securities Exchange Release No. 43863 (Jan. 19, 2001), 66 FR 8020 (Jan. 26, 2001).

INFORMATIONAL

Continuing Education

Effective Date For New Series 6 Program Regulatory Element (S106) For Investment Representatives

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.

- Continuing Education
- Legal & Compliance
- Registration Department
- Senior Management

KEY TOPICS

- Regulatory Element
- Series 6 Program (S106)

Executive Summary

This *NASD Notice to Members* announces that Monday, January 14, 2002, is the effective date that the new Series 6 Program Regulatory Element (S106) for Investment Representatives will begin to be delivered at Sylvan/Prometric Centers in North America, VUE Centers outside North America, and at member firms participating in In-Firm Delivery of the Regulatory Element (see *NASD Notice to Members 01-14,* February 2001). This means that any Series 6-registered person who takes the Regulatory Element on or after January 14, 2002, will participate in the S106 Program instead of the S101 General Program. All Supervisors/Principals will continue to take the Supervisor's Program (S201). All other registration categories will continue to take the General Program (S101).

As announced previously in *NASD Notice to Members 01-71,* November 2001, the S106 will differ in three respects from the existing General Program (S101):

1) The Series 6 Program will feature audio in addition to text on screen.

2) Module 7 of the Series 6 Program—Application Of Product Knowledge To Sales Practice—replaces New and Secondary Offerings, Module 7 of the General Program.

3) The scenarios in all seven modules of the S106 will only deal with mutual funds or variable contracts.

There is a combined Content Outline for both the S101 and S106 Programs, which may be found in *NASD Notice to Members 01-71,* or viewed or downloaded from *www.securitiescep.com,* the Securities Industry/Regulatory Council on Continuing Education Web Site.

Questions/Further Information

Questions about this *Notice* should be directed to John Linnehan, Director, Continuing Education, NASD Regulation, at (240) 386-4684; or Heather Bevans, Continuing Education Communications Coordinator, NASD Regulation, at (240) 386-4685.

ACTION REQUIRED

Broker/Dealer, Investment Adviser, And Agent Renewals

2002 Renewal Rosters And Final Renewal Statements

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
- Registered Representative
- Registration
- Senior Management

KEY TOPICS

- Registration
- Renewals
- Web CRD
- Web IARD

Executive Summary

The 2002 Renewal Program for the National Association of Securities Dealers, Inc. (NASD®) broker/dealer and agent registration began its second phase this month. The NASD is issuing this *Notice* to help members review, reconcile, and respond to the Final Renewal Statements and Rosters that are available on the Web CRD℠ system.

Questions/Further Information

Questions regarding this *Notice* may be directed to the CRD/Public Disclosure (CRD/PD) Gateway Call Center at (301) 869-6699.

Final Renewal Statements And Rosters

Final Renewal Statements became available to access via the Web CRD system on January 2, 2002. NASD member firms can begin to request 2002 Final Renewal Rosters on January 2, 2002, via the Web CRD Reports Tab.

The 2002 Final Renewal Statements reflect the total amount owed by the firm, as of year-end 2001, for:

- NASD Personnel Assessments
- NASD Branch Office Assessments
- NASD System Processing Fees
- New York Stock Exchange (NYSE), American Stock Exchange (Amex), Chicago Board Options Exchange (CBOE), International Securities Exchange (ISE), Pacific Exchange (PCX), and Philadelphia Stock Exchange (PHLX) Maintenance Fees
- State Agent Renewal Fees
- State Broker/Dealer Renewal Fees
- State Investment Adviser Firm Renewal Fees
- Firm payment submitted to the NASD in response to the Preliminary Renewal Statement that was made available on November 5, 2001

The 2002 Final Renewal Statement also reflects the final status of agent and firm registrations and/or Notice Filings as of December 31, 2001. Any adjustments in fees owed as a result of registration terminations, approvals, Notice Filings, or transitions subsequent to the Preliminary Renewal Statement will be made in this final reconciled statement on the Web CRD system. If a firm has more agents, branch offices, or jurisdictions registered and/or Notice Filed on the Web CRD and IARD systems at year's end (than it did in on November 3 when the Preliminary Renewal Statement was generated), additional fees will be assessed. If a firm has fewer agents, branch offices or jurisdictions registered and/or Notice Filed at year's end (than it did when the Preliminary Renewal Statement was generated), a credit/refund will be issued.

If the firm's payment submitted in response to the Preliminary Renewal Statement exceeds its year-end 2001 total of NASD, NYSE, Amex, CBOE, PCX, PHLX, and state renewal fees, a "credit due" statement will be made available. If the firm's Final

Renewal Statement reflects a credit due and the firm would like a refund check, it should print and sign the statement and send it to:

CRD Accounting—Renewal Refunds
NASD Regulation, Inc.
9509 Key West Avenue
Rockville, MD 20850

The statement must be signed by an officer or principal of the firm and should include the name and address of the firm's contact person to whom the check should be sent. Refund requests will be processed as soon as possible. The average turnaround time for receiving a refund check last year was approximately two weeks. Member firms may also request to transfer the credit due to their CRD Daily Registration Account. To initiate a transfer of funds, please contact the CRD/PD Gateway Call Center at (301) 869-6699. If the NASD does not receive a request for a refund check or a request to transfer funds by March 15, 2002, CRD Accounting will begin to manually transfer the remaining credit balances to member firms' CRD accounts.

Final Renewal Statements that reflect zero balances require no further action by the member firm.

Reviewing The Renewal Reports/Rosters

Member Renewal Rosters include all agent registrations renewed for 2002. Registrations that were pending approval or were deficient at year-end 2001 were not assessed Renewal fees; therefore, they will not be reported on the Renewal Roster. Members should examine their rosters carefully to ensure that all registration approvals and terminations are properly listed.

- The ***Firm Renewal Roster*** (Agent) will list all agents registered with your firm, sorted alphabetically by regulator. If a firm's review of the Agent Roster finds any discrepancies between its records and those maintained on the Web CRD system, the discrepancy must be reported, in writing, directly to the appropriate regulatory authority by March 15, 2002.

- Discrepancies—NYSE/Amex/CBOE/PSE/PHLX/States: All regulators should be contacted directly in writing. The NASD Regulation Web Site, *www.nasdr.com,* provides a complete listing of regulator addresses.

- Discrepancies—NASD: Contact the CRD/PD Gateway Call Center at (301) 869-6699 in regard to the NASD Roster. Copies of appropriate documentation, such as Web CRD-generated notice of termination, notification of deficient condition, or notice of approval from its Firm Queues, should be readily available.

- The ***Firm Renewal Roster Download*** (Agent) will list all agents registered with your firm, sorted alphabetically by regulator in a downloadable format.

- The ***Branches Renewal Roster*** lists each branch registered with the NASD and lists branch offices for which the firm is being assessed a fee. Firms should use this roster to reconcile their records for Renewal purposes.

Billing Code Summary And Detail Reports

The Billing Code Summary Report summarizes all Renewal charges by billing code. The Billing Code Detail Report is grouped by billing code and provides detailed information on agent renewals. The Billing Code Summary and Billing Code Detail Reports are for the firm's internal accounting reconciliation and are not an additional billing. It is a report of fees assessed, based on the data supplied by the firm in Item #7, "Branch I.D.," of the Form U-4 application. Any combination of letters and characters is captured as a "billing code." NASD Regulation does not use this data to assess fees.

The November 2001 issue (Vol. 9, No. 1) of the *CRD/PD Bulletin* contains detailed instructions to help members complete the Renewal Process. This publication can also be found on the CRD Web Page of the NASD Regulation Web Site, *www.nasdr.com.*

INFORMATIONAL

Subordination Agreements

NASD Regulation Asks Members Immediately To Adopt "Best Practice" Of Requiring Investors To Sign A Disclosure Document As Part Of Subordination Agreement

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
- Senior Management

KEY TOPICS

- Appendix D to the Net Capital Rule
- Net Capital
- Operations
- Subordination Agreements
- Subordinated Loans

Executive Summary

NASD Regulation, Inc. (NASD Regulation℠) is proposing a rule requiring National Association of Securities Dealers, Inc. (NASD®) members to obtain a signed Subordination Agreement Investor Disclosure Document (Disclosure Document) from an investor before entering into, or reviewing, a subordination agreement with an investor. See Attachment A for a sample proposed Disclosure Document. This action is based on the concern that an increasing number of retail investors may be entering into financing arrangements with broker/dealers without fully appreciating the risks or implications of such arrangements. Pending Securities and Exchange Commission (SEC) approval of this rule, NASD Regulation strongly urges every member that enters into a subordination agreement to adopt immediately, as a "best practice," procedures to deliver the Disclosure Document to, and obtain a signed copy from, each investor as part of the subordinated loan process.

Questions/Further Information

Questions concerning this *Notice* may be directed to Susan DeMando, Director, Financial Operations, Member Regulation, NASD Regulation, at (202) 728-8411; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8844.

Without A Rule Requiring A Disclosure Document, Why Should Members Require Investors To Sign A Disclosure Document?

Although NASD Regulation staff reviews subordination agreements to ensure that the terms of such agreements are consistent with the net capital provisions of the Securities Exchange Act of 1934, it does not review the creditworthiness of the broker/dealer or the suitability of a particular transaction for the investor. NASD Regulation staff is concerned that an increasing number of retail customers may be entering into financing arrangements with broker/dealers without fully appreciating the risks or implications of such arrangements. In connection with two recent failed clearing firms, a number of investors found that entering into subordination agreements with a broker/dealer affected their right to SIPC (Securities Investor Protection Corporation) protection.

NASD Regulation will shortly announce the filing of a new rule with the SEC that will require members to deliver a Disclosure Document to each investor and receive a signed copy of the Disclosure Document affirming that the investor has read it. The purpose of the proposed Disclosure Document is to help investors understand what a subordination agreement is and what risks they assume when they enter into a subordination agreement. Following SEC approval of the Disclosure Document requirement, NASD staff intends to require a copy of the signed Disclosure Document as part of its review of a subordination agreement.

To protect investors during the rulemaking process, NASD Regulation strongly urges its members that enter into a subordination agreement to adopt immediately, as a "best practice," procedures to deliver the Disclosure Document and obtain a signed copy from the investor. This will advance the interests of investor education while seeking to minimize further unintended investor losses.

What Information Will Be Covered In The Disclosure Document?

NASD Regulation has included in the attached Disclosure Document information that it feels is essential for an investor to understand prior to entering into a subordination agreement. In addition to understanding what a subordination agreement is and how it operates, retail brokerage customers need to understand the risks associated with subordination agreements. The investor will be able to obtain the following basic information from the Disclosure Document.

What Is A Subordination Agreement? To receive benefit under the SEC Net Capital Rule (Rule 15c3-1), funds/securities loaned by an investor to a broker/dealer must be the subject of a satisfactory subordination agreement. The subordination agreement sets forth the rights and obligations of the lender (*i.e.*, the investor) and the borrower (*i.e.*, the broker/dealer). The subordination agreement provides that any claims by the lender must be subordinate to claims by other parties, including customers and employees of the firm.

Types Of Subordination Agreements. There are two types of subordination agreements. Under a Subordinated Loan Agreement (SLA), the investor lends cash to the firm. Under a Secured Demand Note Agreement (SDN), the investor agrees to give cash to the firm on demand (*i.e.*, without prior notice) during the term of the note. The investor also must provide securities as collateral for the SDN, which must be deposited with the firm and registered in the firm's name, and the investor cannot sell or otherwise use them unless the investor substitutes securities of equal or greater value for the deposited securities.

No SIPC Protection. When an individual enters into a subordination agreement, he or she is making an investment in a broker/dealer, and any cash or securities that are subject to the subordination agreement are not protected by SIPC. If the broker/dealer defaults on the loan, the customer can lose his or her entire investment, including any cash, securities, or accounts loaned or pledged as collateral.

No Private Insurance Protection. Subordination agreements generally are not covered by any private insurance policy held by the broker/dealer. Thus, if the broker/dealer defaults on the loan, the customer can lose all of his/her investment.

No Priority In Payment Over Other Lenders. Subordination agreements cause the lender to be subordinate to other parties if the broker/dealer goes out of business, *i.e.*, the lender under a subordination agreement is paid after the other parties are paid, assuming the broker/dealer has any assets remaining after the satisfaction of obligations to other parties.

No Restrictions On The Use Of Funds Or Securities. The funds or securities lent to a broker/dealer under a subordination agreement can be used by the broker/dealer almost entirely without restriction, including paying salaries to the broker/dealer's personnel. Indeed, a lender can place no additional restrictions on the use of proceeds of a subordination agreement beyond those contained in Appendix D of the SEC Net Capital Rule.

The Firm Can Force The Sale Of Securities Pledged As Collateral. Broker/dealers are required to discount the market value of securities that are pledged as collateral for an SDN. If these securities decline in value so that their discounted value is less than the face amount of the SDN, the investor must deposit additional securities with the firm to keep the SDN at the proper collateral level. If the investor does not deposit additional collateral with the firm, the firm may sell some or all of the investor's securities. In addition, if the firm makes a demand for cash under an SDN, and the investor does not provide the firm with cash, the firm may sell some or all of the investor's securities.

ATTACHMENT A

SUBORDINATION AGREEMENT
INVESTOR DISCLOSURE DOCUMENT

PLEASE READ THIS DOCUMENT CAREFULLY BEFORE DECIDING TO ENTER INTO A SUBORDINATION AGREEMENT WITH A BROKER/DEALER. SUBORDINATION AGREEMENTS ARE AN INVESTMENT. THESE INVESTMENTS CAN BE RISKY AND ARE NOT SUITABLE FOR ALL INVESTORS. AN INVESTOR SHOULD NEVER ENTER INTO A SUBORDINATION AGREEMENT WITH A BROKER/DEALER UNLESS HE/SHE CAN BEAR THE LOSS OF THE TOTAL INVESTMENT.

