

## INFORMATIONAL

# Dispute Resolution

NASD Dispute Resolution Establishes A New Hearing Location In Orlando, Florida, For Arbitration And Mediation Claims Filed In Its Forum

## 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

- Arbitration/Mediation
- Dispute Resolution

## Executive Summary

NASD Dispute Resolution, Inc. (NASD DR) recently established Orlando as the third hearing location within the State of Florida. Boca Raton and Tampa will continue as hearing locations in Florida.

The Southeast Regional Office of NASD DR, located in Boca Raton, will administer all arbitration and mediation claims assigned to the Orlando hearing location. With the recent addition of Orlando, NASD DR now operates hearing locations in 47 cities across the United States.

## Questions/Further Information

Questions regarding this *Notice* may be directed to Rose M. Schindler, Director, NASD DR Southeast Regional Office, at (561) 416-0277.

## Discussion

In response to requests by party representatives, NASD DR conducted an analysis to determine the need for a third hearing location in the State of Florida. NASD DR had two designated hearing locations in Boca Raton and Tampa. NASD DR assigned all arbitration and mediation claims with customer addresses in Southeast Florida to the Boca Raton hearing location. All claims in the remaining three quarters of the state were assigned to the Tampa hearing location.

Because of the large geographical area covered by the Tampa hearing location, and the large number of claims filed within this hearing location, a significant number of parties and arbitrators were required to travel distances

in excess of 100 miles for their arbitration hearing. To alleviate this inconvenience to parties, many of whom are elderly, and to arbitrators, NASD DR concluded that a third hearing location offered significant advantages.

After further analysis, NASD DR determined Orlando to be the most reasonable and accessible city for a third hearing location. Factors favoring Orlando include its population size, its population demographics, the availability of an existing pool of arbitrators, and its location in the center of the state. NASD DR is pleased that it is able to better meet the needs of its customers by establishing Orlando as an additional hearing location for arbitration and mediation claims filed in its forum.

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## INFORMATIONAL

### Continuing Education

#### NASD Regulation Adopts Amendments To Relieve Registered Representatives Serving In The Armed Forces From Continuing Education Requirements

## 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
- Operations
- Registration
- Senior Management

## KEY TOPICS

- Continuing Education
- IM-1000-2

### Executive Summary

NASD Regulation, Inc. (NASD Regulation) has adopted amendments to National Association of Securities Dealers, Inc. (NASD®) IM-1000-2 to codify the staff's position regarding the relief from NASD Rule 1120, Continuing Education Requirements, for securities industry professionals who volunteer or are called into active military duty. The rule change became effective immediately upon filing with the Securities and Exchange Commission on January 7, 2002. Attachment A contains the text of the amendments.

### Questions/Further Information

Questions regarding this *Notice* may be directed to Grace Yeh, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-6939.

### Background And Discussion

NASD IM-1000-2 (the Interpretation) addresses the registration status of sole proprietors and registered representatives serving in the armed forces. The Interpretation states that securities industry professionals who volunteer or are called into active military duty (Active Duty Professionals) will be placed in a specially designated "inactive" status once the NASD is notified of their military service, but will remain registered for NASD purposes. While IM-1000-2 previously did not address continuing education obligations with respect to Active Duty Professionals, NASD Regulation staff has interpreted NASD Rule 1120 to relieve Active Duty Professionals from continuing education obligations for the

period of time that they are on active duty. NASD Regulation has amended IM-1000-2 to codify the staff's position.

NASD Regulation has, for the reasons set forth below, relieved Active Duty Professionals from continuing education requirements. Rule 1120(a)(2) provides that "Unless otherwise determined by the Association, any registered persons who have not completed the Regulatory Element within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied." A registered person may satisfy his or her Regulatory Element requirement at a Prometric Center in the United States and Canada, or at a VUE Center in Europe and the Pacific Rim. Because it is generally not practical for Active Duty Professionals to be at a facility that delivers the Regulatory Element, Active Duty Professionals should be relieved from fulfilling the Regulatory Element requirements that arise during the period of time that they are on active duty.

With respect to the Firm Element requirements of continuing education, Rule 1120(b)(1) currently provides that only persons who have "direct contact with customers" in the conduct of securities activities are subject to the Firm Element requirements. Active Duty Professionals are excluded from the Firm Element requirements because they do not have contact with customers. Accordingly, the amendment to IM-1000-2 expressly states that Active Duty Professionals are not required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

## **NASD Notice to Members 02-12**

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# **NASD Notice to Members 02-12**

## **ATTACHMENT A**

*New language is underlined; deletions are in brackets.*

### **IM-1000-2. Status of Sole Proprietors and Registered Representatives Serving in the Armed Forces**

Any Registered [registered] Representative of a member who volunteers or is called into the Armed Forces of the United States shall be placed, after proper notification to the Executive Office, upon inactive status and need not be re-registered by such member upon his or her return to active employment with the member.

Any member (Sole Proprietor) who temporarily closes his or her business by reason of volunteering or being called into the Armed Forces of the United States, shall be placed, after proper notification to the Executive Office, on inactive status until his or her return to active participation in the investment banking and securities business.

A Registered Representative who is placed on inactive status as set forth above shall not be included within the definition of "Personnel" for purposes of the dues or assessments as provided in Article VI of the By-Laws.

Any member placed on inactive status as set forth above shall not be required to pay dues or assessments during the pendency of such inactive status and shall not be required to pay an admission fee upon return to active participation in the investment banking and securities business.

A Registered Representative who is placed on inactive status as set forth above shall not be required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

## INFORMATIONAL

# Injunctive Relief

## SEC Approves Permanent Injunctive Relief Rule

## 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
- Arbitration
- Employment Disputes
- Injunctions

## Executive Summary

The Securities and Exchange Commission (SEC or Commission) has approved amendments to Rule 10335 of the NASD Code of Arbitration Procedure (Code) governing injunctive relief in intra-industry disputes.<sup>1</sup> The amendments, which substantially modify the existing pilot rule and make it a permanent part of the Code, will apply to all claims filed on or after March 25, 2002.

Under the permanent rule, temporary injunctive relief is not available in arbitration. Parties in intra-industry cases may seek temporary injunctive relief in a court of competent jurisdiction. If a court orders temporary injunctive relief, the permanent rule requires an expedited hearing in arbitration on the underlying dispute before a panel of three arbitrators. To expedite the hearing on the merits when a court has granted temporary injunctive relief, the permanent rule provides a shortened time frame for arbitrator selection. The rule also clarifies the impact of a pending court order on the underlying arbitration, and provides guidance regarding the substantive legal standard applicable to requests for permanent injunctive relief.

The SEC also approved amendments to Rule 10205(h) to conform the injunctive relief fee provision to the permanent rule.

The text of the rule change described in this *Notice* is included as Attachment A.

## Questions/Further Information

Questions regarding this *Notice* may be directed to Laura Gansler, Counsel, NASD Dispute Resolution, Inc., at (202) 728-8275.

## Discussion

### Background

Rule 10335 of the Code provides procedures for obtaining interim injunctive relief in controversies involving member firms and associated persons in arbitration. Rule 10335 was adopted in 1996 as a one-year pilot rule. The pilot has been extended periodically, and was recently extended to July 1, 2002, pending SEC approval of the permanent rule. The amendments described in this *Notice* supersede the pilot rule, and make Rule 10335 a permanent part of the Code.

### Elimination Of Temporary Injunctive Relief In Arbitration

Under the pilot rule, parties to intra-industry arbitrations could seek temporary injunctive relief either within the arbitration process or from a court of competent jurisdiction. Under the permanent rule, parties may no longer seek temporary injunctive relief in arbitration, but may still seek such relief in court.

As under the current pilot rule, parties seeking temporary injunctive relief in court must simultaneously file in arbitration a Statement of Claim requesting permanent injunctive relief, and any other permanent relief, including damages. They must also serve the Statement of Claim on all other parties at the same time and in the same manner in which it was filed with the Director of Arbitration, unless the parties agree otherwise. Filings and service under the rule must be made by facsimile, overnight delivery service, or messenger.

Parties to a pending arbitration may seek a temporary injunctive order in court even if another party

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has already filed a claim arising from the same dispute in arbitration, so long as the arbitration hearing on a request for permanent injunctive relief has not begun.

### ***Hearing On Request For Permanent Relief***

Under the permanent rule, if a court orders temporary injunctive relief, the hearing on the request for permanent injunctive relief must begin within 15 days of the date the court order was issued. Unless the parties agree otherwise, hearings lasting more than one day will be held on consecutive days, if reasonably possible.

### ***Selection Of Arbitrators For Hearing On Permanent Relief***

Under the new rule, a panel of three arbitrators will conduct the hearing on a request for permanent injunctive relief. In cases in which the underlying dispute would be heard by a panel of non-public arbitrators as defined in NASD Rule 10308(a)(4), the three arbitrators will be non-public. In cases in which the underlying dispute would be heard by a public arbitrator or panel consisting of a majority of public arbitrators under NASD Rule 10202, the three-arbitrator panel hearing the request for permanent relief will consist of a majority of public arbitrators as defined in NASD Rule 10308(a)(5).

In cases in which all of the members of the arbitration panel are non-public, the Director of Arbitration will generate and provide to the parties a list of seven non-public arbitrators from a national roster of arbitrators. Three of the arbitrators on the list will be lawyers with experience litigating cases involving injunctive relief. The Director will also send the

employment history for the past 10 years for each listed arbitrator and other background information. Each party may exercise one strike to the arbitrators on the list.<sup>2</sup>

In cases in which the panel of arbitrators consists of a majority of public arbitrators, the Director of Arbitration will generate and provide to the parties a list of nine arbitrators from a national roster of arbitrators. A majority of the listed arbitrators will be public arbitrators, and four of the listed arbitrators will be lawyers with experience litigating cases involving injunctive relief. The arbitrators with experience litigating cases involving injunctive relief may be public, non-public, or a combination. The Director will also send the employment history for the past 10 years for each listed arbitrator and other background information. Each party may exercise two strikes to the arbitrators on the list – one for the public arbitrator list and one for the non-public list.<sup>3</sup>

Within three days of receiving the lists, the parties must return the lists to the Director, indicating which arbitrators they are striking, if any, and ranking the remaining arbitrators in order of preference. When the lists are returned, the Director will consolidate the parties' rankings, and will appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification. As under Rule 10308, public and non-public arbitrators must be ranked and consolidated separately.

The rule also provides that the Director may exercise discretionary authority to make any decision that is consistent with the purposes of the rule and Rule 10308 to facilitate the appointment of arbitration panels and the selection of the chairperson.

### ***Chairperson Appointment***

Under the permanent rule, the parties must notify the Director of their preference for chairperson of the panel within one business day after receiving notice of the names of the panel members. If the parties do not agree on a chairperson within that time, the Director will select the chairperson. In cases in which the panel consists of a majority of public arbitrators, the Director will select a public arbitrator as chairperson. Whenever possible, the Director will select as chairperson the lawyer with experience litigating cases involving injunctive relief whom the parties have ranked the highest.

### ***Applicable Legal Standard***

The permanent rule clarifies that the appropriate legal standard for granting or denying a request for permanent injunctive relief is that of the state where the underlying events occurred, or as specified in an enforceable choice of law agreement between the parties.

### ***Effect Of Pending Temporary Injunctive Order***

The permanent rule provides that if a court-issued temporary injunctive order is in effect at the time the hearing on the request for permanent injunctive relief begins, the arbitrators may not, until they have heard a full and fair presentation of the evidence from all relevant parties, order the parties to move the court jointly to modify or dissolve the order, or prohibit a party from seeking an extension of the court order. This provision does not limit the authority of arbitrators to order any permanent relief, injunctive or otherwise, that does not conflict with a pending court order. Moreover, because this provision

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only applies to pending court orders, it does not apply to instances in which a court order expires by its own terms when arbitration begins, or when a court explicitly confers authority on arbitrators to modify, amend or dissolve an order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.

### ***Subsequent Hearings On Damages Or Other Relief***

The permanent rule provides that, after the expedited hearing on a request for permanent injunctive relief, the panel may determine that additional hearings are necessary to decide requests for damages and other relief. The arbitrators are not required to schedule such hearings if they can decide all claims based on the evidence presented at the hearing on the request for permanent injunctive relief. However, in some cases, the arbitrators may decide that, given the expedited nature of the hearing on the request for permanent injunctive relief, additional time is necessary to allow the parties to gather and present all relevant evidence on any remaining issues. If the arbitrators decide that any subsequent hearings are necessary, the arbitrators will decide the time and place of such hearings. Any subsequent hearings will be before the same arbitrators, if reasonably possible, and will include, but will not be limited to, the same record.

### ***Fees And Honoraria***

In order to fill a panel to hear requests for permanent relief within the shortened time frame provided by the rule, arbitrators will occasionally be required to

travel to hearing locations other than their primary hearing location. Under the new rule, the parties would jointly bear the reasonable travel-related costs and expenses of the arbitrators who have to travel to hear the request for permanent injunctive relief.

In addition, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to the rule will receive an honorarium of \$375 for each single session, and \$700 for each double session, of the hearing. Each other member of the panel will receive an honorarium of \$300 for each single session, and \$600 for each double session, of the hearing. The rule provides that the parties will equally pay the difference between these amounts and the amounts panel members and the chairperson would otherwise receive under the Code.

The rule also provides that the party seeking injunctive relief would pay the expedited hearing fees pursuant to Rule 10205(h), or, where both sides seek such relief, both parties shall pay such fees. Rule 10205(h) has also been amended to clarify that a party seeking temporary injunctive relief in court must pay a \$2,500 surcharge when it files its Statement of Claim and request for permanent relief as required by Rule 10335. If both sides seek such relief, both parties must pay such fees.

The arbitrators may reallocate any of the fees and costs incurred under this rule.

### ***Effective Date***

The amendments described in this Notice will apply to all claims filed on or after March 25, 2002.

## Endnotes

- 1 Exchange Act Release No. 45261 (January 8, 2002) (File No. SR-NASD-02-02), 67 Federal Register 2258 (January 16, 2002).
- 2 Parties may also challenge for cause arbitrators who should be disqualified due to conflicts of interest or for other reasons.
- 3 See Note 2.

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# **NASD Notice to Members 02-13**

## **ATTACHMENT A**

### **Rules of the Association**

\* \* \* \* \*

### **Code of Arbitration Procedure**

#### **10205. Schedule of Fees for Industry and Clearing Controversies**

(a)-(g) Unchanged.

(h) A party seeking a temporary injunctive order in court pursuant to Rule 10335 shall pay a total non-refundable surcharge of \$ 2,500 at the time the party files its Statement of Claim and Request for Permanent Relief as required by Rule 10335. Where more than one party seeks such relief, all such parties shall pay the surcharge. The arbitrator may determine that a party shall reimburse another party for part or all of any non-refundable surcharge it has paid. These surcharge fees shall be in addition to all other non-refundable filing fees, hearing deposits, or costs which may be required.

(i)-(k) Unchanged.

\* \* \* \* \*

#### **10335. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief**

(a) Temporary Injunctive Orders

(1) In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties may seek a temporary injunctive order, as defined in paragraph (a)(2) of this Rule, from a court of competent jurisdiction. Parties to a pending arbitration may seek a temporary injunctive order from a court of competent jurisdiction even if another party has already filed a claim arising from the same dispute in arbitration pursuant to this paragraph, provided that an arbitration hearing on a request for permanent injunctive relief pursuant to paragraph (b) of this Rule has not yet begun.

(2) For purposes of this Rule, temporary injunctive order means a temporary restraining order, preliminary injunction or other form of initial, temporary injunctive relief.

(3) A party seeking a temporary injunctive order from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file with the Director a Statement of Claim requesting permanent injunctive and all other relief with respect to the same dispute in the manner specified under this Code. The party seeking temporary injunctive relief shall also serve the Statement of Claim requesting permanent injunctive and all other relief on all other parties in the same manner and at the same time as the Statement of Claim is filed with the Director. Filings and service under this Rule shall be made by facsimile, overnight delivery service or messenger. Service shall be made on all parties at the same time and in the same manner, unless the parties agree otherwise. A party obtaining a court-issued temporary injunctive order shall notify the Director and the other parties of the issuance of the order within one business day.



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(4) Unless otherwise stated, for purposes of computation of time under any paragraph of this Rule, any reference to days means calendar days, including Saturdays, Sundays or any NASD holiday. However, if a party must provide notice or a response to the Director and the day on which that notice or response to the Director must be given falls on a Saturday, Sunday or any NASD holiday, then the time period is extended until the next business day.

### (b) Hearing on Request for Permanent Injunctive Relief

#### (1) Scheduling of Hearing.

If a court issues a temporary injunctive order, an arbitration hearing on the request for permanent injunctive relief shall begin within 15 days of the date the court issues the temporary injunctive order. If the 15th day falls on a Saturday, Sunday, or NASD holiday, the 15-day period shall expire on the next business day. Unless the parties agree otherwise, a hearing lasting more than one day shall be held on consecutive days when reasonably possible. The Director shall provide to all parties notice of the date, time and place of the hearing at least three days prior to the beginning of the hearing.

#### (2) Composition of Arbitration Panel

The hearing on the request for permanent injunctive relief shall be heard by a panel of three arbitrators, who shall either be all non-public arbitrators as defined in Rule 10308(a)(4), or, if the underlying dispute would be heard by a public arbitrator or panel consisting of a majority of public arbitrators under Rule 10202, a majority of public arbitrators as defined in Rule 10308(a)(5).

#### (3) Selection of Arbitrators and Chairperson

(A) (i) In cases in which all of the members of the arbitration panel are non-public under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of seven arbitrators from a national roster of arbitrators. The Director shall send to the parties the employment history for the past 10 years for each listed arbitrator and other background information. At least three of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.

(ii) Each party may exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.

(B) (i) In cases in which the panel of arbitrators consists of a majority of public arbitrators under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of nine arbitrators from a national roster of arbitrators. The Director shall send to the parties employment history for the past 10 years for each listed arbitrator and other background information. At least a majority of the arbitrators listed shall be public arbitrators, and at least four of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.

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(ii) Each party may exercise two strikes to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrators, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.

(C) (i) Each party shall inform the Director of its preference of chairperson of the arbitration panel by the close of business on the next business day after receiving notice of the panel members.

(ii) If the parties do not agree on a chairperson within that time, the Director shall select the chairperson. In cases in which the panel consists of a majority of public arbitrators, the Director shall select a public arbitrator as chairperson. Whenever possible, the Director shall select as chairperson the lawyer with experience litigating cases involving injunctive relief whom the parties have ranked the highest.

(D) The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and Rule 10308 to facilitate the appointment of arbitration panels and the selection of chairperson.

### **(4) Applicable Legal Standard**

The legal standard for granting or denying a request for permanent injunctive relief is that of the state where the events upon which the request is based occurred, or as specified in an enforceable choice of law agreement between the parties.

### **(5) Effect of Pending Temporary Injunctive Order**

Upon a full and fair presentation of the evidence from all relevant parties on the request for permanent injunctive relief, the panel may prohibit the parties from seeking an extension of any court-issued temporary injunctive order remaining in effect, or, if appropriate, order the parties jointly to move to modify or dissolve any such order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.

### **(6) Fees, Costs and Expenses, and Arbitrator Honorarium.**

(A) The parties shall jointly bear reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in the hearing on the request for permanent injunctive relief. The arbitrators may reallocate such costs and expenses among the parties in the award.

(B) The party seeking injunctive relief shall pay the expedited hearing fees pursuant to Rule 10205(h), or, where both sides seek such relief, both parties shall pay such fees. In either event, however, the arbitrators may reallocate such fees among the parties in the award.