Subordination agreements are complicated investments. A subordination agreement is a contract between a broker/dealer (the borrower) and an investor (the lender), pursuant to which the lender lends money and/or securities to the broker/dealer. The proceeds of this loan can be used by the broker/dealer almost entirely without restriction. The lender agrees that if the broker/dealer does not meet its contractual obligations, his/her claim against the broker/dealer will be subordinate to the claims of other parties, including claims for unpaid wages. Lenders may wish to seek legal advice before entering into a subordination agreement.

KEY RISKS

All investors who enter into Subordination Agreements with broker/dealers should be aware of the following ***key risks:***

Money or securities loaned under subordination agreements are not customer assets and are not subject to the protection of the Securities Investor Protection Corporation (SIPC). In other words, your investment in the broker/dealer is ***not*** covered by SIPC. Nor are subordination agreements generally covered by any private insurance policy held by the broker/dealer. Thus, if the broker/dealer defaults on the loan, the investor can lose all of his/her investment.

- The funds or securities lent to a broker/dealer under a subordination agreement can be used by the broker/dealer almost entirely without restriction.

- Subordination agreements cause the lender to be subordinate to other parties if the broker/dealer goes out of business. In other words, you, as an investor, would be paid after the other parties are paid, assuming the broker/dealer has any assets remaining.

- The NASD Regulation approval of subordination agreements is a regulatory function. It does ***not*** include an opinion regarding the viability or suitability of the investment. Therefore, NASD Regulation approval of a subordination agreement does not mean that NASD Regulation has passed judgment on the soundness of the investment or its suitability as an investment for a particular investor.

SIPC COVERAGE

Q. In general, what is SIPC coverage?

A. SIPC is a non-profit, non-government, membership corporation created to protect customer funds and securities held by a broker/dealer if the broker/dealer closes because of bankruptcy or other financial difficulties. SIPC defines customers as persons who have securities or cash on deposit with a SIPC member for the purpose of, or as a result of, securities transactions.

Q. Is an investor who enters into a subordination agreement covered by SIPC?

A. No. SIPC considers these agreements to be investments in the broker/dealer. Once a customer signs a Subordinated Loan Agreement (SLA) or Secured Demand Note Agreement (SDN), the lender is no longer considered a customer of the broker/dealer *relative to this investment.* (These agreements are explained in further detail below.) For example, Mr. Jones has an IRA rollover account and a separate investment account with a broker/dealer. Mr. Jones enters into a subordination agreement with the broker/dealer and uses the *investment account* as collateral. This action would cause the investor to lose SIPC coverage for the investment account but not for the IRA account. If the lender pledges physical shares (*i.e.,* certificates) as collateral for the subordination agreement, as opposed to pledging an account, the investor will lose SIPC coverage for the shares pledged.

OTHER INSURANCE COVERAGE

Q. If my broker/dealer tells me that the firm has Fidelity Bond Coverage, will this coverage insure my investment?

A. Fidelity Bond Coverage provides limited protection that generally would not benefit a subordinated lender under an SLA or SDN. In addition, NASD Regulation is not aware of any other insurance product that will protect an investor in this situation. If a broker/dealer claims that an SLA or SDN is covered by any type of insurance, the investor should insist on receiving that representation in writing from the *insurance company.*

GENERAL INFORMATION ABOUT SUBORDINATION AGREEMENTS

Q. Why would a broker/dealer ask an investor to enter into a subordination agreement?

A. Subordination agreements add to the firm's capital and thereby strengthen the broker/dealer's financial condition.

Q. *What are the advantages and disadvantages for an investor to enter into a subordination agreement with a broker/dealer?*

A. An investor may be able to obtain a higher interest rate than from other investments. There are, however, key disadvantages. If the broker/dealer goes out of business, the investor's claims are subordinated to the claims of other parties, *i.e.*, customer and creditor claims will be paid before investors' claims. Thus, the subordinated investor may or may not get his/her funds or securities back, depending on the financial condition of the broker/dealer. FINALLY, MONEY OR SECURITIES LOANED UNDER SUBORDINATION AGREEMENTS ARE NOT CUSTOMER ASSETS AND ARE NOT COVERED BY SIPC, OR, IN GENERAL, ANY OTHER PRIVATE INSURANCE.

Q. *Per the Lender's Attestation, the broker/dealer is required to give the prospective lender copies of various financial documents, including a certified audit. Why is this necessary?*

A. A subordination agreement is an investment in the broker/dealer. Therefore, the investor should assess the firm's financial condition to determine whether the loan makes good business sense. Financial documents can be complicated and the investor should consider consulting with an attorney or accountant.

Q. *Outside counsel can be expensive. What if my broker/dealer provides an attorney for me at its expense?*

A. It may not be desirable to use a broker/dealer's attorney to assist you in the transaction. To ensure independent, objective representation, an investor should retain his/her own attorney.

Q. *How many types of subordination agreements are there?*

A. In general, there are only two, the Subordinated Loan Agreement and the Secured Demand Note Agreement.

SUBORDINATED LOAN AGREEMENTS (SLA)

Q. *What is an SLA?*

A. If an investor lends cash to a broker/dealer, the investor will usually do this as part of an SLA. The SLA discloses the terms of the loan, including the identities of the broker/dealer and investor, the amount of the loan, the interest rate, and the date on which the loan is to be repaid.

Q. *Can the lender restrict the broker/dealer's use of the loan?*

A. No. Language in the SLA precludes the lender from placing restrictions on how the broker/dealer may use the funds. Therefore, investors *should not* rely on side agreements with a broker/dealer that purport to limit the use of the loan proceeds. These agreements are inconsistent with the SLA and may not be enforceable.

SECURED DEMAND NOTE AGREEMENTS (SDN)

Q. *What is an SDN?*

A. An SDN is a promissory note in which the lender agrees to give cash to the broker/dealer on demand during the term of the SDN. *This "promissory note" must be backed by collateral, generally the lender's securities.* The lender/customer retains his/her status as beneficial owner of the collateral, but the securities must be in the possession of the broker/dealer and registered in its name. As securities can fluctuate in value, the lender must give sufficient securities to the broker/dealer so that when the securities are discounted, the net value of the securities will be equal to or greater than the amount of the SDN. This "discounting" is required by regulation. The rate of the discount varies and can be as high as 30 percent in the event common stock is used as collateral.

For example, assuming common stock is used as collateral, for every $1,000 of face amount of the SDN, the investor must give the broker/dealer collateral that has a market value of at least $1,429. Therefore, collateral for a $15,000 SDN would require common stock that has a current market value of at least $21,435.

Q. *What happens to the securities that I pledge as collateral under an SDN?*

A.
- The investor gives up the right to sell or otherwise use the securities that have been pledged to the broker/dealer under an SDN. Once securities are pledged as collateral for an SDN, the broker/dealer has exclusive use of the securities.
- The investor may *exchange* or substitute the securities that have been pledged to the broker/dealer with different securities, but the value of the new securities (after applying the appropriate discount) must be sufficient to collateralize the SDN.
- The broker/dealer may use them as collateral, *i.e.,* the broker/dealer may borrow money from another party using the securities the investor has pledged as collateral under the SDN as collateral for the new loan.
- If the securities pledged as collateral decline in value so that their discounted value is less than the face amount of the SDN, the investor must deposit additional securities with the broker/dealer to keep the SDN at the proper collateral level. If the investor does not give the broker/dealer additional collateral, the broker/dealer may sell some or all of the investor's securities.

- If the broker/dealer makes a demand for cash under an SDN, and the investor does not provide the broker/dealer with the cash, the broker/dealer has discretion to *sell* some or all of the investor's collateral (or securities). The SDN gives the broker/dealer the discretion to choose which of the investor's collateral to sell.
- All securities pledged as collateral for the SDN, including excess collateral, are subordinated to the claims of the broker/dealer's customers and creditors. Thus, if the firm becomes insolvent, the lender's ability to retrieve his/her collateral may be at risk.

THE NASD REGULATION APPROVAL PROCESS

Q. *What is involved in the NASD Regulation approval process?*

A. NASD Regulation will review the subordination agreement to ensure that it meets all technical requirements of Appendix D of SEC Rule 15c3-1 and to verify and that the broker/dealer has actually received the investor's funds or securities. This review is done to enable the borrower broker/dealer to use the subordination agreement as part of its regulatory capital. As previously stated, NASD Regulation does *not* review subordination agreements to determine whether the investment is viable or suitable for the investor. The investor must make this determination.

By signing below, the investor attests to the fact that he/she has read this Subordination Agreement Investor Disclosure Document.

Investor Name

Investor Signature Date

FOR NASD USE ONLY

Effective Date:

LOAN Number:

NASD ID Number:

Date Filed:

INFORMATIONAL

FOCUS Reporting

Changes To FOCUS Resulting From Certain Disclosure And Asset Recognition Requirements Under FASB 140

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

KEY TOPICS

- Financial Accounting Standards Board
- FOCUS Reports

Executive Summary

The National Association of Securities Dealers, Inc. (NASD®) has modified the FOCUS Report to include disclosure, pursuant to Financial Accounting Standards Board Statement 140 (Statement 140), of amounts of inventory pledged, non-cash collateral received in secured financing transactions, and residual interests carried as a result of asset-collateralized securitizations. Beginning with the December 2001 FOCUS Report, members, who are required to file FOCUS Report, Part II, need to disclose:

(1) the dollar value of inventory pledged to secure a bank loan, or a security lending or re-purchase transaction, *to the extent that the third party receiving the collateral has the right to sell or re-pledge such collateral;*

(2) the market value of securities received as collateral, which were pledged by a counter-party as a result of a securities lending or repurchase arrangement, as well as an offsetting amount representing the obligation to return pledged securities; and

(3) the fair value of residual interests, over which the firm has retained control, in a special purpose entity (SPE), and an offsetting amount representing contingent obligations to the beneficial owners of interests in the SPE.

Questions/Further Information

Members should initially direct any questions on the applicability of the disclosure requirements of Statement 140 to their outside auditors. Questions concerning the disclosure reported on the FOCUS Statement of Financial Condition ("Balance Sheet") may be directed to Andrew Labadie, Member Regulation, NASD Regulation, at (202) 728-8397.

Background

In September 2000, the Financial Accounting Standards Board (FASB) issued Statement 140, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities." While the primary focus of Statement 140 is to provide guidance for, and facilitate consistent treatment of, transfers of financial assets and settlements of financial liabilities, it also requires firms to disclose the extent to which they have (1) encumbered (that is, permitted third parties to sell or re-pledge) inventory that has been pledged to obtain financing, and (2) received non-cash financial assets as collateral in secured lending transactions. In addition, firms need to disclose the fair value of any residual interests retained in an SPE. (SPEs are often a vehicle for the issuance of asset-collateralized securities, such as interests in the cash flows obtained from credit card receivables).[1]

The Securities and Exchange Commission requested the New York Stock Exchange (NYSE) and the NASD to determine the extent to which broker/dealers encumber pledged inventory, engage in secured financing transactions, or originate securitizations in which they retain residual interests. The NYSE and the NASD have included additional fields in the Balance Sheet of the FOCUS Report to capture such information. Accordingly, beginning with the December 2001 FOCUS Report, members will need to disclose the market value of proprietary securities that are not under their control as encumbered

assets, and recognize, as assets and liabilities, non-cash collateral received in certain secured transactions, as well as indirect interests in certain securitized assets that do not qualify for sale treatment under Statement 140.

Application: FOCUS Report Part II Filers

Pages 2 and 3 of the FOCUS Report have been revised to accommodate the new disclosure and recognition Items; the specific line item fields are currently reflected in Web FOCUS.

1. Under Section 7, *Securities and Spot Commodities owned at market value,* we have added Line 7J: "Total Inventory – includes encumbered securities of" – (FOCUS Item 120). The dollar value of proprietary securities that are encumbered is a *subset* of the combined value of the preceding inventory categories (that is, it *cannot exceed* the amount reported in Item 850). As a subset of the total of the preceding inventory categories, the amount reported in Item 120 does not carry forward to Item 850, and thus has no effect on total assets. Encumbered securities primarily consist of securities not in the control of the broker/dealer as a result of a secured transaction such as a bank loan, or a security lending or re-purchase transaction, *to the extent that the third party receiving the collateral has the right to sell or re-pledge such collateral.* The amount reported on this line may be reported on a settlement-date basis, even if inventory is reported on a trade-date basis.

2. Under Section 15, *Other Assets,* we have added Line 15E, "Collateral accepted under Statement 140" – (FOCUS Item 536), and under Section 23, *Accounts payable and accrued liabilities and expenses,* Line 23G, "Obligation to return securities" – (FOCUS Item 1386). Collateral accepted under Statement 140 refers to the market value of non-cash collateral received in exchange for securities loaned. The *offsetting* liability on Line 23G represents the obligation to return such securities. The amounts reported in Item 536, and in Item 1386 in a basic filing, or Item 1686 in an alternate filing, should be *equal.* The amount included in Item 536 should be carried forward to Item 930, and the amount included in 1386 in a basic filing should be carried forward to Item 1686. Since the amounts on Lines 15E and 23G offset, they do not effect net worth.[2]

3. Again under Section 15, *Other Assets, we have added Line 15F, "SPE Assets" – (FOCUS Item 537) and under Section 23, Accounts payable and accrued liabilities and expenses, Line 23H, "SPE Liabilities"* – (FOCUS Item 1387). SPE assets represent residual interests, over which the issuer has retained control, in an SPE (that is, effectively residual interests in the cash flows obtained from the underlying securitized assets held by the SPE). The fair value of such retained residual interests is reported in Item 537. The offsetting liability reported on Line 23H represents the contingent obligations to the beneficial owners of interests in the SPE. The amounts reported in Item 537, and in Item 1387 in a basic filing, or Item 1687 in an alternate filing, should be equal. The amount included in Item 537 should be carried forward to Item 930, and the amount included in 1387 in a basic filing should be carried forward to Item 1687. Since the amounts on Lines 15F and 23H offset, they do not effect net worth.