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(C) Notwithstanding any other provision in the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this Rule shall receive an honorarium of \$375 for each single session, and \$700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium of \$300 for each single session, and \$600 for each double session, of the hearing. The parties shall equally pay the difference between these amounts and the amounts panel members and the chairperson receive under the Code pursuant to IM-10104. The arbitrators may reallocate such amount among the parties in the award.

(c) Hearing on Damages or other Relief.

(1) Upon completion of the hearing on the request for permanent relief, the panel, may, if necessary, set a date for any subsequent hearing on damages or other relief, which shall be held before the same panel of arbitrators and which shall include, but not be limited to, the same record.

(2) The parties shall jointly bear reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in any subsequent hearings on damages or other relief. The arbitrators may reallocate such costs and expenses among the parties in the award.

(d) Effective Date

This Rule shall apply to arbitration claims filed on or after March 25, 2002. Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceedings instituted under this Rule.

# NASD Notice to Members 02-14

## INFORMATIONAL

### FIPS Changes

Fixed Income  
Pricing System<sup>SM</sup>  
Additions, Changes,  
And Deletions As Of  
December 21, 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 December 21, 2001, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>).

Symbol	Name	Coupon	Maturity
ALME.GB	Alaris Medical Systems Inc.	11.625	12/01/06
AWAS.GG	Allied Waste North America Inc.	8.500	12/01/08
AMGT.GA	American Greetings Corp.	11.750	07/15/08
AEGF.GT	Amerigas Partners LP	8.875	05/20/11
AZR.GD	Aztar Corp.	9.000	08/15/11
BYD.GD	Boyd Gaming Corp.	9.250	08/01/09
CPMI.GA	Compass Minerals Group Inc.	10.000	08/15/11
STZ.GB	Constellation Brands Inc.	8.125	01/15/12
CSKI.GB	CSK Auto Inc.	12.000	06/15/06
DNFD.GA	Dean Foods Co.	6.750	06/15/05
DNFD.GB	Dean Foods Co.	6.900	10/15/17
DNFD.GC	Dean Foods Co.	6.625	05/15/09
DNFD.GD	Dean Foods Co.	8.150	08/01/07
ICN.GB	ICN Pharmaceuticals Inc.	8.750	11/15/08
IGL.GL	IMC Global Inc.	10.875	06/01/08
IGL.GM	IMC Global Inc.	11.250	06/01/11
IMKT.GA	Ingles Markets Inc.	8.875	12/01/11
KCS.GB	KCS Energy Inc.	8.875	01/15/06
MCBB.GA	Mediacom Broadband LLC	11.000	07/15/13
MRHO.GA	MeriStar Hospitality Oper Partners LP	10.500	06/15/09
MMIP.GB	MMI Products Inc.	13.000	04/15/07
NXTP.GD	Nextel Partners Inc.	12.500	11/15/09
OMG.GA	OM Group Inc.	9.250	12/15/11
PAX.GB	Paxson Communications Corp.	10.750	07/15/08
RSCR.GA	Res-Care Inc.	10.625	11/15/08
RVSU.GH	Revlon Consumer Products Corp.	12.000	12/01/05
RAD.GF	Rite Aid Corp.	10.500	09/15/02
RAD.GG	Rite Aid Corp.	11.250	07/01/08
SCHC.GA	Salem Comm Holding Corp.	9.000	07/01/11
SHLR.GB	Schuler Homes Inc.	9.375	07/15/09
SHLR.GC	Schuler Homes Inc.	10.500	07/15/11
SFD.GB	Smithfield Foods Inc.	8.000	10/15/09
SLR.GB	Solelectron Corp.	7.375	03/01/06
SGY.GB	Stone Energy Corp.	8.250	12/15/11
TLMU.GB	Telemundo Holdings Inc.	11.500	08/15/08
TEX.GD	Terex Corp.	9.250	07/15/11
TSO.GC	Tesoro Petroleum Corp.	9.625	11/01/08
UPUC.GA	United Pan-Europe Communication	14.500	07/15/08
UTPH.GA	United Surgical Partners Holdings Inc.	10.000	12/15/11
WSCD.GB	Wesco Distribution Inc.	9.125	06/01/08

## NASD Notice to Members 02-14

As of December 21, 2001, the following bonds were deleted from the Fixed Income Pricing System.

<b>Symbol Name</b>	<b>Coupon</b>	<b>Maturity</b>
AGIT.GA	Agriculture Min & Chem Inc.	10.750 09/30/03
ANCP.GB	Anacomp Inc.	10.875 04/01/04
ANCP.GC	Anacomp Inc.	10.875 04/01/04
AROI.GC	Asarco Inc.	7.000 12/01/01
BNKF.GA	Bankatlantic Financial Corp.	10.000 07/01/09
BWS.GA	Brown Shoes Inc. New	9.500 10/15/06
COVD.GA	Covad Communications Group Inc.	13.500 03/15/08
COVD.GB	Covad Communications Group Inc.	12.500 02/15/09
COVD.GC	Covad Communications Group Inc.	12.000 02/15/10
DYPR.GB	Drypers Corp.	10.250 06/15/07
EDYN.GB	Envirodyne Inds. Inc.	10.250 12/01/01
F.GA	Ford Motor Company	9.215 09/15/21
HSE.GC HS	Resource Inc.	9.250 11/15/06
KBH.GB	Kaufman & Broad Home Corp.	9.375 05/01/03
KM.GH	K-Mart Corp.	13.500 01/01/09
LWN.GB	Loewen Group Intl Inc.	8.250 10/15/03
LWN.GD	Loewen Group Intl Inc.	8.250 04/15/03
PPPC.GA	Penna Power Co.	8.500 07/15/22
PPPC.GB	Penna Power Co.	7.500 08/01/03
PPPC.GC	Penna Power Co.	6.625 07/01/04
PPPC.GD	Penna Power Co.	7.625 07/01/23
PPPC.GE	Penna Power Co.	6.375 09/01/04
RICK.GA	Rickel Home Centers Inc.	13.500 12/15/01
RAD.GC	Rite Aid Group	6.700 12/15/01
SBGI.GB	Sinclair Broadcasting Group Inc.	10.000 09/30/05
WBB.GD	Webb (Del) Corp.	9.750 01/15/08

As of December 21, 2001, changes were made to the symbols of the following FIPS bonds:

<b>New Symbol</b>	<b>Old Symbol</b>	<b>New Name/Old Name</b>	<b>Coupon</b>	<b>Maturity</b>
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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, NASDR Market Regulation, at (301) 590-6447.

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

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# NASD Notice to Members 02-15

## INFORMATIONAL

### Trade Date— Settlement Date

Trade Date—Settlement  
Date For Good Friday  
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.*

- Internal Audit
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Trading & Market Making

## KEY TOPICS

- Holiday Trade Date—  
Settlement Date Schedule

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

The Nasdaq Stock Market and the securities exchanges will be closed on Good Friday, March 29, 2002. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
March 25	March 28	April 2
26	April 1	3
27	2	4
28	3	5
29	Markets Closed	—
April 1	4	8

\* 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."

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# Disciplinary Actions

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## Disciplinary Actions Reported For February

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of January 2002.

### Firms Expelled, Individuals Sanctioned

**The Hamilton-Shea Group, Inc. (CRD #37526, Pompano Beach, Florida) and Michael Thomas O'Hara (CRD #848213, Registered Principal, Topeka, Kansas).** The firm has been fined \$1,375,000 and expelled from NASD membership. In the event the firm attempts to become an NASD member, the fine must be paid and the firm must rescind penny stock transactions. O'Hara has been fined \$10,000 and barred from association with any NASD member in any principal capacity. The fine must be paid before O'Hara reassociates with any NASD member. The sanctions are based on findings that the firm bid for, purchased, and attempted to induce others to purchase the securities of a common stock while acting as a distribution participant, and engaged in penny stock transactions without complying with penny stock rule disclosure and suitability requirements.

The findings also stated that the firm failed to report statistical and summary information to the NASD relating to written customer complaints received by the firm. In addition, the findings stated that the firm and O'Hara failed to develop adequate written supervisory systems and procedures with regard to the review of order

tickets, trade reports, and securities receipt blotters while engaged in the sale of securities pursuant to Regulation M, and failed to develop such systems and procedures for the sale of penny stocks or the reporting of customer complaints. The NASD found that the firm, acting through O'Hara, failed to adequately supervise the trading activity of the firm's head trader. O'Hara also failed to perform his supervisory function by reviewing documents related to order tickets, trading blotters, trading reports, and securities receipt blotters. Furthermore, the firm, acting through O'Hara, engaged in interstate commerce to conduct a securities business while failing to maintain minimum net capital. **(NASD Case #CAF000002)**

**VTR Capital, Inc. n/k/a Fairchild Financial Group, Inc. (CRD #21404, New York, New York) and Edward Joseph McCune (CRD #1316826, Registered Principal, Haines City, Florida)** submitted Offers of Settlement in which the firm was expelled from NASD membership and McCune was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm acted as the lead managing underwriter for an initial public offering (IPO) and purchased shares from the selling security-holders unsolicited, and, within minutes, began re-selling the shares to retail customers on a solicited basis. The firm, acting through McCune, knowingly or recklessly failed to disclose, or caused the firm's registered representatives to fail to disclose, material information to public customers in connection with the offer, recommendation, or sale of the company's common

stock, including that the firm and McCune had purchased a very large quantity of shelf-registered shares from the selling security-holders' stock at the opening of aftermarket trading; the price of the stock; that they were immediately recommending and reselling the shares to public customers at much higher prices; that as a result of these purchases and resales of the selling security-holder shares, the available public float was increased substantially; that the resales presented an immediate risk of dilution; and that the resales constituted a separate or secondary offering requiring the preparation and distribution of an amended or supplemental prospectus.

The findings also stated that the firm, acting through McCune, knowingly or recklessly, by the use of the means and instrumentalities of interstate commerce, or of the mails, employed devices, schemes, or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated as a fraud or deceit upon any persons, in connection with the purchase or sale of securities. The NASD found that the firm, acting through McCune, conducted a secondary offering and failed to file certain information and documents with the NASD regarding the proposed terms and to obtain an opinion of "no objections" to the proposed terms and arrangements from the NASD, to disclose the amount of its compensation in a prospectus, and to comply with its undertakings with the NASD. Furthermore, the NASD found that the firm, acting through McCune,

participated in the secondary offering in which the underwriting compensation was unfair and unreasonable in that the firm received total compensation that exceeded the maximum permissible under NASD guidelines by approximately \$1,303,380. **(NASD Case #CAF010010)**

### **Firm Fined, Individual Sanctioned**

**MG Securities Group, Inc. (CRD #42991, Dallas, Texas) and Michael Paul Anderson (CRD #1625289, Registered Principal, Richardson, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$21,000, of which \$20,000 is payable jointly and severally with Anderson. Anderson was also suspended from association with any NASD member in a principal capacity for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that in connection with a best efforts, "minimum-maximum" offering, the firm, acting through Anderson, rendered false the representations in the offering memorandum that the offering would terminate on a specified date and that investors' funds would be promptly returned if the minimum offering amount was not obtained during the initial offering period. The NASD found that the offering continued for two months after the initial 60-day period and the firm broke escrow early by causing the funds to be transferred to the issuer. The findings stated that the firm failed to transmit through the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) last-sales reports of over-the counter (OTC) securities transactions within 90 seconds of

execution and the reported transactions did not contain an ".SLD" modifier as required. The NASD also determined that the firm, acting through Anderson, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with applicable securities laws and regulations and with rules of the NASD.

Anderson's suspension began February 4, 2002, and will conclude at the close of business March 5, 2002. **(NASD Case #C06010044)**

### **Firms And Individuals Fined**

**Aethlon Capital, L.L.C. (CRD #42241, Minneapolis, Minnesota) and John William Pagnucco, Jr. (CRD #355245, Registered Principal, Wayzata, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through Pagnucco, commenced private placement contingent offerings and failed to establish independent escrow accounts for the offerings into which customer funds would be deposited pending the achievement of the contingency. The NASD found that the firm held the funds until a later date or until the offering closed. The findings also stated that the firm, acting through Pagnucco, permitted sales in an offering beyond the time period specified in the offering documents without providing notice to prior investors, reconfirming their purchases or offering them rescission, and conducted a securities business while failing to maintain adequate



minimum net capital. The NASD also found that the firm, acting through Pagnucco, failed to make and keep current a blotter containing an itemized daily record of the receipt, delivery, and/or disbursement of the customer funds and customer checks received from the contingent offerings. **(NASD Case #C04020001)**

**Pacific Continental Securities Corporation (CRD #2398, Beverly Hills, California) and George Fleischer Balmer (CRD #1046182, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, 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 acted in contravention of SEC Rule 15c3-3 and NASD Membership and Registration Rule 1014, and Balmer acted in contravention of Membership and Registration Rule 1014 when the firm lost its exemptive status by holding certain customer funds before transferring them to the firm's clearing broker. The NASD found that while the firm deposited the funds in a Special Reserve Account, it failed to make required computations and deposit additional funds into the account to meet the 105% requirement. And, because the firm conducted certain of its business beyond the limitations specified in the exemptive provisions of the Rule, it was required to obtain prior written approval from the NASD but failed to do so. **(NASD Case #C02010065)**

**Premier Group, Inc. (CRD #47346, San Antonio, Texas) and Hugh John Graham (CRD #1542345, Registered Principal, San Antonio, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,500, jointly and severally, and the firm and Graham agreed to the imposition of an advertising "pre-use filing requirement" for a one-year period, whereby the respondents must file sales literature with the Advertising Regulation Department of NASD Regulation and obtain approval for the use of such sales literature prior to the time such sales literature is used.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Graham, approved a telephone sales script relating to oil and gas investments that was used by the firm's sales staff; however, the script omitted material information, contained exaggerated and misleading information, and did not provide a sound basis for certain information. The findings stated that the firm, acting through Graham and another individual, allowed representatives of the firm to engage in the investment banking and securities business without being properly registered with the NASD. The NASD also found that the firm, acting through Graham, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to comply with applicable NASD rules concerning the permissible activities of non-registered employees. **(NASD Case #C06010043)**

**Waterford Capital, Inc. (CRD #21687, Dallas, Texas) and David Patrick O'Connor (CRD #2143494, Registered Principal, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanction and to the entry of findings that the firm, acting through O'Connor, allowed registered representatives to act in capacities requiring registration while they were inactive for failing to complete the Regulatory Element of Continuing Education. **(NASD Case #C06010042)**

**Wolff Investment Group, Inc. (CRD #21930, New York, New York) and Patricia Ann Schaeen (CRD #412379, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$21,785, jointly and severally, which includes disgorgement of \$3,785 in commissions received. The firm was also fined an additional \$3,000, jointly and severally, with another individual. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Schaeen, failed to abide by the terms and conditions of the firm's restrictive agreement with the NASD by participating in a firm commitment underwriting as a selling group member when the agreement permitted the firm to participate in underwritings on a best-efforts basis only; by engaging in municipal securities transactions when the agreement did not permit the firm to do so; and by receiving stock certificates

from public customers when the firm was not permitted to accept such certificates.

The findings stated that the firm, acting through Schaen, effected transactions in municipal securities without having paid an initial fee to the Municipal Securities Rulemaking Board (MSRB) and without having a qualified municipal securities principal at the firm. The NASD also found that the firm, acting through Schaen, allowed an individual to act in the capacity of a general securities principal while not registered in that capacity with the NASD, and failed to report to the NASD a customer settlement agreement in an amount exceeding \$25,000. In addition, the NASD found that the firm, acting through Schaen, failed to comply with the Firm Element of the NASD's Continuing Education Requirement by failing to conduct a needs analysis, to prepare a training plan, and to implement its training plan. Furthermore, the findings stated that the firm conducted a securities business while failing to maintain the minimum required net capital. **(NASD Case #C10010136)**

### **Firms Fined**

**Adams, Harkness & Hill, Inc. (CRD #1020, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$60,000, and required to pay \$59.38, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as

possible under prevailing market conditions. The findings also stated that the firm failed to execute orders fully and promptly, and executed short-sale transactions without reporting each of these transactions to ACT with a short-sale modifier. The NASD found that the firm failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis amount in relation to the size associated with the firm's bid or offer in each such security. In addition, the NASD found that the firm, a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or ask quotations in The Nasdaq Stock Market that caused a locked or crossed market condition to occur in each instance.

The NASD also determined 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 but the firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. In addition, the findings stated that the firm, as market maker in securities, locked or crossed the market during the pre-opening period and failed to immediately thereafter send a trade-or-move message through SelectNet® to the market participant whose quote it locked or crossed that was priced at the receiving market participant's

quoted price, and failed to send a trade-or-move message through SelectNet when an aggregate size of at least 5,000 shares to all market participants whose quotes it locked/crossed. Furthermore, the findings stated that the firm was a party to a locked or crossed market condition prior to the market opening, received a trade-or-move message in each instance through SelectNet, and failed to fill the incoming trade-or-move message for the full size of the message or move its bid down (offer up) by a quotation increment within 30 seconds of receiving such messages, so that the market would have unlocked or uncrossed. **(NASD Case #CMS010208)**

**BNP Paribas Brokerage Services, Inc. (CRD #31394, King of Prussia, Pennsylvania)** 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 timely report to Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) reportable order events. 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. 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 the 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 #CMS010203)**

**Inter Securities, Ltd. (CRD #40733, Encino, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it failed to ensure that it maintained and designated in its written supervisory procedures, an appropriately registered principal to carry out the supervisory responsibilities of the firm for each type of business in which it engaged. **(NASD Case #C07010094)**

**M&I Brokerage Services, Inc. (CRD #16517, Milwaukee, Wisconsin)** 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 allowed individuals who were registered with the firm as investment company and variable contracts products representatives to act in capacities requiring registration as general securities representatives by, among other things, paying, or causing to be paid to, the representatives compensation based on equity securities transactions executed in customer accounts. The NASD also found that the firm failed to administer a continuing education program for the firm element for its registered persons. **(NASD Case #C8A010043)**

**Maple Securities U.S.A. Inc. (CRD #33947, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent

in which the firm was censured and fined \$17,000. 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 to the NASD. The findings also stated that the firm did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short-interest reporting. 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 the 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 #CMS010199)**

**Market Wise Securities, Inc. (CRD #45269, Broomfield, Colorado)** 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 relating to OATS rules. 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. 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 subject reports and, thus, failed to report such information to OATS correctly.

The NASD found that the firm failed to report all applicable order information required to be recorded under the NASD Marketplace Rule 6954 to OATS for 25 business days during the review period. 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 OATS 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 the 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 #CMS010200)**

**Momentum Securities, LLC (CRD #39293, Houston, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which it 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 transmit to OATS any order data for its orders for equity securities traded on The Nasdaq Stock Market and transmitted to OATS reports containing inaccurate data as to the proper account type code and the limit order display indicator with respect to orders for equity securities traded on The Nasdaq Stock Market. 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 reporting. 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 the 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 #CMS010204)**

**Schonfeld Securities, LLC (CRD #23304, Jericho, New York)**

submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures concerning ACT reporting, Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) trading, trade reporting, books and records, harassment of market participants, the prompt receipt and delivery of securities, SEC Rule 10a-1, OATS reporting, and best execution. 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.