Assets and liabilities reported on FOCUS solely to provide disclosure pursuant to Statement 140 will have no impact on the computation of net capital or the customer reserve calculation. Haircut charges will continue to apply unchanged to the inventory categories in Lines 7A through 7I. The amount reported in Item 120 on Line 7J will not be subject to an additional haircut charge. The amounts reported in Items 536 and 537 are included in allowable assets and the amounts in 1386 and 1387 are excluded from aggregate indebtedness.

Endnotes:

1 Statement 140 became effective for transfers and servicing of financial assets and extinguishments of liabilities occurring after March 31, 2001. The collateral re-classification and recognition requirements became effective for financial statements for fiscal years ending after December 15, 2000. Statement 140 replaces, and yet is essentially a refinement of, Statement 125, which was released in June 1996.

2 Members are responsible for determining how Statement 140 applies to the member's use of customer securities, *e.g.*, bank loan versus customer margin securities. Members should consult with their independent public accountants as to the recognition of such securities on the FOCUS Balance Sheet. If so recognized, the market value of these securities would also be disclosed on Line 15E, Item 536, and Line 23G, Items 1386 or 1686 on the FOCUS Balance Sheet.

INFORMATIONAL

Trade Date—Settlement Date

Trade Date—Settlement Date Schedule For Martin Luther King Day And Presidents' Day

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 21, 2002, 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. 15	Jan. 18	Jan. 23
16	22	24
17	23	25
18	24	28
21	Markets Closed	—
22	25	29

Presidents' Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, February 18, 2002, 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. 12	Feb. 15	Feb. 20
13	19	21
14	20	22
15	21	25
18	Markets Closed	—
19	22	26

* 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."

INFORMATIONAL

Interfering With Customer Account Transfers

NASD Regulation Adopts Interpretive Material Prohibiting Interference With The Transfer Of Customer Accounts In The Context Of Employment Disputes

Implementation Date: February 11, 2002

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
- Registered Representatives
- Senior Management
- Training

KEY TOPIC

- Account Transfers
- Employment Disputes
- Injunctions

Executive Summary

NASD Regulation, Inc. (NASD Regulation℠) has adopted Interpretive Material 2110-7, which provides that it is inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim.

The Interpretive Material was filed with the Securities and Exchange Commission (SEC) on December 21, 2001.[1] Pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and SEC Rule 19b-4(f)(1) thereunder, the Interpretive Material became immediately effective upon filing. The NASD will implement IM-2110-7 beginning on February 11, 2002.

Included with this *Notice* is Attachment A, the text of the new Interpretive Material.

Questions/Further Information

Questions regarding this *Notice* may be directed to Sarah J. Williams, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8083.

Discussion

As a condition of employment, certain members require their registered representatives to sign employment contracts in which each registered representative agrees that when he or she leaves the firm, he or she will not take, copy, or share with others any firm records. In addition, the registered representative may agree that, for a certain period of time following his or her departure from the firm, he or she will not solicit the firm's customers for business. Nonetheless, when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may decide to continue their relationship with the registered representative by transferring their accounts to the registered representative's new firm. The registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new firm, or soliciting clients to transfer their accounts to the new firm, sometimes seeks a court order to prevent the transfer of accounts.[2]

In some cases, courts have granted the former firm's request for relief, and have ordered the registered representative's new employer to reject customer account transfers received from the registered representative's former firm. Some courts also have ordered the registered representative's new firm to send letters to customers who may have been solicited in breach of an employment agreement stating that the firm is prohibited by a court order from having contact with that customer.

In *NASD Notice to Members 79-7* (February 13, 1979), the NASD alerted its members that the SEC had issued a notice to broker/dealers stating that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade. NASD Regulation believes that obtaining court

orders to prevent customers from following a registered representative to a different firm is similar to the unfair practice of delaying transfers that the SEC warned of in its notice.

To address this concern, NASD Regulation has adopted Interpretive Material 2110-7, which provides that it is inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery, or acceptance of a written request from a customer to transfer his or her account.

The Interpretive Material does not affect the operation of Rule 11870 (governing customer account transfers), nor does it affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Members are not prevented from pursuing other remedies they may have arising from employment disputes with former registered representatives. The Interpretive Material is limited to restricting a member from interfering with a customer's right to transfer his or her account, once the customer has asked the firm to move the account.

Endnotes

1 *See* Securities Exchange Act Release No. 45239 (January 4, 2002) (File No. SR-NASD-2001-95).

2 NASD Code of Arbitration Procedure Rule 10335 permits the parties to arbitration disputes to seek temporary injunctive relief. Proposed amendments to Rule 10335 are currently pending with the SEC. The proposed Interpretive Material would not conflict with or affect the operation of Rule 10335 (*i.e.*, the procedure by which temporary injunctive relief may be obtained in intra-industry arbitration disputes).

ATTACHMENT A

IM 2110-7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes

It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

INFORMATIONAL

FIPS Changes

Fixed Income Pricing System℠ Additions, Changes, And Deletions As Of **November 28, 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.

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

KEY TOPICS

- FIPS

As of November 28, 2001, the following bonds were added to the Fixed Income Pricing System (FIPS℠).

Symbol	Name	Coupon	Maturity
ASGU.GA	Amerisourcebergen Corp	8.125	09-01-08
AVA.GA	Avista Corp	9.750	06-01-08
CDLV.GA	CB Richard Ellis Service Inc.	11.250	06-15-11
CBNG.GA	CBRE Holding Inc.	16.000	07-20-11
DCN.GA	Dana Corp.	6.500	03-15-08
DCN.GB	Dana Corp.	7.000	03-15-28
DCN.GC	Dana Corp.	6.500	03-01-09
DCN.GD	Dana Corp.	7.000	03-01-29
DCN.GE	Dana Corp.	6.250	03-01-04
DRUI.GA	Denbury Resource Inc.	9.000	03-01-08
DILP.GA	Dillards Inc.	9.500	09-01-09
DILP.GB	Dillards Inc.	9.125	08-01-11
DILP.GC	Dillards Inc.	7.150	09-01-02
DILP.GD	Dillards Inc.	7.850	10-01-12
DILP.GE	Dillards Inc.	7.875	01-01-23
DILP.GF	Dillards Inc.	6.875	06-01-05
DILP.GG	Dillards Inc.	7.375	06-01-06
DILP.GH	Dillards Inc.	7.750	07-15-26
DILP.GI	Dillards Inc.	7.150	02-01-07
DILP.GJ	Dillards Inc.	7.750	05-15-27
DILP.GK	Dillards Inc.	6.625	01-15-18
DDS.GA	Dillards Inc.	6.300	02-15-08
DDS.GB	Dillards Inc.	6.310	08-01-12
DDS.GC	Dillards Inc.	6.390	08-01-13
DDS.GD	Dillards Inc.	6.430	08-01-04
DDS.GE	Dillards Inc.	6.690	08-01-07
DDS.GF	Dillards Inc.	7.130	08-01-18
DDS.GG	Dillards Inc.	6.125	11-01-03
DDS.GH	Dillards Inc.	6.625	11-15-08
DDS.GI	Dillards, Inc.	7.000	12-01-28
ENE.GC	Enron Corp	9.875	06-15-03
ENE.GD	Enron Corp	9.125	04-01-03
ENE.GE	Enron Corp	7.625	09-10-04
ENE.GF	Enron Corp	7.000	08-15-23
ENE.GG	Enron Corp	7.125	05-15-07
ENE.GH	Enron Corp	6.750	09-15-04
ENE.GI	Enron Corp	6.875	10-15-07
ENE.GJ	Enron Corp	6.750	08-01-09
ENE.GK	Enron Corp	6.500	08-01-02
ENE.GL	Enron Corp	6.750	09-01-04
ENE.GM	Enron Corp	6.625	10-15-03
ENE.GN	Enron Corp	6.625	11-15-05
ENE.GO	Enron Corp	6.400	07-15-06
ENE.GP	Enron Corp	6.950	07-15-28
ENE.GQ	Enron Corp	6.950	07-15-28

ENE.GR	Enron Corp	7.375	05-15-19
ENE.GS	Enron Corp	7.875	06-15-03
ENE.GT	Enron Corp	6.725	11-17-08
ENE.GU	Enron Corp	9.625	03-15-06
GSKI.GA	Golden Sky Debs Inc.	13.500	03-01-07
GSKY.GA	Golden Sky Sys Inc.	12.375	08-01-06
GAP.GE	Great Atlantic & Pacific Tea Inc.	9.125	12-15-11
ISEM.GA	ISP Chemco Inc.	10.250	07-01-11
KBH.GG	KB Home	8.625	12-15-08
LBFN.GA	Liberty Financial Cos Inc.	6.750	11-15-08
LBFN.GB	Liberty Financial Cos Inc.	7.625	11-15-08
LNHG.GB	Lin Holdings Corp	10.000	03-01-08
LNTV.GB	Lin Television Corp	8.000	01-15-08
LSS.GA	Lone Star Technologies Inc	9.000	06-01-11
MCNS.GA	Mercantile Stores Inc.	8.200	09-15-22
NAUR.GA	NA United Rentals Inc.	10.750	04-15-08
NHGS.GA	Northern Natl Gas Co Del	6.875	05-01-05
OWNR.GA	Owens & Minor Inc.	8.500	07-15-11
OXAU.GD	Oxford Automotive	10.125	06-15-07
SNH.GA	Senior Housing Properties Trust	8.625	01-15-12
SBSA.GE	Spanish Broadcasting System Inc.	9.625	11-01-09
TLLP.GH	Toll Corp	8.250	12-01-11
TRWP.GC	Transwestern Pub/Twp Cap	9.625	11-15-07
TRUD.GA	Tri-Union Development Corp	12.500	06-01-06
UIS.GK	Unisys Corp	7.250	01-15-05
UVN.GA	Univision Comm Inc.	7.850	07-15-11
XRX.GA	Xerox Corporation	5.500	11-15-03

As of November 28, 2001, the following bonds were deleted from the Fixed Income Pricing System.

Symbol	Name	Coupon	Maturity
CVXP.GL	Cleveland Electric Illum Co.	7.430	11-01-09
CVXP.GM	Cleveland Electric Illum Co.	7.880	11-01-17
CVXP.GN	Cleveland Electric Illum Co.	6.860	10-01-08
CVLD.GB	Cleveland Electric Illum/Toledo Edison Co.	7.670	07-01-04
CBDC.GA	Contl Broadcasting Ltd/Cap	10.625	07-01-08
CDIG.GA	CSC Holdings Inc.	9.250	11-01-05
CDIG.GB	CSC Holdings Inc.	9.875	05-15-06
EE.GC EI	Paso Electric Co	8.250	02-01-03
EE.GD EI	Paso Electric Co	8.900	02-01-06
EE.GE EI	Paso Electric Co	9.400	05-01-11
FXFW.GA	El Paso Electric Co	9.250	11-01-07
FXFW.GB	El Paso Electric Co	10.250	11-01-07
FNRI.GB	Flores and Rucks Inc.	9.750	10-01-06
ISLP.GA	Isle of Capri/Cap Corp	13.000	08-31-04
ISPH.GB	ISP Holdings Inc.	9.750	02-15-02
NEBC.GA	Nebco Evans Holding Co.	12.375	07-15-07
NMK.GE	Niagara Mohawk Power Corp	7.735	07-01-03
NMK.GF	Niagara Mohawk Power Corp	7.625	10-01-05
NMK.GG	Niagara Mohawk Power Corp	7.750	10-01-08
PJMC.GA	Peter (J.M.) Co	12.750	05-01-02
SGO.GB	Seagull Energy Corp	8.625	08-01-05
SDW.GA	Southdown Inc.	10.000	03-01-06
TEDP.GC	Toledo Edison Co.	8.000	11-01-03
TEDP.GE	Toledo Edison Co.	7.875	08-01-04
TEDP.GF	Toledo Edison Co.	8.700	09-01-02
TWA.GA	Transworld Airlines Inc.	11.500	12-15-04
TWA.GB	Transworld Airlines Inc.	12.000	04-01-02
UC.GD	United Cos Finl Corp	7.700	01-15-04

As of November 28, 2001 changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	New Name/Old Name	Coupon	Maturity

There were no symbol changes for this time period.

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 (240) 386-4994.

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

Disciplinary Actions

Disciplinary Actions Reported For January

NASD Regulation, Inc. (NASD Regulation℠) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD®) 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 December 2001.

Firms And Individuals Fined

Investex Securities Group, Inc. (CRD #30094, New York, New York) and Frank John Somma (CRD #1186283, Registered Principal, Holmdel, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined $10,000, 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, acting through Somma, failed to timely report to the NASD statistical and summary information regarding written customer complaints, and failed to establish, maintain, and enforce written supervisory procedures designed to reasonably achieve compliance with the NASD rule regarding customer complaint reporting requirements. **(NASD Case #C10010138)**

Worldco, L.L.C. (CRD #24673, New York, New York) and Terry Thomas Maloney (CRD #2612384, Registered Principal, Princeton Junction, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined $15,000, jointly and severally. The firm was fined an additional $175,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Maloney, failed to adequately monitor, calculate, and/or enforce day-trading margin maintenance requirements for a prime brokerage account of an institutional customer as required by the NASD, in that the firm failed to monitor and/or calculate whether the account exceeded day-trading buying power. **(NASD Case #C10010142)**

Firms Fined

ABN AMRO, Incorporated (CRD #15776, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report, or completely and accurately report, transactions in municipal securities effected with other broker/dealers, municipal securities dealers, or with institutional and retail customers. The NASD also found that the firm failed to provide accurate and timely information regarding municipal securities trades to the National Securities Clearing Corporation (NSCC), which caused its T-Input Percentage to be below the industry average. The findings also stated that the firm failed to report municipal securities transactions with a proper Effecting Broker Symbol (EBS), in that it had a non-compliance percentage that was below the industry average. In addition, the NASD found that the firm failed to obtain and maintain adequate documentation for securities accounts, for which the beneficial owners of the accounts were not identified, in that the accounts were undisclosed principal accounts, and/or accounts of

investment partnerships or corporations that purchased shares of initial public offerings (IPOs), which traded at a premium on the secondary market. Furthermore, the findings stated that the firm failed to establish, maintain, and/or enforce adequate written supervisory procedures to address all areas of its municipal securities business in that the firm's procedures failed to address municipal securities trade reporting and failed to state any procedure to test whether automated systems are properly reporting municipal securities transactions. **(NASD Case #C8A010084)**

Arcadia Securities, L.L.C. (CRD #44656, 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 it failed to transmit to the Order Audit Trail System (OATS℠) any order data for its orders for equity securities traded on The Nasdaq Stock Market.® According to the findings, although the firm entered into an agreement with its reporting agent to submit OATS data in accordance with NASD Rule 6955, the firm's reporting agent improperly submitted OATS data under another firm's identification symbol rather than under that of the firm. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning OATS, in that the firm had no procedure by which it regularly monitored its OATS reporting agent to insure proper reporting on behalf of the firm. **(NASD Case #CMS010174)**

Arnhold and S. Bleichroeder, Inc. (CRD #1101, 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 it failed to display immediately customer limit orders in its public quote, when each such order was at a price that would have improved the firm's bid or offer in each security, when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. **(NASD Case #CMS010169)**

Bidwell & Company (CRD #10215, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $10,000, and required to revise its written supervisory procedures to achieve compliance with applicable securities laws and regulations concerning OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it captured or entered orders for equity securities traded on The Nasdaq Stock Market into an electronic order routing or execution system, submitted to OATS reports with respect to equity securities traded on The Nasdaq Stock Market that were not in the electronic form prescribed by the NASD, and failed to correct or replace the subject reports when they were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web Site. The findings also stated that the firm did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning OATS. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010179)**

Global Capital Markets, LLC (CRD #16191, Melville, 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 the entry of findings that it employed an individual who was statutorily disqualified due to a felony conviction. **(NASD Case #C10010147)**

Herzog, Heine, Geduld, Inc. (CRD #2186, Jersey City, New Jersey) 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, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size and thereby failed to honor its published quotation. **(NASD Case #CMS010185)**

International Securities Corporation (CRD #36023, New York, New York) submitted a Letter of Acceptance, Waiver, and

Consent in which the firm was censured and fined $12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions to Automated Confirmation Transaction Service℠ (ACT℠) within 90 seconds after execution, constituting a pattern or practice of late reporting without exceptional circumstances. The findings also stated that the firm failed to designate as late transactions in over-the-counter equity securities, Nasdaq SmallCap℠ securities, and Nasdaq National Market (NNM) securities within 90 seconds after execution to ACT. **(NASD Case #CMS010178)**

McMahan Securities Co. L.P. (CRD #22123, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $17,500, and required to revise its written supervisory procedures relating to the supervision of its trading desk and compliance with applicable securities laws and regulations concerning ACT compliance, best execution, limit-order protection, order handling, one-percent rule, registration, trade reporting, Small Order Execution System℠ (SOES℠), books and records, locked/crossed markets, SEC 21(a) report issues, short-sale compliance, and front running. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale orders in certain securities and failed to maintain a written record of the affirmative determination made for such orders; failed to provide written notification disclosing to its customer its correct capacity in the transaction; failed to show the correct time of entry and/or time of execution; failed to memorialize the volume of each component of the executions on brokerage order memorandum; failed to maintain legible time stamps for the execution of orders on the memorandum of brokerage orders; and executed short-sale orders and failed to mark the order tickets properly as short for those orders.

Furthermore, the NASD determined that the firm's written supervisory procedures did not accurately reflect the firm's actual supervisory system that was designed to achieve compliance with respect to the supervision of the firm's trading desk. Specifically, the firm's written supervisory procedures identified inaccurately the person responsible for supervising the firm's trading desk, and the firm supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations. The firm's supervisory system also did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with applicable rules; a statement of the steps that such person should take to ensure compliance therewith; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010186)**

Merrill Lynch Professional Clearing Corp. (CRD #16139, Somerset, New Jersey) 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 report its short-interest positions in Nasdaq SmallCap securities to the NASD. **(NASD Case #CMS010184)**

National Capital, LLC (CRD #26078, Oklahoma City, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $10,000, and required to revise its written supervisory procedures concerning firm quote compliance. 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 firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. The findings also stated that the firm did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning firm quote rules. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010194)**

NexTrade, Inc. (CRD #41087, Clearwater, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $15,000, and required to revised its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to

transmit to OATS any order data for its orders for equity securities traded on the Nasdaq Stock Market; failed to transmit to OATS reports containing each applicable item of order information identified in NASD Marketplace Rule 6954; and transmitted to OATS inaccurate reports by transmitting execution reports rather than routing reports with respect to orders for equity securities traded on the Nasdaq Stock Market. The findings also stated that the firm did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning OATS. Specifically, the NASD found that the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010181)**

Paragon Capital Markets, Inc. (CRD #18555, New York, New York) 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 as a registered market maker in securities, 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 firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. The findings also stated that the firm did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning the firm quote rules. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010193)**

Olympic Trading & Investments, Inc., n/k/a NT Securities LLC (CRD #45694, Monroe, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $10,000, and required to revise its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to transmit to OATS reports containing each applicable item of order information identified in NASD Marketplace Rule 6954. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations, and NASD rules concerning OATS. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010176)**

PenStar Trading, LLC (CRD #103719, Sarasota, Florida) 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 submitted to OATS reports with respect to equity securities traded on The Nasdaq Stock Market that were not in the electronic form prescribed by the NASD, and after the reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web Site, the firm did not correct or replace the reports and, thus, failed to report such information to OATS correctly. The findings also stated that the firm submitted to OATS reportable order events that contained inaccurate, incomplete, or improperly formatted data. In addition, the NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations, and NASD rules concerning OATS. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010163)**

Rom-Bo Trading Co. (CRD #37554, 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 executed short-sale transactions in certain securities, all of which were NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. **(NASD Case #CMS010159)**

UBS PaineWebber, Inc. (CRD #8174, Weehawken, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $12,500, and required to revise its written supervisory procedures relating to transaction reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it incorrectly designated as late, to the Fixed Income Pricing System℠ (FIPS®), transactions in FIPS securities and failed to report the correct time of execution to FIPS for each transaction. The findings also stated that the firm failed to report to FIPS the correct bond identification symbol in one transaction in a FIPS security, double reported a transaction in a FIPS security, and failed to report to FIPS the correct unit price in transactions in FIPS securities and high-yield corporate debt securities. The findings also stated that the firm failed to report to FIPS the correct time of execution in transactions in high-yield corporate debt securities and failed to cancel in FIPS transactions in a high-yield corporate debt security. In addition, the NASD determined that the firm did not have a supervisory system that provided for supervision reasonably designed to achieve compliance with respect to the rules concerning the reporting of transactions in high-yield corporate debt securities to the NASD. **(NASD Case #CMS010162)**

Wilson-Davis & Co., Inc. (CRD #3777, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $10,000, and required to revise its written supervisory procedures concerning SEC Rule 15c2-11 and NASD Marketplace Rule 6740. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it published quotations for OTC Equity Securities in quotation mediums that did not have in its records the documentation required by SEC Rule 15c2-11(a), and that it did not have a reasonable basis under the circumstances for believing that the information was accurate in all material respects or did not have a reasonable basis under the circumstances for believing that the sources of the information were reliable. Moreover, the quotations did not represent a customer's indication of unsolicited interest. The findings also stated that the firm failed to file a Form 211 with the NASD at least three business days before the firm's quotations were published or displayed in a quotation medium. The NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning SEC Rule 15c2-11 and NASD Marketplace Rule 6740. Specifically, the NASD found that the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010182)**

Individuals Barred Or Suspended

Gilbert Louis Almada (CRD #1176134, Registered Representative, Diamond Bar, 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, Almada consented to the described sanction and to the entry of findings that he used fraudulent and deceptive means to obtain checks totaling $143,000 from a public customer by falsely telling the customer that he would use the funds to make securities investments on her behalf. The NASD found that Almada never intended to use the funds to purchase the investments on the customer's behalf and instead deposited the funds into a checking account he controlled and used the funds for his own personal use. **(NASD Case #C02010060)**

James Philip Arndts (CRD #1037280, Registered Representative, Troy, Ohio) 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, Arndts consented to the described sanction and to the entry of findings that he sold promissory notes away from his member firm, for compensation, failed to provide his firm with

detailed written notice of the transactions and his role therein, and failed to receive permission from the firm to engage in the transactions. **(NASD Case #C8B010030)**

James Patrick Bauer (CRD #1902320, Registered Representative, Bethlehem City, Pennsylvania) 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, Bauer consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C9A010046)**

Joseph Albert Best (CRD #2396728, Registered Representative, Leesburg, Florida) 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, Best consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, or authorization from, his member firm. The findings also stated that Best failed to respond to NASD requests for information. **(NASD Case #C07010092)**

William Lester Bennett (CRD #1112341, Registered Representative, Sanford, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for two years. In light of the financial status of Bennett, no monetary sanction has been imposed. Without admitting or denying the allegations, Bennett consented to the described sanction and to the entry of findings that he participated in sales of private securities to public customers without providing prior notice to, or obtaining written authorization from, his member firm.

Bennett's suspension began December 17, 2001, and will conclude at the close of business December 16, 2003. **(NASD Case #C07010079)**

Kris Paul Binneboese (CRD #2850596, Registered Representative, Hinton, Iowa) 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, Binneboese consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Uniform Application for Securities Industry Registration or Transfer (Form U-4). The findings also stated that Binneboese failed to respond to NASD requests for information. **(NASD Case #C04010041)**

Lee Edward Bridges (CRD #1509183, Registered Representative, McComb, Mississippi) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for one year. In light of the financial status of Bridges, no monetary sanctions have been imposed. Without admitting or denying the allegations, Bridges consented to the described sanction and to the entry of findings that he engaged in business activities outside the scope of his relationship with his member firm without prior written notice to the firm. The findings also stated that Bridges received $1,000 from a public customer to open up an Individual Retirement Account (IRA), failed to open the account as instructed and maintain proper control of the funds, and thereby allowed the funds to be misappropriated by an employee.

Bridges' suspension began January 7, 2002, and will conclude at the close of business January 6, 2003. **(NASD Case #C05010021)**

Michael Alexander Bufano (CRD #3199805, Associated Person, Bronx, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bufano removed two blank checks from the checkbook of a member firm with which he was associated, filled out each check for $1,000, and cashed the checks, converting the $2,000 for his own personal use and benefit without the firm's knowledge, authorization, or consent. The NASD also found that Bufano forged the signature of an authorized signatory employed by the firm on each check. In addition, Bufano failed to respond to NASD requests for information. **(NASD Case #C10010087)**

Joseph Michael Cileone, III (CRD #4264848, Associated Person, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $2,500 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Cileone reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cileone consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U-4.

Cileone's suspension will begin January 22, 2002, and will conclude at the close of business February 4, 2002. **(NASD Case #C9A010050)**

Richard Arlan Corley (CRD #800781, Registered Representative, Wake Forest, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Corley consented to the described sanction and to the entry of findings that he was directed by his member firm to open brokerage accounts for each of his customers, to transfer all of their mutual fund and annuity holdings into those accounts within 90 days, and to have his clients complete all required documentation for transactions effected in their accounts. The findings stated that Corley completed the required forms and mailed them to his clients with instructions to sign and return them by a stated deadline but some of his clients failed to return the forms by the deadline. In those instances, Corley signed the client's name on the required forms without authorization.

Corley's suspension began January 7, 2002, and will conclude at the close of business January 18, 2002. **(NASD Case #C07010081)**

Edward Miller Crowley (CRD #802611, Registered Representative, Toms River, New Jersey) 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 30 days. Without admitting or denying the allegations, Crowley consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide his member firm with detailed written notice of the transactions, his role therein, and whether he might receive compensation.

Crowley's suspension began December 17, 2001, and will conclude at the close of business January 15, 2002. **(NASD Case #C9A010048)**

Christina I. Dharamsingh (CRD #4075197, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Dharamsingh reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dharamsingh consented to the described sanctions and to the entry of findings that she willfully failed to disclose material information on a Form U-4.