The findings also stated that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities and failed to report the contra side executing broker in transactions in eligible securities. In addition, the findings 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. 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 the 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 #CMS010205)**

**Tucker Anthony Incorporated (CRD #837, New York, New York)**

submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$16,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in eligible securities to ACT with a short sale modifier, the correct number of shares, and the correct symbol indicating whether the firm executed the transactions in a principal or agency capacity. The findings also stated that the firm failed to display immediately the customer limit orders in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or 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 #CMS010198)**

**Individuals Barred Or Suspended**

**Ciro Bocchetti (CRD #2838866, Registered Representative, Merrick, New York)** 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 three months, and required to follow special supervisory requirements in the event of his association with another member firm for 12 months from the date of his reassociation. Bocchetti shall not be permitted to continue such association unless the firm has adopted and implemented compliance programs and procedures that include monitoring his conversations with public customers on a random, silent basis, and monitoring all incoming and outgoing correspondence between Bocchetti and public customers to insure compliance with NASD rules, regulations, and federal securities laws. The fine must be paid before Bocchetti reassociates with any NASD member following the suspension. Without admitting or denying the allegations, Bocchetti consented to the described sanctions and to the entry of findings that in a phone call involving a potential public customer, he used a fictitious name to identify himself and falsely represented himself as a compliance officer with his member firm.

Bocchetti's suspension began February 4, 2002, and will conclude at the close of business May 3, 2002. **(NASD Case #C10010163)**

**Eugene Grant Boyle (CRD #4195875, Associated Person, Island Park, New York)** 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, Boyle consented to the described sanction and the entry of findings that he willfully failed to disclose material facts on a Uniform Application for Securities Industry Registration or Transfer Form (U-4). **(NASD Case #C10010150)**

**Thomas J. Braden (CRD #2729803, Registered Representative, Toms River, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, ordered to pay \$8,250 in disgorged commissions in partial restitution to public customers, and suspended from association with any NASD member in any capacity for 15 months. Payment of the fine and satisfactory proof of payment of the disgorgement is required before Braden reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Braden consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Braden's suspension began February 4, 2002, and will conclude May 3, 2003. **(NASD Case #C9A020002)**

**Michael Steven Brier (CRD #2076021, Registered Representative, Providence, Rhode Island)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Brier consented to the described

sanctions and to the entry of findings that he willfully failed to disclose a material fact on a Form U-4.

Brier's suspension began January 22, 2002, and will conclude April 21, 2002. **(NASD Case #C11010040)**

**Bill Warren Briley (CRD #1447544, Registered Representative, Brenham, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Briley engaged in private securities transactions and failed to provide prior written notice of the transactions, his role therein, and to receive permission from his member firm to engage in the transactions. In addition, Briley failed to respond to NASD requests for information. **(NASD Case #C06010012)**

**Joan Ann Brown (CRD #1057438, Registered Representative, Skaneateles, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brown consented to the described sanction and to the entry of findings that she failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #C11020004)**

**Mario Buccaran (CRD #2610271, Registered Representative, Long Island City, New York)** 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 90 days. The fine must be paid before Buccaran reassociates with any NASD member following the

suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Buccaran consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on a flexible life insurance illustration example without the customer's knowledge, authorization, or consent.

Buccaran's suspension began February 4, 2002, and will conclude May 4, 2002. **(NASD Case #C10010161)**

**Edward Leo Christensen (CRD #1027027, Registered Representative, Johnstown, 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, Christensen consented to the described sanction and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his firm with detailed written notice of the transactions and his role therein, and to receive permission from the firm to engage in the transactions. The findings also stated that Christensen failed to respond to an NASD request to appear and provide testimony. **(NASD Case #C9A010052)**

**John Joseph Cioffoletti (CRD #2066033, Registered Representative, Fairhaven, New Jersey)** 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, Cioffoletti consented to the described sanction and to the entry of findings that while

associated with a former member firm, he participated in several fraudulent schemes to manipulate the stock price of various companies and fraudulently induced investors to buy and hold such securities. The findings also stated that Cioffoletti entered a guilty plea to multiple counts of securities fraud conspiracy and securities fraud. **(NASD Case #C9B010102)**

**John Richard Coleman (CRD #600684, Registered Principal, Orange, California)** 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 10 business days. Without admitting or denying the allegations, Coleman consented to the described sanctions and to the entry of findings that he recommended transactions of a speculative and high-risk stock, and recommended a covered call strategy, which involved writing options against highly volatile and speculative stocks for the trust account of a public customer without having reasonable grounds for believing that such recommendations were suitable for the customer in light of the size and nature of the transactions, the concentration of speculative securities, and the facts disclosed concerning the customer's other securities holdings, financial situation, investment objectives, circumstances, and needs.

Coleman's suspension began February 4, 2002, and will conclude at the close of business February 15, 2002. **(NASD Case #C02010072)**

**Bruce David Dannenberg (CRD #2602486, Registered Representative, Black Mountain, 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 five months. Without admitting or denying the allegations, Dannenberg consented to the described sanction and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his firm with detailed written notice of the transactions and his role therein, and to receive permission from the firm to engage in the transactions.

Dannenberg's suspension began January 22, 2002, and will conclude at the close of business June 21, 2002. **(NASD Case #C07010097)**

**Michael Stephen DaSaro (CRD #1918044, Registered Representative, Brooklyn, New York)** 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, DaSaro consented to the described sanction and the entry of findings that he converted \$2,100 of a public customer's funds intended to be applied as premiums towards the customer's insurance policy maintained at his member firm for his own personal use and benefit without the prior knowledge, authorization, or consent of the customer. **(NASD Case #C10010165)**

**David Lawrence Dosik (CRD #1978544, Registered Representative, Northbrook, Illinois)** 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 10 business days. The fine must be paid before Dosik

reassociates with any NASD member following the suspension. Without admitting or denying the allegations, Dosik consented to the described sanctions and to the entry of findings that he engaged in, and/or accepted compensation for, activities as an agent of a life insurance company without providing prompt written notice of his outside business activities to his member firm.

Dosik's suspension began February 4, 2002, and will conclude at the close of business February 15, 2002. **(NASD Case #C8A020001)**

**Barbara Sue Edgemon (CRD #2386050, Registered Representative, Otis Orchards, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Edgemon consented to the described sanction and to the entry of findings that she participated in the sale of promissory notes to public customers totaling \$1,554,000 and failed to provide written notice to her member firm describing in detail the proposed transactions, her proposed role therein, and stating whether she would receive, or might receive, selling compensation in connection with the transactions. **(NASD Case #C3B010019)**

**Robert Allen Evans (CRD #2949332, Registered Representative, Greensburg, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to disgorge \$64,000 in commissions in partial restitution to customers. Satisfactory proof of

payment of restitution must be made before Evans reassociates with any NASD member. Without admitting or denying the allegations, Evans consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. **(NASD Case #C9A020001)**

**Robert Fitzpatrick (CRD #842159, Registered Principal, Westport, Connecticut)** was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for five business days. The Securities and Exchange Commission (SEC) imposed the sanctions following appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that Fitzpatrick failed to respond in a timely manner to NASD requests to provide documents.

Fitzpatrick has appealed this decision to the Court of Appeals, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C10970176)**

**Harry Gliksman (CRD #223138, Registered Principal, Los Angeles, California)** was censured, suspended from association with any NASD member in any capacity for six months, and required to requalify as a general securities representative. The United States Court of Appeals affirmed the sanctions following appeal of a December 1999 SEC decision. The sanctions were based on findings that Gliksman made unsuitable recommendations to a public customer.

Gliksman filed a petition for rehearing with the United States Court of Appeals; therefore, the sanctions are not in effect pending

the court's ruling on the petition for rehearing. **(NASD Case #C02960039)**

**Christian Limon Gloria (CRD #2548614, Registered Representative, Southgate, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$11,712.13 and barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member firm after four years. The fine must be paid before Gloria reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gloria consented to the described sanctions and to the entry of findings that he recommended that a public customer liquidate her investment in a variable annuity and reinvest the proceeds in another variable annuity with similar investment objectives without having reasonable grounds for believing that such recommendations were suitable for the customer in light of the nature of the transactions and the facts disclosed by the customer as to her other securities holdings, financial situation, circumstances, and needs. The findings also stated that in order to complete the switch from the first annuity to the second annuity, Gloria misrepresented to his direct supervisor that the funds used to purchase the second annuity were coming from the liquidation of a certificate of deposit. **(NASD Case #C02010075)**

**Harut Harry Gouyoumjian (CRD #2787029, Registered Representative, Sherman Oaks, 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, Gouyoumjian consented to the described sanction and to the entry of findings that while employed by a bank, he removed \$1,000 from his teller cash drawer and deposited the funds into his personal bank account without authorization. **(NASD Case #C02010066)**

**Michael John Halkitis (CRD #2246940, Registered Principal, Astoria, New York) and Hugh Daniel Dunn, Jr. (CRD #2219252, Registered Principal, Town of Wallkill, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were each fined \$2,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they completed and executed Forms U-4 and failed to indicate that they were engaged as officers and/or proprietors of a business other than that of their member firm.

Halkitis' suspension began January 22, 2002, and concluded at the close of business January 28, 2002. Dunn's suspension began January 29, 2002, and concluded at the close of business February 4, 2002. **(NASD Case #C10010152)**

**Robert Sippel Harrison (CRD #1891983, Registered Representative, Jacksonville, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to disgorge \$457.50. Satisfactory proof of payment of disgorgement must be made before Harrison reassociates with any NASD member. Without

admitting or denying the allegations, Harrison consented to the described sanctions and to the entry of findings that he engaged in outside business activities for which he received compensation without prior written notice to his member firm. **(NASD Case #C07010102)**

**Roger Andrew Heubach (CRD #1057670, Registered Representative, Raleigh, North Carolina)** 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, Heubach consented to the described sanction and to the entry of findings that he deposited checks into his personal bank account that were given to him by a public customer for investment purposes, without authorization from the customer. **(NASD Case #C07010093)**

**Michael Earl Hill (CRD #2186074, Registered Principal, Plano, Texas)** 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 60 days. The fine must be paid before Hill reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hill consented to the described sanctions and to the entry of findings that he prepared correspondence that contained misleading statements, gave it to a public customer, and failed to include material information.