Dharamsingh's suspension will begin January 22, 2002, and will conclude July 21, 2002. **(NASD Case #C06010038)**

Mary Ann Donaghy (CRD #1468163, Registered Representative, Indianola, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $2,500 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Donaghy reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Donaghy consented to the described sanctions and to the entry of findings that she mishandled customer funds by accepting cash from public customers and placing it in a bank account that she controlled.

Donaghy's suspension began December 17, 2001, and concluded at the close of business December 31, 2001. **(NASD Case #C04010042)**

James Edward Dvorak (CRD #3110894, Registered Representative, Elmhurst, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,559.51, required to disgorge $4,440.49, plus interest, in commissions to public customers, and suspended from association with any NASD member in any capacity for four months. The fine and disgorgement must be paid before Dvorak reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dvorak consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to, and receiving approval from, his member firms.

Dvorak's suspension began December 17, 2001, and will conclude at the close of business April 16, 2002. **(NASD Case #C8A010083)**

Jeffrey Lee Farley (CRD #1891240, Registered Representative, Lutherville, Maryland) was barred from association with any NASD member in any capacity. The sanction was based on findings that Farley received and used for his own benefit funds taken from the account of his member firm. **(NASD Case #C9A000038)**

Gregory Michael Fabrizzi (CRD #2349994, Registered Representative, Old Bridge, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent 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 $8,526, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Fabrizzi consented to the described sanctions and to the entry of findings that he engaged in excessive trading and unsuitable recommendations in the account of a public customer in order to increase the buying power of the account and his commissions.

Fabrizzi's suspension began January 7, 2002, and will conclude at the close of business February 19, 2002. **(NASD Case #CAF010029)**

Oleg Ferdman (CRD #2092949, Registered Principal, Brooklyn, New York) and Gregg Eli Bailer (CRD #2245653, Registered Representative, Brooklyn, New York) were barred from association with any NASD member in any capacity for failure to appear. Ferdman was also fined $225,000 and suspended from association with any NASD member in any capacity for 60 days for prohibited conduct during a distribution of securities. Ferdman's fine is due and payable prior to his re-entry into the securities industry. The sanctions are based on findings that Ferdman continuously made a market in, bid for, and induced others to purchase shares and warrants of a security while engaged in distributions of the company's shares. The findings also stated that Ferdman participated in the purchase and resale of shares to public customers while he was still participating in an aftermarket distribution in violation of the SEC Regulation M. In addition, Ferdman and Bailer failed to respond to NASD requests to appear for scheduled interviews.

Ferdman's and Bailer's bars became effective November 19, 2001. **(NASD Case #CAF000040)**

Gregory Caulfield Gaydos (CRD #2431680, Registered Representative, South Plainfield, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Gaydos failed to respond to an NASD request for information. **(NASD Case #C9B010049)**

Frank Joseph Gilday, IV (CRD #2198718, Registered Representative, New Smyrna Beach, Florida) 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 45 days. Without admitting or denying the allegations, Gilday consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in a public customer's account. The findings also stated that Gilday, after receiving a complaint from the same customer concerning another transaction, settled the complaint away from his member firm.

Gilday's suspension began January 7, 2002, and will conclude at the close of business February 20, 2002. **(NASD Case #C07010089)**

Jeffrey Jay Gollehon (CRD #1212338, Registered Representative, Whispering Pines, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000, suspended from association with any NASD member in any capacity for 60 days, and required to disgorge $1,200, plus interest, to public customers. Payment of the fine and satisfactory proof of payment of disgorgement, plus interest, must be made before Gollehon reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gollehon consented to the described sanctions and to the entry of findings that he sold promissory notes, for compensation, to public customers away from his member firm and failed to provide his firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions.

Gollehon's suspension began December 3, 2001, and will conclude at the close of business January 31, 2002. **(NASD Case #C8B010027)**

Michael Goras (CRD #2093841, Registered Representative, Hackensack, New Jersey) 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 Goras reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Goras consented to the described sanctions and to the entry of findings that he engaged in outside business activities without prior written notice to, or approval from, his member firm.

Goras' suspension began January 7, 2002, and will conclude at the close of business January 6, 2003. **(NASD Case #C9B010101)**

Arturo Elias Gorena (CRD #1941195, Registered Representative, Houston, 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, Gorena consented to the described sanction and to the entry of findings that he guaranteed a public customer's account against loss and represented that he had put a lien on his home as collateral for the guarantee. The findings stated that Gorena prepared correspondence and gave it to a public customer, which included statements that failed to offer a sound basis for evaluating the claim contained within the statement, were unwarranted, and failed to reflect the risks of fluctuating prices and the uncertainty of rates of return and yield. The findings also stated that Gorena failed to respond to NASD requests for information. **(NASD Case #C06010036)**

William Otis Haff (CRD #2605143, Registered Representative, Dallas, 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, Haff consented to the described sanction and to the entry of findings that he received 401(k) roll-over checks totaling $3,063.99, made payable to his member firm for the benefit of public customers. The findings stated that Haff failed to remit the checks to his member firm and, instead, forged the customer name to the back of the checks, deposited the checks into accounts he controlled, thereby converting the funds to his own use and benefit without customer knowledge or consent. **(NASD Case #C05010052)**

Brian Henry Thomas Harbold (CRD #2903625, Registered Representative, Pittsburgh, Pennsylvania) 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 30 business days. The fine must be paid before Harbold reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Harbold consented to the described sanctions and to the entry of findings that he sold shares of IPOs to public customers, and in connection with the sale of alleged shares of IPOs, Harbold negligently misrepresented that the firm offering the IPOs had acquired these shares through agreements with member firms when in fact there were no agreements with these firms and the shares in the IPOs were never acquired.

Harbold's suspension began December 17, 2001, and will conclude at the close of business January 30, 2002. **(NASD Case #C9A010025)**

Adam Troy Hepworth (CRD #4180579, Registered Representative, Gilbert, Arizona) was fined $15,000, suspended from association with any NASD member in any capacity for 30 days for providing false responses, and barred from association with any NASD member in any capacity for failing to respond. The fine must be paid before Hepworth reassociates with any NASD member. The sanctions were based on findings that Hepworth willfully failed to disclose a material fact on a Form U-4 and failed to respond to NASD requests for information.

Hepworth's bar became effective November 20, 2001. **(NASD Case #C3A010020)**

Paul John Hoeper (CRD #2318477, Registered Representative, Newport Beach, California) was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) affirmed the sanction following appeal of an Office of Hearing Officers decision. The sanction was based on findings that Hoeper failed to respond to NASD requests for information. **(NASD Case #C02000037)**

Marshall Eugene Hoggard (CRD #1515720, Registered Representative, Jackson, Tennessee) 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, Hoggard consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Hoggard engaged in business activity outside the scope of his relationship with his member firm for which he accepted compensation without prior written notice to his firm. **(NASD Case #C05010050)**

Donald Erwin Jones (CRD #870822, Registered Representative, Cincinnati, Ohio) 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 pay $130,684.07, plus interest, in restitution to a public customer. Satisfactory proof of payment of restitution, with interest, must be made before Jones reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he received $192,684.07 from a public customer and executed a promissory note in favor of the customer for $190,000. The NASD found that, under the terms of the note, Jones was required to repay the customer $190,000, plus interest, but repaid only $62,000 of the principal amount and failed to pay the remaining $130,684.07 of the funds. In addition, the findings stated that Jones failed to respond to NASD requests for documents and information. **(NASD Case #C8B010029)**

Emmanuel George Kavekos (CRD #2794227, Registered Representative, West Palm Beach, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kavekos engaged in unauthorized transactions in the accounts of public customers. In addition, Kavekos made baseless price predictions to public customers in order to induce the customers to purchase securities and failed to respond to NASD requests for information and to appear for an interview. **(NASD Case #C07010045)**

Lane Marshall Langley (CRD #1044004, Registered Representative, Dana Point, 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 six months. The fine was reduced by $7,000 in consideration of Langley's voluntary payment to investors, leaving the amount of $3,000 to be paid to the NASD. Without admitting or denying the allegations, Langley consented to the described sanctions and to the entry of findings that he participated in private securities transactions without prior written notice to, or approval from, his member firm.

Langley's suspension began January 7, 2002, and will conclude on July 6, 2002. **(NASD Case #C3A010050)**

John Edward Letterio (CRD #1420688, Registered Representative, Marshfield, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent 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 Letterio reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Letterio consented to the described sanctions and to the entry of findings that he willfully failed to update his Form U-4 to disclose material information.

Letterio's suspension began January 7, 2002, and will conclude on April 6, 2002. **(NASD Case #C11010037)**

George Louis Lindenberg (CRD #4249880, Registered Representative, Austin, Texas) 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 nine months. The fine must be paid before Lindenberg reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lindenberg consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on a Form U-4.

Lindenberg's suspension will begin January 22, 2002, and will conclude at the close of business October 21, 2002. **(NASD Case #C06010037)**

Amit Mathur (CRD #2532770, Registered Principal, Shrewsbury, 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, Mathur consented to the described sanction and to the entry of findings that he failed to provide prompt written notice to his member firm of his involvement in a family-owned business, which was outside the scope of his employment with the firm for which he received compensation. The findings also stated that Mathur failed to respond to NASD requests for information. **(NASD Case #C11010038)**

Elliott Steven Polatoff (CRD #1956658, Registered Representative, Far Rockaway, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $13,000, suspended from association with any NASD member in any capacity for three months, and required to pay $1,856.25, plus interest, in restitution to member firms. Payment of the fine and proof of payment of restitution shall be prerequisites before reassociating with any NASD member or before

requesting relief from any statutory disqualification. Without admitting or denying the allegations, Polatoff consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders in Nasdaq securities into an electronic communications network (ECN) at prices that he knew would improve the national best bid or offer (NBBO) in such securities, in that the full price and size of such orders would be reflected in the public quotation system as the best prices and sizes at which a market participant was willing to buy or sell such securities. Furthermore, the NASD found that after entering such orders, Polatoff entered orders of such securities in his trading account because he knew that they would be routed to market makers whose automated execution systems were programmed to transact such securities on an automated basis at prices equal to the NBBO and in an amount greater than the NBBO, thereby enabling him to buy and sell shares of the securities at prices that were lower or higher than he would otherwise have been able to buy or sell shares of the securities. Moreover, the findings stated that immediately after he received the executions of the orders that he had entered in his trading account, Polatoff canceled priced limit orders that he had entered into the ECN.

Polatoff's suspension began January 7, 2002, and will conclude at the close of business April 5, 2002. **(NASD Case #CMS010172)**

Gary Ronald Putti (CRD #2630113, Registered Representative, Miami, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Putti failed to respond to NASD requests for information. **(NASD Case #C07010042)**

Juan Francisco Rivera, Jr., (CRD #2023380, Registered Representative, Allentown, Pennsylvania) 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 six months. The fine must be paid before Rivera reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rivera consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on a Form U-4.

Rivera's suspension began December 17, 2001, and will conclude June 16, 2002. **(NASD Case #C9A010049)**

Quint Edward Robinson (CRD #2719933, Registered Representative, Chesterton, Indiana) 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 six months. The fine must be paid before Robinson reassociates with any NASD member, or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Robinson consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers on a document containing mutual fund disclosure information, without the customers' knowledge or consent.

Robinson's suspension began January 7, 2002, and will conclude July 6, 2002. **(NASD Case #C8A010087)**

Alvaro Fabian Rodriguez (CRD #2076732, Registered Representative, Addison, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was ordered to pay $8,725 in restitution to a public customer and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Rodriguez consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without providing written notice to his member firm of the transactions, his role therein, and whether he would receive compensation.

Rodriguez's suspension will begin January 22, 2002, and will conclude at the close of business February 19, 2002. **(NASD Case #C06010039)**

Louis Ronald Rosenwein (CRD #715625, Registered Representative, Bayside, New York) 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 five business days. Without admitting or denying the allegations, Rosenwein consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of a public customer without prior written authorization from the customer to exercise discretion or having the accounts accepted, in writing, as discretionary by his member firm.

Rosenwein's suspension began January 7, 2002, and concluded at the close of business January 11, 2002. **(NASD Case #C10010139)**

Ronald M. Roth (CRD #1785602, Registered Representative, Dix Hills, 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 two years. The fine must be paid before Roth reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Roth consented to the described sanctions and to the entry of findings that he submitted, or caused to be submitted, applications for life insurance that falsely listed on the Agent's Reports and/or Participation Statements accompanying the applications, the names of agents who had purportedly performed work on these policies, when, in fact, the agents identified thereon had not performed any such work. The findings also stated that Roth submitted life insurance applications in the names of fictitious individuals.

Roth's suspension began January 7, 2002, and will conclude at the close of business January 6, 2004. **(NASD Case #C9B010097)**

Alexander Namsik Scribner (CRD #2525381, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $25,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Scribner reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scribner consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders in Nasdaq securities into an ECN at prices that he knew would improve, and were intended to improve, the NBBO in such securities, in that the full price and size of such orders would be reflected in the public quotation system as the best prices and sizes at which a market participant was willing to buy or sell such securities. The findings also stated that after having entered such orders into the ECN, Scribner knowingly and intentionally entered orders to buy shares of such securities in his trading account at his member firm because he knew that they would be routed to market makers whose automated execution systems were programmed to buy such securities on an automated basis at prices equal to the NBBO and in an amount greater that the NBBO. The NASD determined that by knowingly and intentionally engaging in this course of conduct, Scribner bought shares of these securities at prices that were lower than he would otherwise have been able to buy shares of these securities, but for his entry of the orders into the ECN and immediately after he received the execution of the orders that he had entered in his trading account, he intentionally and knowingly canceled priced limit orders that he had entered into the ECN.

Scribner's suspension began November 19, 2001, and will conclude at the close of business January 18, 2002. **(NASD Case #CMS010168)**

Frank Dennis Schwertfeger (CRD #2692390, Associated Person, Playa Del Rey, 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, Schwertfeger consented to the described sanction and to the entry of findings that he opened securities trading accounts and effected securities transactions with NASD member firms other than his member firm, without informing his member firm of the existence of each of the foregoing accounts, and failed to disclose to the executing firms that he was associated with a member firm. The findings also stated that Schwertfeger failed to respond to NASD requests for information in a timely manner, and failed and refused to provide full and complete responses to certain requests for information. **(NASD Case #C02010061)**

Michael Paul Siegel (CRD #2871429, Registered Principal, Manchester Center, Vermont) 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, Siegel consented to the described sanction and to the entry of findings that he made inappropriate use of funds while registered at a member firm. **(NASD Case #C11010036)**

Kevin Robert Smith (CRD #1133992, Registered Representative, Marion, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $10,000, suspended from association with any NASD member in any capacity for 18 months, and required to disgorge $10,240, plus interest, in commissions to public customers. Payment of the fine and satisfactory proof of payment of disgorgement, plus interest, must be made before Smith reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he sold promissory notes to public customers away from his member firm,

failed to provide his firm with detailed written notice of the transactions and his role therein, and failed to receive permission from the firm to engage in the transactions.

Smith's suspension began December 3, 2001, and will conclude at the close of business June 2, 2003. **(NASD Case #C8B010028)**

Yago Marti Sobrevias (CRD #2642527, Registered Representative, Madrid, Spain) was fined $57,750 and barred from association with any NASD member in any capacity. The fine shall be due and payable upon Sobrevias' reassociation with an NASD member. The sanctions were based on findings that Sobrevias engaged in an unauthorized transaction in that he purchased securities for a customer without the prior knowledge, authorization, or consent of the customer. In addition, to conceal the unauthorized purchase, Sobrevias prepared and sent statements to a public customer that falsely reflected the purchase of securities that the customer had requested him to acquire but had not in fact purchased. Furthermore, Sobrevias prepared a letter of guarantee for a public customer guaranteeing the principal value of the customer's portfolio, without the authorization of his member firm, and failed to respond to NASD requests for information. **(NASD Case #C05010027)**

Richard Allen Solmen (CRD #430310, Registered Representative, Clarkston, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $3,500, which includes disgorgement of commissions earned of $1,000, and suspended from association with any NASD member in any capacity for one month. The fine must be paid before Solmen reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Solmen consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for which he received compensation, without providing prompt written notice to his member firm.

Solmen's suspension began January 7, 2002, and will conclude at the close of business February 6, 2002. **(NASD Case #C8A010089)**

Todd Mitchell Spehler (CRD #1255835, Registered Principal, Bellmore, New York) 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, Spehler consented to the described sanction and to the entry of findings that he failed to testify truthfully, accurately, non-deceptively, and/or completely during an NASD on-the-record interview. The findings also stated that a member firm, acting through Spehler, filed an MC-400 with the NASD that contained false, misleading, inaccurate, or incomplete information regarding an individual's job functions and role during his association with the firm and permitted this individual to become associated with the firm without the permission of the SEC and NASD when the firm and Spehler knew, or should have known, that the individual was subject to statutory disqualification. The NASD also found that the member firm, acting through Spehler, failed to register the individual as a representative when the individual was engaged in activities that required registration as a representative, and also failed to register the individual as a principal when he was engaged in activities that required registration as a principal.

In addition, the NASD found that the member firm, acting through Spehler, failed to report to the NASD that it had become associated in business and financial activities with an individual subject to statutory disqualification, and failed to file with the SEC an amendment to its Form BD correcting an inaccuracy that the individual had become a control person of the firm. Furthermore, the member firm, acting through Spehler, failed to implement, maintain, and enforce an effective supervisory system that would have enabled the firm to comply with federal securities laws and NASD rules to detect and prevent the above violations. Moreover, the firm, acting through Spehler, failed to establish, maintain, and enforce written procedures to address the qualifications of, and registration process for, associated persons reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. **(NASD Case #C10990158)**

Todd Mitchell Spehler (CRD #1255835, Registered Principal, Bellmore, New York) 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, Spehler consented to the described sanction and to the entry of findings that a member firm, acting through Spehler, conducted a securities business while failing to comply with the minimum net capital requirements and failed to prepare and maintain accurate books and records. The

findings also stated that the member firm, acting through Spehler, failed to file accurate FOCUS reports with the NASD. **(NASD Case #C10000044)**

Haskell Paul Stone, III (CRD #3035254, Registered Representative, Stuart, Florida) was fined $10,000 and barred from association with any NASD member in any capacity for material misrepresentations and omissions, and fined $5,000 and suspended from association with any NASD member in any capacity for one year for making unsuitable recommendations. The fine shall be due and payable upon Stone's reassociation with an NASD member. The sanctions were based on findings that Stone made material misrepresentations and omissions when making recommendations to public customers, including baseless price predictions, false statements, and inadequate risk disclosure. In addition, Stone recommended and implemented a course of trading in the account of a public customer that was unsuitable based upon the customer's lack of investment experience and the use of borrowed funds.

Stone's bar was effective December 5, 2001. **(NASD Case #C07010051)**

Grace Patricia Stoneham (CRD #1068378, Registered Representative, San Francisco, California) submitted an Offer of Settlement in which she was suspended from association with any NASD member in any capacity for 60 days and ordered to pay $18,000 in restitution to public customers. In light of the financial status of Stoneham, no fine has been imposed. Satisfactory proof of payment of restitution must be made before Stoneham reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Stoneham consented to the described sanctions and to the entry of findings that she made material misrepresentations and omissions of material fact to public customers. The findings also stated that Stoneham made false price predictions to public customers without any reasonable basis for the prediction and failed to disclose the speculative nature of a stock issuer to the customers.

Stoneham's suspension began December 3, 2001, and will conclude at the close of business January 31, 2002. **(CRD #CAF010009)**

Robert Edward Stoner (CRD #4205337, Registered Representative, Long Beach, 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 two years. The fine must be paid before Stoner reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Stoner consented to the described sanctions and to the entry of findings that he willfully misrepresented material facts on a Form U-4.

Stoner's suspension began January 7, 2002, and will conclude at the close of business January 6, 2004. **(NASD Case #C02010063)**

Esa Suonborai (CRD #4258397, Registered Representative, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $2,500 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Suonborai reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Suonborai consented to the described sanctions and to the entry of findings that he failed to respond in a timely manner to NASD requests for information.

Suonborai's suspension will begin January 22, 2002, and will conclude at the close of business February 20, 2002. **(NASD Case #C9A010051)**

Joseph Cyrus White, III (CRD #2779627, Registered Representative, Marion, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000, suspended from association with any NASD member in any capacity for 90 days, and required to disgorge $2,000, plus interest, in commissions to public customers. Satisfactory proof of payment of disgorgement with interest must be made before White reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, White consented to the described sanctions and to the entry of findings that he sold promissory notes to public customers away from his member firm and failed to provide his firm with detailed written notice of the transactions and his role therein, and failed to receive permission from the firm to engage in the transactions.

White's suspension is deemed served based upon a suspension imposed by the Ohio Division of Securities. **(NASD Case #C8B010032)**

Bret Courtney Williams (CRD #1572726, Registered Representative, Manhattan Beach, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $20,000, suspended from association with any NASD member in any capacity for 30 days, and required to pay $2,543.75, plus interest, in restitution to member firms. The fine must be paid before Williams reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered orders in Nasdaq securities into ECNs at prices that he knew would improve the NBBO in such securities, in that the full price and size of such orders would be reflected in the public quotation system as the best prices and sizes at which a market participant was willing to buy or sell such securities. Furthermore, the NASD found that Williams, having entered such orders either into ECNs knowingly and intentionally, routed orders on behalf of his member firm's proprietary account, and sold shares of these securities at prices that were higher than he would otherwise have been able to buy or sell shares of these securities, but from his entry of the orders into the ECNs. Moreover, the findings stated that immediately after he received the executions of the orders that he had entered on behalf of his proprietary account, Williams canceled the orders that he had entered into the ECNs.

Williams' suspension will begin January 21, 2002, and will conclude at the close of business February 19, 2002. **(NASD Case #CMS010166)**

William Kenneth Wilson (CRD #1370065, Registered Representative, Arlington Heights, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined $2,500, and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Wilson reassociates with any NASD member or before any request for relief from any statutory disqualification. Without admitting or denying the allegations, Wilson consented to the described sanctions and to the entry of findings that he deposited into an account for his benefit a commission check of $912.28 for his life insurance policy, which check was payable to another representative, without the knowledge or consent of the representative.

Wilson's suspension began December 17, 2001, and will conclude at the close of business January 30, 2002. **(NASD Case #C8A010085)**

Rodney Isamu Yamamoto (CRD #4374826, Registered Representative, Bountiful, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $15,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Yamamoto reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Yamamoto consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on a Form U-4.

Yamamoto's suspension began January 7, 2002, and will conclude at the close of business January 6, 2004. **(NASD Case #C3A010047)**

Individual Fined

Thomas James Bruch (CRD #1211757, Registered Principal, New Canaan, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined $41,000, which includes the disgorgement of a transaction profit of $39,000. Without admitting or denying the allegations, Bruch consented to the described sanctions and to the entry of findings that in contravention of NASD Rule IM-2110-1, he purchased, or allowed to be purchased, shares of common stock for his account held at a member firm at the public offering price per share. The NASD also found that Bruch engaged in such activities while failing to give written notice to his member firm that he had opened and was maintaining the account. **(NASD Case #C8A010081)**

Decision Issued

The following decision has been issued by the DBCC or the Office of Hearing Officers and has been appealed to or called for review by the NAC as of December 7, 2001. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members.*

Vincent Joseph Puma (CRD #2358356, Registered Principal, Freehold, New Jersey) was fined $10,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Puma

effected an unauthorized transaction in the account of a public customer.

Puma has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C10000122)**

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.

George Robert Gonzalez (CRD #1266143, Registered Representative, Pompton Lakes, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended and effected securities transactions in the accounts of public customers without having reasonable grounds for believing the recommendations and subsequent transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. **(NASD Case #C9B010093)**

Lawrence Ronald Legind (CRD #2830571, Registered Representative, Corona Del Mar, California) was named as a respondent in an NASD complaint alleging that he engaged in private securities transactions and outside business activities, and failed to provide prior written notice to, and receive written permission from, his member firm. The complaint also alleges that Legind guaranteed a customer against loss in the customer's account. **(NASD Case #C02010062)**

Carl Bernard Mahoney (CRD #2963667, Registered Representative, Northfield, Ohio) was named as a respondent in an NASD complaint alleging that he received $10,000 from a public customer for the purchase of an annuity and failed to purchase the annuity or apply the funds in any manner for the benefit of the customer. The complaint also alleges that Mahoney failed to respond to NASD requests for information. **(NASD Case #C8B010024)**

Jerry Herbert Shulak (CRD #1993089, Registered Representative, Scottsdale, Arizona) was named as a respondent in an NASD complaint alleging that he engaged in excessive trading in the account of public customers. **(NASD Case #C3A010048)**

Frank James Varsalona (CRD #3211699, Registered Representative, Margate, Florida) was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, unauthorized transactions totaling $42,479.41 in the accounts of public customers without their knowledge or consent. **(NASD Case #C07010086)**

Firms Expelled For Failure To Pay Fines/Costs And/Or Provide Proof Of Payment In Connection With Violations

Continuum Capital, Inc.,
Lawrence, New York
(November 26, 2001)

Magnum Securities of New York, Inc.,
Commack, New York
(November 26, 2001)

Tarpon Scurry Investments, Inc.,
Jersey City, New Jersey
(November 26, 2001)

Firms Suspended For Failure To Supply Financial Information

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

Bowling Green Securities, Inc.,
New York, New York
(November 30, 2001)

Century Financial Group, Inc.,
Newport Beach, California
(November 30, 2001)

Deferred Compensation Securities Corporation,
Newport Beach, California
(November 30, 2001)

Walch Financial Services, Inc.,
San Antonio, Texas
(November 30, 2001)

Firm Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement

The date the registration was suspended is included after the entry. If the firm has complied, the listing also includes the date the suspension was lifted.

Miller & Schroeder Financial, Inc.,
Minneapolis, Minnesota
(December 5, 2001)

Individuals Barred Pursuant To NASD Rule 9544 For Failure To Provide Information Requested Under NASD Rule 8210. (The date the bar became effective is listed after the entry.)

Carlson, Aaron J.,
Beaverton, Oregon
(November 12, 2001)

Federico, Mark A.,
Beacon Hill, Massachusetts
(November 27, 2001)

Joslyn, Chad,
Macedon, New York
(November 9, 2001)

Ly, Danny Ben,
North Hollywood, California
(November 16, 2001)

Radde, Kevin E.,
Gilberts, Illinois
(November 27, 2001)

Vitale, David Michael,
Pacific Beach, California
(November 16, 2001)

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

Leventis, Michael E.,
Delray Beach, Florida
(November 26, 2001)

Negron, Brandon,
Ocoee, Florida
(November 26, 2001)

O'Leary, Bryan J.,
Dallas, Texas
(November 26, 2001)

Simmons, Russell B.,
Valrico, Florida
(November 26, 2001)

Stewart, Jr., Robert A.,
Cincinnati, Ohio
(November 26, 2001)

Zborowski, Mark,
Lawrence, New York
(November 26, 2001)

Individuals Suspended Pursuant To NASD Rule 9541(b) For Failure To Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry.)