Hill's suspension began February 4, 2002, and will conclude at the close of business April 4, 2002. **(NASD Case #C06010047)**

**Michael Earl Hill (CRD #2186074, Registered Principal, Plano, 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, Hill consented to the described sanction and to the entry of findings that he received \$2.6 million from public customers based on representations that he was going to purchase certificates of deposit on their behalf. Instead, Hill used these funds for his personal benefit. **(NASD Case #C06010048)**

**Winston Lee Hodges (CRD #714571, Registered Representative, Raleigh, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. In light of the financial status of Hodges, no monetary sanctions have been imposed. Without admitting or denying the allegations, Hodges consented to the described sanction and to the entry of findings that he engaged in outside business activities related to financial planning for which he received compensation without prompt, written notice of his involvement in the activities to his member firm. **(NASD Case #C07010103)**

**Kerry W. Hough (CRD #731839, Registered Representative, Peoria, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Hough re-associates with any NASD member following the suspension or prior to any request for relief from any statutory

disqualification. Without admitting or denying the allegations, Hough consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers on applications for variable life insurance policies.

Hough's suspension began February 4, 2002, and will conclude at the close of business February 15, 2002. **(NASD Case #C8A020003)**

**Keang Patrick Ing (CRD #2697125, Registered Representative, San Gabriel, 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, Ing consented to the described sanction and to the entry of findings that he executed unauthorized purchase and sale transactions in various options in the accounts of public customers without their knowledge, authorization, or consent. The findings also stated that Ing effected, or caused to be effected, transactions in the securities accounts of public customers and exercised discretionary power in those accounts without prior written authorization from the customers and acceptance in writing by his member firm of the accounts as discretionary. **(NASD Case #C02010067)**

**Carlos Tomas Jordan (CRD #4159949, Registered Representative, Guaynabo, Puerto Rico)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Jordan cheated during a qualification examination. **(NASD Case #C07010060)**



**Abdulla Akhterhusain Kagalwalla (CRD #2717532, Registered Principal, Clearwater, 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, Kagalwalla consented to the described sanction and to the entry of findings that he participated in the preparation of offering materials for private offerings interests that were used to solicit investors, contained materially false and misleading statements, and failed to disclose material facts necessary to make the statements therein not misleading. The findings also stated that Kagalwalla participated in a private securities transaction without providing prior written notice to, or receiving prior written approval from, his member firm. **(NASD Case #C07010096)**

**Michael James Kincaid (CRD #2054052, Registered Representative, Boomer, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, ordered to disgorge \$6,226.12, plus interest, to public customers, and suspended from association with any NASD member in any capacity for two years. Payment of the fine and satisfactory proof of payment of the disgorgement is required before Kincaid reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kincaid consented to the described sanctions and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his firm with prior detailed written notice of the transactions.

Kincaid's suspension began February 4, 2002, and will conclude at the close of business February 3, 2004. **(NASD Case #C9A010054)**

**Michelle LaVonne (CRD #2013383, Registered Representative, Rancho Santa Margarita, California)** submitted a Letter of Acceptance, Waiver, and Consent in which she was suspended from association with any NASD member in any capacity for two years. In light of the financial status of LaVonne, no monetary sanctions have been imposed. Without admitting or denying the allegations, LaVonne consented to the described sanction and to the entry of findings that she recommended an investment strategy for the accounts of public customers that was unsuitable for the customers in view of the frequency and nature of the recommended transactions and the customers' financial situation, objectives, circumstances, and needs.

Lavonne's suspension began January 22, 2002, and will conclude at the close of business January 20, 2004. **(NASD Case #C02010064)**

**Tuan Ba Le (a/k/a Jason Le) (CRD #3079382, Registered Representative, Grand Prairie, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Le made unauthorized withdrawals totaling \$176,000 from a public customer's bank account by signing the customer's name on withdrawal slips and used the funds for his own use and benefit without the authorization, knowledge, or consent of the customer. **(NASD Case #C06010017)**

**Jon Letang (CRD #1615102, Registered Representative, Spring, Texas)** was fined \$10,000, suspended from association with any NASD member in any capacity for six months for failing to disclose material information, and barred from association with any NASD member in any capacity for failure to respond to NASD requests for information. The fine must be paid before Letang reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Letang failed to disclose material facts on his Form U-4.

Letang's bar became effective January 2, 2002. **(NASD Case #C05010032)**

**David Robert Lippa, Jr. (CRD #1696616, Registered Representative, Unadilla, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$484,000, plus interest, in restitution to public customers. The restitution must be paid before Lippa reassociates with any NASD member or prior to any request for relief from any statutory disqualification. Without admitting or denying the allegations, Lippa consented to the described sanctions and to the entry of findings that he was engaged in private securities transactions without prior written notice to, or approval from, his member firm. The NASD also found that Lippa converted for his own use and benefit portions of the funds he received from public customers who purchased the private securities transactions from him. **(NASD Case #C11010042)**

**Leonard Vincent Lombardo (CRD #2401363, Registered Representative, Edison, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lombardo engaged in material misrepresentations and omissions of fact in the sale of securities to public customers. Lombardo made optimistic predictions as to price, profit, and performance without disclosing negative information concerning the financial or operating condition of the companies issuing the stocks. The findings also stated that Lombardo engaged in unauthorized transactions in the accounts of public customers. **(NASD Case #C10000006)**

**Frederick Max Long (CRD #2333378, Registered Representative, Catawissa, 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, Long consented to the described sanction and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his firm with prior written notice of the transactions and his role therein, and failed to state whether he had received, or might receive, selling compensation. The findings also stated that Long failed to respond to an NASD request for information. **(NASD Case #C9A010053)**

**Michael Joseph Markowski (CRD #844847, Registered Principal, Miami Beach, Florida) and Joseph F. Riccio (CRD #710502, Registered Representative, Palm Harbor, Florida).** Markowski was

censured, fined \$300,000, and barred from association with any NASD member in any capacity, and Riccio was censured, fined \$250,000, and barred from association with any NASD member in any capacity. The U.S. Court of Appeals for the District of Columbia Circuit affirmed the sanctions following appeal of a September 2000 SEC decision. The sanctions were based on findings that Markowski and Riccio manipulated the market for securities underwritten by a firm and published non-bona fide bids for those securities. In addition, Markowski failed to comply with a restriction agreement between the firm and the NASD and refused to timely submit to an NASD investigative interview. **(NASD Case #CMS920091)**

**Robert Steve Miles (CRD #1569883, Registered Representative, Tulsa, Oklahoma)** was fined \$10,000, required to pay \$13,400 in restitution to public customers, suspended from association with any NASD member in any capacity for 180 days for private securities transactions, and barred from association with any NASD member in any capacity for failure to respond to NASD requests for information. The fine must be paid before Miles reassociates with any NASD member or before requesting relief from any statutory disqualification. The sanctions were based on findings that Miles engaged in private securities transactions for compensation without providing prior written notice to, and receiving approval from, his member firm, and for failing to respond to NASD requests for information.

Miles' bar became effective December 24, 2001. **(NASD Case #C05010020)**

**Thomas Paul Morris (CRD #1395018, Registered Representative, Drexel Hill, Pennsylvania)** 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 \$355,944 in restitution to public customers. Satisfactory proof of payment of restitution must be made before Morris reassociates with any NASD member. Without admitting or denying the allegations, Morris consented to the described sanctions and to the entry of findings that he received \$355,944 from public customers for the purpose of making investments and, instead, deposited the funds into bank accounts that he controlled, and converted the funds to his own use and benefit without the customers' knowledge or consent. **(NASD Case #C9A010055)**

**William Carlson Nagy (CRD #2139804, Registered Representative, Burlington, Kentucky)** 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 60 days. Without admitting or denying the allegations, Nagy consented to the described sanctions and the entry of findings that he participated in the sale of promissory notes away from his member firm and failed to provide his firm with detailed written notice of the transactions, his role therein, and to secure approval from his firm to participate in the transactions.

Nagy's suspension began January 22, 2002, and will conclude at the close of business March 22, 2002. **(NASD Case #C8B010035)**

**Brent Allen Nelson (CRD #3026585, Registered Principal, Vienna, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 business days and required to disgorge \$14,500 in commissions earned. Without admitting or denying the allegations, Nelson consented to the described sanctions and to the entry of findings that he sold alleged shares of initial public offerings (IPOs) to public customers, and in connection with the sale of alleged shares of the IPOs, Nelson negligently misrepresented that the firm offering the IPOs had acquired the 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.

Nelson's suspension began January 22, 2002, and will conclude at close of business March 6, 2002. **(NASD Case #C9A010026)**

**Jim Newcomb (CRD #1376482, Registered Representative, Fort Collins, Colorado)** was fined \$32,000 and suspended from association with any NASD member in any capacity for two years. The SEC affirmed the sanctions following appeal of a November 16, 2000, NAC decision. The sanctions were based on findings that Newcomb engaged in private securities transactions, for compensation, without providing prior written notice of his intention to participate in such transactions to, and receiving permission from, his member firm.

Newcomb's suspension began January 22, 2002, and will conclude at the close of business

January 21, 2004. **(NASD Case #C3A990050)**

**Michael L. Niemczyk (CRD #3097183, Registered Representative, Round Lake Beach, Illinois)** 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 Niemczyk reassociates with any NASD member following the suspension or prior to any request for relief from any statutory disqualification. Without admitting or denying the allegations, Niemczyk consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer to two account transfer forms without the customer's knowledge or consent.

Niemczyk's suspension began February 4, 2002, and will conclude August 3, 2002. **(NASD Case #C8A020002)**

**John Fredrik Peters, II (CRD #1311252, Registered Representative, Loveland, 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 60 days, and ordered to disgorge \$10,418.47, plus interest, in commissions to public customers. The fine and disgorgement must be paid before Peters reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Peters consented to the described sanctions and to the entry of findings that he sold promissory notes 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.