Berlin, Gregg Arnold,
Lake Almanor, California
(November 20, 2001)

Depergola, Joseph,
Middle Village, New York
(November 20, 2001)

Juravel, Samuel,
Savannah, Georgia
(November 21, 2001)

Kelley, Michael Allen,
Seattle, Washington
(November 20, 2001)

Sapienza, Salvatore,
Ronkonkoma, New York
(November 21, 2001)

Simmons, Monica Lynn,
St. Petersburg, Florida
(November28, 2001)

Staltare, Steven C.,
Boca Raton, Florida
(November 20, 2001)

Thau, Jonathan T.,
Sunrise, Florida
(November 27, 2001)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement

The date the registration was suspended is included after the entry. If the individual has complied, the listing also includes the date the suspension was lifted.

Lisnoff, Jr., Robert William,
Seaford, New York
(November 9, 2001)

Scillia, Vincent Michael,
Ft. Lauderdale, Florida
(December 3, 2001 – December 6, 2001)

NASD Regulation, Inc. Disciplines Two Ohio Brokerage Firms In Muni Bond Scheme

NASD Regulation expelled Michael Patterson, Inc., and barred its owner and President, Michael W. Patterson, for over-charging customers in municipal securities transactions. NASD Regulation also censured Quantum Capital Corporation and suspended former Quantum fixed-income trader Ernest Dahlen for six months for coming between Michael Patterson, Inc.'s, customers and the best available purchase price for municipal bonds. Dahlen's former supervisor, Thomas Dooley was suspended for three months as a principal and fined $10,000.

According to the settlement, in 1997, Patterson formed his own firm, Michael Patterson, Inc., and entered into an exclusive trading and execution agreement with Quantum, a firm with whom he had previously been employed. As a result of Quantum's involvement in 70 transactions involving municipal bonds issued by North

Central Texas Health Facilities Development Corporation and the Orange County, Florida, Health Facilities Authority, customers failed to receive the best available market prices for the bonds during a seven-month period between 1998 and 1999. In fact, Michael Patterson, Inc.'s, customers paid substantially higher prices for these two bond issues than did customers of other firms for the same bonds during the same period. The firm fraudulently marked up four of the Orange County trades over 11 percent above its contemporaneous cost. Additionally, Michael W. Patterson failed to check available market sources to ensure that the prices his firm charged its customers for the bonds were fair.

Separately, from October of 1999 through May of 2000, Patterson engaged in a scheme in which he purchased Orange County bonds from some retail customers and sold them to others. In 32 trades he charged customers prices ranging from $61 to $68, while other dealers were selling the same bonds at dramatically lower prices. NASD Regulation found that this scheme by the firm and Patterson violated the Municipal Securities Rulemaking Board's (MSRB) fair-dealing rule as well as the antifraud provisions of the federal securities laws.

Quantum's settlement acknowledged that it allowed its inventory account to be interpositioned between the customers of Michael Patterson, Inc., and the best available market price for the two municipal bonds. Additionally, Dahlen provided Patterson and his firm with information sheets with pricing information on the Orange County and North Central Texas bonds, but failed to update the information even when it changed significantly. Dooley failed to ensure that Dahlen's pricing of municipal securities transactions was fair, or that his activities complied with MSRB rules and applicable securities laws.

Since 1998, all municipal firms have been required to report to the MSRB all inter-dealer and customer municipal transactions. NASD Regulation and its Fixed Income Securities Regulation group use municipal securities transaction information as part of its routine examination and oversight of firms, and as part of a continuing process to surveil for patterns in transactions that may indicate rule violations. Michael Patterson, Inc., and Quantum Capital Corporation municipal transaction pricing and best execution/interpositioning practices came the Fixed Income Groups attention as a result of this transaction surveillance.

These actions were investigated by NASD Regulation's Enforcement Department with substantial assistance from the organization's Cleveland District Office, and the Member Regulation Fixed Income Group and represent the continuing effort of NASD Regulation to address violations in the municipal securities marketplace. In settling this matter, the firm and Patterson neither admitted nor denied the allegations. Both firms are located in Columbus, Ohio. This case was originally published in NASD Regulation's Disciplinary Actions in November.

NASD Regulation Suspends And Fines Two Former Senior Vice Presidents Of Parker/Hunter Inc. For Insider Trading

NASD Regulation announced disciplinary actions against John D. Frankola and Richard J. Sporrer, Jr., for insider trading and their former firm, Parker/Hunter Inc., for not properly supervising its research department. The firm was censured and fined $100,000. Frankola was suspended for 11 months and fined $30,000, and Sporrer was suspended for six months and fined $12,000.

NASD Regulation found that in September 1998, Frankola received material, non-public information about Piercing Pagoda, Inc., from a Parker/Hunter research analyst. The research analyst told him that an individual at Piercing Pagoda had disclosed inside information to her, including the company's projected second quarter loss. After the research analyst provided the same information to Sporrer, who was then Research Director for Parker/Hunter, Sporrer and Frankola met to discuss whether the information conveyed was material, non-public information. Parker/Hunter co-managed Piercing Pagoda's IPO in 1994, and its research department followed the company.

Sporrer subsequently permitted Frankola, who supervised the firm's Asset Management and Portfolio Management Departments, to sell Piercing Pagoda stock in a discretionary account that Frankola managed for Sporrer. Frankola also sold Piercing Pagoda shares held in his personal account, as well as in 10 asset management accounts over which he had discretionary control. By selling the company's stock prior to the public announcement of the projected second quarter loss, Frankola and Sporrer avoided total losses (including the customer accounts) of approximately $32,000. These actions violated NASD anti-fraud rules.

Federal securities law requires brokerage firms to establish, maintain and enforce written procedur-

es reasonably designed to prevent misuse of material, non-public information by employee and proprietary accounts. To comply with this requirement, firms generally develop and implement policies and procedures to isolate material, non-public information within the research (or other relevant) department to prevent improper use of inside information. These procedures, or "information barriers," generally include physical separation of trading and sales departments, among other measures.

NASD Regulation found that at the time of the trading, Parker/Hunter improperly directed the firm's research analysts to seek advice outside the Research Department, so that during this period, research analysts potentially were disclosing material, non-public information to John Frankola, the head of the firm's Asset Management and Portfolio Management Departments. Additionally, NASD Regulation found that Parker/Hunter failed to establish written supervisory procedures that would require reviews designed to prevent insider trading. Parker/Hunter agreed, as a part of the settlement, to revise its procedures for complying with insider trading laws.

Neither Piercing Pagoda, Inc., nor the Parker/Hunter research analyst is alleged to have engaged in any wrongdoing.

Until their resignations in August 2001, Frankola and Sporrer were senior vice presidents of Parker/Hunter Inc., located in Pittsburgh, PA. In settling the matter, neither the firm nor Frankola and Sporrer admitted or denied the charges. These disciplinary actions are the result of an investigation conducted by NASD Regulation's Market Regulation Department.

NASD Regulation Announces Two Enforcement Actions Involving Sales Of Variable Annuity And Life Insurance Contracts

NASD Regulation announced two separate enforcement actions involving sales of variable annuities and the supervision of sales activities. Two brokerage firms and three individuals were named in disciplinary actions representing the second set of cases resulting from a series of special examinations focusing on the sale of variable contracts conducted by NASD Regulation during 1999 and 2000. Monetary sanctions in the two settled actions totaled $142,500.

The two cases include findings of violations in the following areas:

- Failure to collect customer financial and other information for use in making suitability determinations, including information regarding variable products being exchanged;
- Deficient supervisory procedures with respect to the suitability of recommendations by registered representatives, including supervisory review of variable product sales and exchanges of one variable annuity product for another; and
- An unsuitable sale and failure to communicate a material fact concerning a variable annuity.

These actions were investigated by NASD Regulation's New Orleans district office, and represent the organization's continuing effort to address problem areas in the sale, distribution, and marketing of variable products.

Earlier this year, NASD Regulation took action against six firms and an individual for various violations in the marketing and sale of variable annuities, with fines and restitution totaling $112,000.

Sales of variable products, particularly tax-free exchanges, have increased dramatically over the last several years. To help investors evaluate the factors involving replacement sales, NASD Regulation issued an Investor Alert in February *(http://nasdr.com/alert_02-01.htm)*, providing investors with key points to review before replacing a variable product. NASD Regulation has also offered guidance to its members on the proper sale of variable products through the issuance of *Notices to Members 99-35* and *00-44*, and an article in the Summer 2000 issue of the *Regulatory and Compliance Alert.* These information pieces give firms and their brokers sound guidance on how to sell variable annuity and life contracts, and evaluate whether they are suitable investments for particular investors.

VARIABLE ANNUITY ENFORCEMENT ACTIONS:

1. CUNA Brokerage Services, Inc.—Case No. C05010054

CUNA Brokerage Services, Inc., settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

> The firm, through its compliance officer Campbell D. McHugh, failed to establish, maintain, and enforce adequate written supervisory procedures relating to the sale of variable annuities and variable universal life insurance in the areas of suitability of recommendations, review of new business for suitability, training and supervision of principals, and the investigation and reporting of customer complaints.

The firm failed to maintain certain records recording the rationale for the exchange of variable products.

The firm failed to demonstrate that reasonable efforts had been made to obtain certain customer information needed for suitability determinations.

The firm, through Daniel L. Bernal, recommended a variable annuity purchase without having reasonable grounds for believing the transaction was suitable.

The firm, through Christian C. Zernich, failed to communicate a material fact to a customer in connection with a sale of a variable annuity contract.

The firm was censured and fined $100,000, of which $25,000 was assessed jointly and severally against the firm and McHugh. McHugh was also suspended for 45 days in any principal capacity. Bernal was fined $5,000 and suspended for 10 days in all capacities, while Zernich was fined $2,500 and suspended five days in all capacities.

2. Mutual Service Corporation—Case No. C05010053

Mutual Service Corporation, Inc., settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

The firm failed to establish, maintain, and enforce adequate written supervisory procedures relating to the following aspects of variable annuity and life insurance sales:

The manner in which home office principals were to review and approve the suitability of variable product sales by principals in its offices of supervisory jurisdiction.

The manner in which the activity of variable product surrenders and product cancellations were to be monitored.

The manner and purpose in which exception reports were to be utilized by the firm in supervising variable product business.

The procedure by which representatives of the firm were to effect variable life insurance transactions.

The manner in which principals of the firm were to review, approve, and otherwise supervise variable life insurance transactions.

The manner in which a supervisory review was to be conducted of the suitability of the allocation of premium payments to investment portfolios or sub-accounts, in relation to customers' investment objectives.

The firm failed to establish and maintain a supervisory system for retaining information necessary for the review of exchange transactions executed by principals in offices of supervisory jurisdiction.

The firm failed to evidence the review of the initial allocation of premium payments to investment portfolios or sub-accounts.

The firm failed to make reasonable efforts to obtain customer information for making suitability determinations. This information includes customer net worth, risk tolerance, and information on products being exchanged, such as surrender charges and the allocation of funds in sub-accounts.

The firm was censured and fined $35,000.

ACTION REQUESTED BY FEBRUARY 28, 2002

Regulatory Fee

NASD Seeks Member Comment On Proposed Changes To NASD's Regulatory Fee: **Comment Period Expires February 28, 2002**

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 and Compliance
- Senior Management

KEY TOPICS

- NASD By-Laws
- Regulatory Fees

Executive Summary

The National Association of Securities Dealers, Inc. (NASD®) is issuing this *Notice to Members* to solicit comments from members on proposed changes to NASD's regulatory fee. This transaction-based fee, authorized by Section 8 of Schedule A of NASD By-Laws (Section 8), is a significant source of revenue for NASD to fund its regulatory programs. The structure of the fee has not changed since 1983. To account for changes in the markets (including Nasdaq® exchange registration), maintain the scope of the fee, and keep the revenue stream stable, NASD is proposing to amend the definition of the scope of transactions subject to the fee and to enhance its process for receiving the data required to assess the fee accurately. View Attachment A for proposed new text of Section 8(a) of Schedule A to NASD By-Laws.

Questions concerning this *Notice* should be directed to: Department of Finance, at (240) 386-5397 or the Office of General Counsel, at (202) 728-8071.

Action Requested

NASD requests all interested parties to comment on the proposed amendments. Comments must be received by **February 28, 2002**. Members can submit their comments using the following methods:

- mailing in written comments; or
- e-mailing written comments to *pubcom@nasd.com*.

Written comments should be mailed to:

Barbara Z. Sweeney
Office of the Corporate Secretary
National Association of
Securities Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1500

IMPORTANT NOTE: The only comments that will be considered are those submitted in writing or by e-mail. Before becoming effective, any rule change must be approved by the Securities and Exchange Commission.

Discussion

NASD currently assesses its members a regulatory fee on all transactions reportable through the Automated Confirmation Transaction service (ACT). NASD has not modified this fee structure since 1983. Given the dynamic changes taking place in our industry, the existing pricing structure is becoming outdated. Moreover, NASD needs to modernize the structure of the regulatory fee to take into account Nasdaq's separation from NASD and registration as a national securities exchange.