Peters' suspension began January 22, 2002, and will conclude at the close of business March 22, 2002. **(NASD Case #C8B010034)**

**Barry Ray Phipps, Sr. (CRD #362867, Registered Representative, Columbia City, Indianapolis)** 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, Phipps consented to the described sanction and to the entry of findings that he participated, for compensation, in private securities transactions by participating in the sale of securities in the form of promissory notes without prior written notice to, and approval from, his member firm, prior to engaging in such activities. The NASD also found that Phipps failed and neglected to provide prompt written notice to his member firm of his outside business activities of providing payroll services relating to a company's promissory note business. The findings also stated that Phipps failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #C8A010095)**

**Ryan O'Neal Rancher (CRD #2492877, Registered Representative, Birmingham, Alabama)** submitted an Offer of Settlement in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Rancher reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting

or denying the allegations, Rancher consented to the described sanctions and to the entry of findings that he submitted to his member firm a customer retirement plan enrollment form containing false and/or inaccurate customer financial and other information, and forged the customer's name on the enrollment form.

Rancher's suspension began February 4, 2002, and will conclude at the close of business February 3, 2003. **(NASD Case #C07010054)**

**Francis Angelo Ricafort (CRD #3024229, Registered Representative, Santa Clarita, 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, Ricafort consented to the described sanction and to the entry of findings that he embarked on a scheme to convert a public customer's funds for his own use and benefit. According to the findings, Ricafort recommended that a public customer liquidate a mutual fund and reinvest the proceeds with a new mutual fund. After liquidating the mutual fund, Ricafort invested the proceeds totaling \$92,341 in a mutual fund, established a third-party address as the address of record for the fund, obtained possession of the checkbook for the fund, endorsed checks totaling \$90,719.04 by forging a third-party's signature on the respective signature lines, and converted the funds for his own benefit. **(NASD Case #C02010070)**

**Eric Vonn Schultz (CRD #1978124, Registered Representative, Simi Valley, 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, Schultz consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The findings also stated that Schultz used the instrumentalities of interstate commerce or the mails intentionally or recklessly, to employ devices to defraud public customers by making untrue statements of material facts and/or omitting to state material facts necessary to make the statements by him, in light of the circumstances in which they were made, not misleading. **(NASD Case #C02010069)**

**Steven Marc Simmons (CRD #2957967, Registered Representative, New York, 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 60 days. Without admitting or denying the allegations, Simmons consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer by purchasing shares of stock without obtaining prior written authorization from the public customer and prior written acceptance of the account as discretionary by his member firm.

Simmons' suspension began February 4, 2002, and will conclude at the close of business April 4, 2002. **(NASD Case #C9B010109)**

**Jack Harry Stein (CRD #1233359, Registered Representative, West Palm Beach, Florida)** was fined \$25,000, and suspended from association with any NASD member in any capacity for three months. The NAC imposed the sanctions following the appeal of an Office of Hearing Officer (OHO) decision. The sanctions were based on findings that Stein recommended and implemented a course of unsuitable and excessive trading in a public customer's account without having a reasonable basis for believing that such recommendations were suitable for the customer due to the nature of the securities, the concentration of the securities in the account, and the customer's investments objectives, financial situation, and needs.

Stein has appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C07000003)**

**Matthew David Stone (CRD #2922068, Registered Representative, Stuart, Florida)** submitted an Offer of Settlement in which he was fined \$10,000 and barred from association with any NASD member in any capacity with the right to reapply after two years. The fine must be paid before Stone reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Stone consented to the described sanctions and to the entry of findings that he engaged in widespread, fraudulent sales practices and lured customers into highly speculative investments in risky securities by making misrepresentations and omissions to the customers, including baseless price predictions and providing

false statements to customers without providing adequate and accurate information regarding the securities he recommended, and without having a reasonable basis for such representations. The findings also stated that Stone failed to follow customers' instructions to sell stock and engaged in unauthorized trading in a customer's account. **(NASD Case #C07010050)**

**Dawn Marie Stuhr (CRD #2985179, Registered Representative, Davidson, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stuhr consented to the described sanction and to the entry of findings that she caused checks totaling \$6,560 to be issued from the bank account of a public customer without the customer's authorization, and then obtained and used the proceeds for her own use and benefit. **(NASD Case #C07010105)**

**John Phillip Toepper (CRD #2333199, Registered Representative, Chicago, Illinois)** 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 Toepper reassociates with a member firm or prior to requesting relief from any statutory disqualification. Without admitting or denying the allegations, Toepper consented to the described sanctions and to the entry of findings that he accepted compensation for accounting-related services that he provided to two entities pursuant to employment agreements he entered into with those entities.

In connection therewith, he failed and neglected to provide prompt, written notice to his member firm of his outside business activities.

Toepper's suspension began February 4, 2002, and will conclude at the close of business February 15, 2002. **(NASD Case #C8A010098)**

**Tanya N. Vu (CRD #2954683, Registered Principal, Houston, Texas)** was fined \$10,000, suspended from association with any NASD member in any capacity for 30 business days, and required to requalify by exam before reentering the securities industry. The sanctions were based on findings that Vu failed to update her Form U-4 to disclose a material fact.

Vu's suspension began January 7, 2002, and will conclude at the close of business February 19, 2002. **(NASD Case #C06010015)**

**Edward Nial Weeks, Jr. (CRD #2351808, Registered Representative, Poughkeepsie, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,500, of which \$1,100 represents disgorgement of commissions, suspended from association with any NASD member in any capacity for six months, and ordered to pay \$65,000, plus interest, in restitution to public customers. The fine and restitution must be paid before Weeks reassociates with any NASD member or prior to any request for relief from any statutory disqualification. Without admitting or denying the allegations, Weeks consented to the described sanctions and to the entry of findings that he recommended that public customers purchase securities that resulted in highly concentrated positions in certain speculative stocks in their accounts. The NASD found that

the purchase of these speculative stocks resulted in a loss in the customers' accounts of approximately \$65,000.

Weeks' suspension began February 4, 2002, and will conclude August 3, 2002. **(NASD Case #C11020001)**

**Donny Randall Wells (CRD #1089583, Registered Representative, Santa Rosa, 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 30 days. The fine must be paid before Wells reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wells consented to the described sanctions and to the entry of findings that he effected transactions in the securities accounts of public customers and exercised discretionary power in those accounts without prior written authorization from the customers and acceptance in writing by his member firm of the accounts as discretionary.

Well's suspension began January 22, 2002, and will conclude at the close of business February 20, 2002. **(NASD Case #C02010071)**

**Thomas Andrew Winnicki (CRD #1513199, Registered Representative, Dickson City, Pennsylvania)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay \$20,000, plus interest, in disgorgement of commissions in partial restitution to public customers. Satisfactory proof of payment of disgorgement must be made before Winnicki reassociates with any NASD

member. Without admitting or denying the allegations, Winnicki consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The findings also stated that Winnicki offered and sold securities to public customers without having a reasonable basis for believing that such transactions were suitable for the customers based upon their financial situation, investment objectives, and needs. **(NASD Case #C9A010011)**

**Keith Frederick Yearout (CRD #2322125, Registered Representative, Cincinnati, Ohio)** 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 Yearout reassociates with any NASD member or before requesting for relief from any statutory disqualification. Without admitting or denying the allegations, Yearout consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers, as trustees, to a member firm's account transfer form, without the trustees' or beneficiary's knowledge or consent.

Yearout's suspension began February 4, 2002, and will conclude August 3, 2002. **(NASD Case #C8A010097)**

### **Decisions Issued**

The following decisions have been issued by the DBCC or the Office or Hearing Officers and have been appealed to or called for review by the NAC as of January 4, 2002. The findings and sanctions

imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

**Wendell Duane Belden (CRD #1324913, Registered Principal, Tulsa, Oklahoma)** was fined \$40,000, required to pay \$55,567.03, plus interest, in restitution to the estate of a public customer, suspended from association with any NASD member in any capacity for 90 days, and ordered to requalify by exam as a principal before functioning in any principal capacity. The sanctions were based on findings that Belden made unsuitable recommendations to a public customer.

Belden has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C05010012)**

**Pacific On-Line Trading & Securities, Inc. (CRD #45737, San Jose, California) and Timothy Alan McAdams (CRD #2877024, Registered Principal, San Jose, California)** were censured and fined \$10,000, jointly and severally, and McAdams was ordered to requalify as a general securities principal. The sanctions were based on findings that the firm, acting through McAdams, maintained a Web site advertisement without filing the Web site with NASD. In addition, the firm, acting through McAdams, used a Web site that was false and misleading because it omitted material information concerning the risks of day-trading and contained exaggerated, unwarranted, and false statements.