NASD is proposing amendments to Section 8. The proposed amendments would amend the definition of the scope of transactions subject to the fee, but seek to keep the actual scope of the fee unchanged. The amendments would permit NASD to continue to assess fees on members, either directly for self-clearing members or through clearing firms, for transactions in: (1) any security traded on Nasdaq or a facility of Nasdaq, (2) any Nasdaq-listed security, regardless of where the transaction takes place, and

(3) any other equity security occurring otherwise than on an exchange. With these changes, the same transactions currently assessed will continue to be assessed in the future.
Specifically, NASD will continue to receive transaction fees on all transactions in Nasdaq securities and on what are currently Nasdaq InterMarket transactions (*i.e.*, over-the-counter trading of NYSE- and Amex-listed securities) after Nasdaq becomes an exchange. NASD also will receive fees on transactions reported to NASD through the new NASD Alternative Display Facility, as well as any other equity securities transaction that occurs otherwise than on an exchange and is reported to NASD.

Traditionally, the regulatory fee has been assessed on members, either directly for self-clearing members or through clearing firms.The methodology for assessing the fee would remain unchanged. The clearing firm on the "sell" side and the clearing firm on the "buy" side of a transaction will be assessed a regulatory fee for each transaction report (last sale only, last sale/clearing, or clearing only). If a clearing firm represents both the "sell" and "buy" side, the clearing firm will be assessed a fee for each side of the transaction. For a transaction effected with a non-member customer (*i.e.*, internalized trade), the clearing firm will be assessed one fee for each transaction report. All other transaction reports will be assessed two fees, one for the "sell" side and one for the "buy" side. **For example:**

Transaction Type	Fee Assessment
Transaction between two members that are self-clearing	Self-clearing member on the "sell" side and self-clearing member on the "buy" side of the transaction
Transaction between two introducing members using a single clearing firm	Same clearing firm on the "sell" side and "buy" side of the transaction
Internalized trade by a member that is self-clearing	Self-clearing firm either on the "sell" or "buy" side of the transaction
Internalized trade by introducing member	Clearing firm either on the "sell" or "buy" side of the transaction
Transaction between two introducing members, each using a different clearing firm	Clearing firm on the "sell" side and clearing firm on the "buy" side of the transaction

The ACT system is the current mechanism for assessing the regulatory fee, and NASD will continue to rely on ACT data for transactions that members report through ACT. Because ACT is a proprietary system owned by Nasdaq and some fee-eligible transactions in the future will be reported using facilities other than ACT, NASD must explore other methods of obtaining the data necessary to assess the fee fairly and accurately. This proposal would require members, solely for purposes of assessing the regulatory fee, to report transaction information to NASD directly or to contract with a reporting agent to report transactions on their behalf.

Although reporting obligations are ultimately the responsibility of the member, fees will continue to be charged directly to the clearing firm responsible for clearing the transaction. In addition, specifics regarding detailed reporting requirements for an alternative NASD reporting system will be communicated at a later date. In this regard, NASD seeks comments on whether there are any ways to minimize the burden on firms that self-report some percentage of their trading activity.

The changes proposed above are intended to stabilize and maintain the existing revenue stream in a neutral manner with minimal impact on our members. As stated above, NASD anticipates that the scope of members' regulatory fees, in conformity with this proposal, will remain consistent with those paid today. NASD will continue to review its overall fee structure to ensure that its assessment methods are modernized and keep pace with industry developments and practices.

ATTACHMENT A

Proposed New Text of Section 8(a) of Schedule A to NASD By-Laws

(a) NASD transaction fee. Each member shall be assessed a transaction charge of $.0625 per 1,000 shares, with a minimum charge per side of $.025 and a maximum charge per side of $.46875 for each transaction in:

i. any security traded on Nasdaq or traded on a facility of Nasdaq;

ii. Nasdaq securities, regardless of where the transaction takes place; and

iii. any other equity security occurring otherwise than on an exchange.

Each member is required in conformity with this paragraph and NASD Rules to report all transactions subject to this transaction fee. A member may enter into an agreement with a third party pursuant to which the third party agrees to fulfill the reporting obligations under this paragraph. Notwithstanding the existence of such an agreement, each member remains responsible for complying with the requirements of this paragraph.

ACTION REQUESTED BY MARCH 1, 2002

Rule Modernization Project

The NASD Requests Information On Steps That Can Be Taken To Streamline NASD Rules; **Response Period Expires on March 1, 2002**

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 and Compliance
- Senior Management

KEY TOPICS

- Annual Compliance Conference
- Branch Office
- Customer Support Representatives
- General Securities Representative
- Proxy Materials
- Rule Modernization
- Rule Review
- Sponsoring Exam Applicants

Executive Summary

The National Association of Securities Dealers, Inc. (NASD®) is conducting a comprehensive review of its rules to ensure that they are as streamlined as possible, and impose the least burden to accomplish their objectives. One key to the success of the NASD's efforts to modernize its rules will be industry input. Attached is the first in a series of questionnaires designed to collect information that will assist the NASD in assessing the costs and benefits of certain rules (see Attachment A). Responses that include specific explanations of the burdens imposed by a rule will be particularly helpful.

Action Requested

NASD encourages all member firms to complete the questionnaire by **March 1, 2002.** Members can submit their responses using the following methods:

- mailing in written responses to the questionnaire that appears in Attachment A
- e-mailing written responses to *pubcom@nasd.com*
- completing the online form on the NASDR Web Site (*www.nasdr.com*)

Written responses submitted via hard copy should be mailed to:

Barbara Z. Sweeney
Office of the Corporate Secretary
National Association of Securities Dealers, Inc.
1735 K Street, NW
Washington, DC 20006-1500

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

Before becoming effective, any rule change developed as a result of responses 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 public comment.

Questions/Further Information

Questions concerning this *Notice* may be directed to Eric J. Moss, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8982.

Background

Over the past several years, the NASD has conducted a comprehensive review of its rules. Recently we have taken steps to expand and build upon this review to ensure that our rules are as streamlined as possible, and impose the least burden to accomplish their objectives. We have appointed an Economic Advisory Board with particular expertise in analyzing regulations to assist in this review. Also, we published *NASD Notice to Members 01-35* soliciting public input on the rules that should be the focus of this review.

In response to *NASD Notice to Members 01-35*, we received 37 comment letters identifying rules that should be the focus of our rule modernization initiative. To date, we have identified a number of proposals that we believe are particularly well suited to cost/benefit analysis.

The proposals under consideration include, but are not limited to, whether:

- Regulators should eliminate the current requirement that generally only persons sponsored by broker/dealers may take the General Securities Representative (Series 7) exam.
- Regulators should develop a new registration category that would permit associated persons to perform basic customer support functions without being required to take and pass the comprehensive Series 7 exam.
- The requirement to hold an annual compliance conference, as outlined in NASD Rule 3010(a)(7), should be eliminated in light of the Continuing Education Firm Element required by NASD Rule 1120(b).
- The NASD definition of "branch office," as outlined in Rule 3010(g)(2), should be modified in light of: (1) the SEC's recent amendments to the definition of the term "office" in SEC Rules 17a-3 and 17a-4 (*see NASD Notice to Members 01-80*); (2) the branch office definitions used by the New York Stock Exchange and State regulators; (3) the new business practices that are developing based on technological innovations; and (4) the potential to develop a uniform registration system for branch offices through the Central Registration Depository (CRD) system maintained by the NASD.
- NASD Rule 2260 should be revised to expand the categories of persons to whom member firms may forward proxy material, annual reports, information statements, and other material sent to stockholders.

The attached questionnaire is designed to collect information that will assist the NASD in reviewing the costs and benefits of these proposals. Note that an online version of the questionnaire also appears on the NASD Regulation Web Site (*www.nasdr.com*).

The NASD is considering a number of other proposals, and will publish additional questionnaires at a later date.

ATTACHMENT A

NASD Rule Modernization Questionnaire

Using the questions below as your guide, please submit written comments via a separate document and send your responses to the NASD at the address indicated in the attached *Notice to Members*. Please note that you may also complete this survey online via the NASD Regulation Web Site at *www.nasdr.com*.

Your Firm And Position

Include with your response which of the following best describe your firm (you may include more than one category per question).

1) **Firm Size**
   - a) 10 or fewer registered representatives
   - b) 11 to 49 registered representatives
   - c) 50 to 499 registered representatives
   - d) 500 or more registered representatives

2) **Firm Type**
   - a) Self-clearing
   - b) Introducing — sales
   - c) Introducing — sales and trading
   - d) Investment company products
   - e) Variable contracts
   - f) Direct participation programs
   - g) Investment banking
   - h) Other (please specify)

3) **Business**
   - a) Retail business
   - b) Institutional business
   - c) Wholesale business
   - d) Business in equity securities
   - e) Business in debt securities
   - f) Business in government/municipal securities
   - g) Business in investment company/variable contract products
   - h) Other (please specify)

4) **Position**
   - a) CEO/President
   - b) Owner
   - c) Legal/Compliance Officer
   - d) Chief Financial Officer
   - e) Chief Operations Officer
   - f) Other (please specify)

Sponsoring Qualification Exams

1) Please describe the opportunities that your firm provides to applicants preparing for the Series 7 exam, including:

   a) training courses;

   b) time during normal working hours to study for the exam; and

   c) the number of opportunities given to pass the exam.

2) Should regulators eliminate the general requirement that only broker/dealers sponsor Series 7 exam applicants? If so, should the exam be made available to the general public, or only to persons sponsored by certain institutions, such as universities or colleges?

3) What are the benefits and risks of making the Series 7 exam available to larger applicant pools (such as the general public or persons sponsored by universities or colleges)? For instance, would such a change:

   a) affect the quality of persons wishing to work in the securities industry;

   b) create more flexibility in the labor market; and/or

   c) split the labor force between those sponsored by broker/dealers and those sponsored by other institutions, such as universities and colleges?

4) Would eliminating the general requirement that broker/dealers sponsor Series 7 exam applicants alter your firm's recruiting, hiring, or training practices? For instance, would your firm start requiring that applicants successfully pass the Series 7 exam before being considered for employment? Please estimate the amount of money that your firm would save with the elimination of the general requirement that broker/dealers sponsor exam applicants.

5) What administrative functions do Series 7 applicants at your firm perform while studying for the exam? Do those activities help train them to be registered representatives? If Series 7 applicants can take the exam before starting at your firm, would you have to hire additional staff for the administrative tasks the Series 7 applicants would have performed? Would it be cheaper to employ more support personnel for these tasks than use Series 7 applicants during their exam preparation?

Customer Support Representatives

1) If regulators develop a limited registration category for Customer Support Representatives (CSR) that would permit associated persons to perform basic customer support functions without being required to take and pass the comprehensive Series 7 exam, would your firm take advantage of this category?

2) What functions would your firm consider to be most critical for CSRs to perform, considering that the more services authorized, the more challenging the exam?

3) Based on the functions you outlined in response to Question 2, how many people at your firm would qualify for CSR registration?

4) How would the CSR registration category affect career paths within your firm?

5) Would the development of a CSR registration category save your firm money?

Annual Compliance Conference

1) Which of the following does your firm use to routinely address regulatory developments and compliance matters in addition to the annual compliance conference.

   a) E-mail

   b) Newsletters

   c) Video-conferencing

   d) Conference calls with branch offices

   e) Regular meetings (circle: weekly, biweekly, monthly)

   f) Circulation of *Notices to Members* and *Regulatory & Compliance Alerts*

   g) Monitoring and reporting information posted on regulatory Web sites—*please specify the Web sites that your firm finds helpful and specify how this information is generally distributed.*

   h) Other (please describe)

2) Describe how your firm complies with the requirement to hold an annual compliance conference in NASD Rule 3010(a)(7), including the meeting format, such as in-person meetings, videoconferences, etc.

3) List the topics your firm has covered at your last two annual compliance conferences.

4) If your firm has registered representatives in multiple offices, does that affect your compliance with NASD Rule 3010(a)(7)?

5) If the requirement to hold an annual compliance conference were abolished, what benefits would your firm lose?

6) How much does your firm generally spend to comply with NASD Rule 3010(a)(7)? Please break out the components of the cost (*e.g.*, $5,000 to fly in participants, reserve a meeting facility, and hire a facilitator; $10,000 to maintain an administrative process to monitor compliance; and $8,000 for the presentation), and describe any indirect costs as well.

7) The NASD also requires firms to comply with continuing education requirements, which include a Regulatory Element and a Firm Element. Does your firm hold the annual compliance conference in conjunction with a Firm Element meeting? Why or why not?

Branch Offices

1) NASD Rule 3010(g)(2) generally defines a branch office as any location identified to the public as a place where a member conducts a securities business. How many branch offices does your firm have under this Rule?

2) How many of your *non*-branch locations have:

   a) One registered person

   b) Two registered persons

   c) Three registered persons

   d) Four or more registered persons

3) If the States adopt a uniform definition of branch office (for example, a location identified to the public as a place of business OR that has *two* or more registered persons) and your firm is able to register them through the CRD, would the benefits of uniformity and central registration outweigh the costs if the definition were to create additional branch offices of your firm?

Forwarding Materials

1) Should NASD Rule 2260 be expanded to permit members to forward proxy materials, annual reports, information statements, and other materials furnished by issuers to any recipient designated in writing by the beneficial owner of the security?

2) Does your firm directly forward these materials to beneficial owners or their designated registered investment advisers, or has the firm contracted with a third-party distribution company to handle the mailings?

3) Would your firm need to modify its technology or software systems if NASD Rule 2260 were modified as described in Question 1? If so, what are the changes and associated costs?

4) What additional costs or burdens will your firm incur in forwarding materials furnished by issuers to any recipient designated by the beneficial owner?

5) Would the costs of implementing this proposal be offset if other self-regulatory organizations (*e.g.*, the New York Stock Exchange) adopt a similar rule change?