The firm and McAdams have appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C01000037)**

### **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.

**Decole Leeann Bee (CRD #3251151, Registered Representative, Dallas, Texas)** was named as a respondent in an NASD complaint alleging that she completed a personal line of credit application in the name of her grandfather and forged his name to the application without his knowledge or consent. The complaint also alleges that Bee executed and processed cash advances on the line of credit in the amount of \$6,000 and checks totaling \$550 against the line of credit, thereby converting the funds to her own use and benefit. The complaint also alleges that Bee failed to respond to NASD requests for information. **(NASD Case #C05010055)**

**Verna Lynn Eller (CRD #2085566, Registered Representative, Chillicothe, Missouri)** was named as a respondent in an NASD complaint alleging that she caused checks totaling \$40,000 to be issued from the accounts of public customers

and affixed the customers' endorsement signatures on the check and money fund joint account applications without the customers' knowledge or consent. The complaint alleges that Eller deposited the funds into a money fund joint account she controlled, and subsequently transferred the funds to an account in her name and the names of her husband and son. Furthermore, the complaint alleges that Eller received \$340 in cash from a public customer with instructions from the customer to purchase shares of stock, handed the customer a handwritten document as a putative receipt, and failed to open the account for the customer or purchase stock as intended, and, instead, retained the cash for her own use and benefit. The NASD also alleges that Eller failed to respond to NASD requests for information. **(NASD Case #C04010043)**

**Matthew James Gervasio (CRD #2844164, Registered Representative, West Islip, New York)** was named as a respondent in an NASD complaint alleging that he received \$366,168.55 from public customers to be deposited in their accounts at his member firm, failed to deposit the funds as instructed, and, without the prior knowledge, authorization, or consent of the customers, deposited the checks into accounts at his firm for his own personal use or benefit. The complaint also alleges that Gervasio received silver bars valued at approximately \$8,500 from a public customer to be deposited into a safe deposit box at his member firm and, without the prior knowledge, authorization, or consent of the customer, converted the silver bars for his own personal use and benefit. In addition, the complaint alleges that Gervasio failed to respond to an

NASD request to submit a written response to a public customer's complaint. **(NASD Case #C10010157)**

**Richard Scott Gregory (CRD #2837455, Registered Representative, Dallas, Texas)** was named as a respondent in an NASD complaint alleging that he executed unauthorized transactions in the account of a public customer without his prior knowledge or authorization. **(NASD Case #C06010045)**

**Edward Hossein Haghani (CRD #3055635, Registered Representative, King of Prussia, Pennsylvania)** was named as a respondent in an NASD complaint alleging that he caused an unauthorized withdrawal of \$650 from the bank account of a public customer and used the funds for his own personal financial benefit. The complaint also alleges that Haghani failed to respond to NASD requests for information. **(NASD Case #C9A020003)**

**Sean Kathenes (CRD #2278583, Registered Representative, Verona, New Jersey)** was named as a respondent in an NASD complaint alleging that he executed unauthorized transactions in a public customer's account without the prior knowledge, authorization, or consent of the customer. **(NASD Case #C9B010108)**

**John Joseph Kenny (CRD #2122478, Registered Principal, Hoboken, New Jersey)** was named as a respondent in an NASD complaint alleging that he executed the sale of shares of stock from the joint account of public customers without their prior knowledge, authorization, or consent. The complaint also alleges that Kenny failed to respond to NASD requests to

appear for an on-the-record interview. **(NASD Case #C10010158)**

**Philip William Merrill (CRD #2436444, Registered Representative, Goodyear, Arizona)** was named as a respondent in an NASD complaint alleging that he entered unauthorized transactions in a public customer's account, resulting in a loss of \$11,101 in the account. **(NASD Case #C3A020002)**

**Thomas Marion Scotton (CRD #1160247, Registered Representative, Willingboro, New Jersey)** was named as a respondent in an NASD complaint alleging that he effected the opening of an account at his member firm for a public customer and himself, with him serving as joint account holder with rights of survivorship; did not to discuss the opening of the joint account with anyone other than the customer prior to opening the account; and effected the transfer of holdings from an individual account to the joint account, thereby acquiring a direct financial interest in the holdings. The complaint also alleges that Scotton facilitated his designation as the beneficiary of an annuity contract, of which the public customer was the owner and annuitant, by completing a change of beneficiary form, and failed to discuss his designation as beneficiary with anyone other than the customer prior to the designation. In addition, the complaint alleges that Scotton shared directly or indirectly in the profits or losses of the joint account without contributing any money, being liable for any losses in the account, and was not an "immediate family member" as defined in NASD Conduct Rule 2330(f). **(NASD Case #C10010156)**

**Thomas Andrew Timberlake (CRD #870022, Registered Principal, Tampa, Florida)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omissions to public customers with regard to their purchase of certificates of deposit (CDs). Specifically, the complaint alleges that Timberlake failed to disclose that the CDs had a 15- or 20-year maturity, that the principal was subject to secondary market risk if the customers wanted to liquidate the CDs prior to maturity, or that the CDs were zero coupon CDs that paid no interest. The complaint also alleges that Timberlake falsely represented to customers that they would have access to their money at any time and that the only risk was loss of interest. Furthermore, the complaint alleges that Timberlake falsely told customers that they could redeem the CDs after two years at full value because they were FDIC insured when in fact they were not. **(NASD Case #C07010099)**

**James Richard Wamsley (CRD #1149112, Registered Representative, Petaluma, California)** was named as a respondent in an NASD complaint alleging that he prepared a letter to a former customer concerning a tax-deferred annuity, signed his manager's name to the letter, and sent it to the customer without his manager's knowledge and without approval from anyone at his member firm. **(NASD Case #C01010017)**

#### **Firm Suspended For Failure To Supply Financial Information**

The following firm was suspended from membership in the NASD for failure to comply with formal written requests to submit financial

information to the NASD. The action was 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.

**Ameritrust Securities, Inc.,**  
Torrington, Connecticut  
(January 4, 2002)

#### **Suspension Lifted**

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

**The Sunnoor Corporation,**  
Lockwood, California  
(December 17, 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.)**

**Chan, Brian,**  
San Diego, California  
(December 28, 2001)

**Darlington, Douglas K.**  
Morristown, New Jersey  
(December 31, 2001)

**Flowers, Troy**  
Lemon Grove, California  
(December 28, 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.

**Hayes, Harold R.**  
Winder, Georgia  
(December 31, 2001)

**Onthank, Sr., Robert Pierce**  
Fairfield, Connecticut  
(January 14, 2002)

#### **NASD Regulation Fines And Censures Worldco, LLC, And Former Principal For Day Trading Margin Violations**

NASD Regulation censured and fined Worldco, LLC, of New York City \$175,000 for violating NASD day trading rules. Additionally, NASD Regulation announced that Worldco's former Chief Financial Officer, Terry T. Maloney, was censured and fined together with the firm, an additional \$15,000 for the violations.

NASD Regulation found that from October 1998 through March 2000, Worldco failed to adequately monitor, calculate, and enforce NASD day trading margin requirements for a prime brokerage account of an institutional customer. Worldco cleared and financed transactions in that customer's account.

NASD Regulation found that Worldco failed to monitor and calculate whether the account, which engaged in extensive day trading, exceeded day trading buying power. As a result, Worldco was not able to determine whether the account had sufficient equity,



and whether a margin call needed to be issued. It was found that Worldco, acting through Maloney, who was responsible for ensuring the firm's compliance with day trading margin rules, violated NASD rules.

In a typical prime brokerage account, an institutional investor will execute trades with various broker/dealers, and the trades will be aggregated in the prime brokerage account for the purpose of clearance and settlement. The clearing firm is responsible for ensuring that the prime brokerage account is maintained pursuant to the requirements of Regulation T and applicable Self Regulatory Organization margin rules. NASD rules require, among other things, that a firm ensure that a customer's account maintains sufficient equity, and in the case of a deficiency, require that the customer provide additional cash or securities to meet any deficiency.

As a part of the settlement with NASD Regulation, Worldco and Maloney neither admitted nor denied NASD Regulation's findings.

### **NASD Regulation Directs Knight Securities, L.P., To Pay \$1.5 Million For Market Violations**

*\$700,000 Fine to NASD, \$800,000 Payments to Clients*

NASD Regulation announced that Knight Securities, L.P., has been censured, fined \$700,000, and directed to pay \$800,000 to clients of the firm. The sanctions were imposed for wide-ranging market making and trading violations, including failure to honor posted quotes and to accurately report trades to the NASD. The fine and payments made by Knight are the

largest ever imposed by NASD Regulation for these types of marketplace violations.

NASD Regulation found that Knight committed numerous violations of federal securities laws and NASD rules spanning the 4-year period from July 1997 to May 2001—a period of rapid expansion for the firm. Among the most significant was a series of violations of the locked and crossed markets rule that emerged during separate review periods from 1998 to 2001. The locked and crossed violations occurred during normal trading hours, before the market opened, and in trading following Initial Public Offerings (IPOs). NASD Regulation also found that Knight failed to honor posted quotes, promptly display limit orders, and to report thousands of trades timely and accurately to the NASD.

Finally, in connection with trading in the market for OnSale, Inc., NASD Regulation found that the execution quality provided by Knight for 645 orders was inconsistent with just and equitable principles of trade. Knight was directed to pay \$800,000 plus interest to clients of the firm in connection with the execution of OnSale orders.

"It is critical that no matter how rapid a firm's business growth, the commitment to develop and maintain systems to ensure compliance must keep pace," said Mary L. Schapiro, President of NASD Regulation, Inc. "This is fundamental to the success of our markets and the protection of investors."

As a part of the settlement with NASD Regulation, Knight neither admitted nor denied the findings.

### **NASD Regulation Charges Tower Square Securities And Files Complaints Against Two Individuals**

NASD Regulation, Inc., today announced a disciplinary settlement in which it fined Tower Square Securities \$200,000 and directed it to make \$4.3 million in restitution to the Jefferson Parish (Louisiana) Public School System's employees deferred compensation plan. In addition, complaints were filed against a former registered representative with Tower and his business partner, Randall J. Veselik. The three enforcement actions involve the mishandling of the investment portfolio of the school system's deferred compensation retirement plan.

The complaint filed against the former Tower registered representative, Kevin B. Dermody, alleges that in July 2000, he entered into a contract to serve as investment manager of the deferred compensation plan operated by the Jefferson Parish school system for the benefit of its employees. At Dermody's direction, the plan liquidated its holdings of approximately \$10.8 million in variable annuities, incurring surrender charges of more than \$670,000. Proceeds of the annuity liquidation, along with additional plan contributions, were used by Dermody to purchase securities and insurance products including investment contracts issued by Hilltopper Enterprises, L.L.C., a company organized by Dermody and Veselik. Veselik was named in a separate complaint. The majority of plan funds invested with Hilltopper was lost through speculative trading. An independent audit of the plan as of June 30, 2001, revealed that liabilities to plan participants exceeded plan assets by more than \$4.2 million.

“The mishandling of investment portfolios is serious misconduct and deserves meaningful and prompt sanctions,” said Mary L. Schapiro, President of NASD Regulation, Inc. “We are pleased that the school system is to receive full restitution in this case.”

These actions were investigated and filed by the NASD Regulation office in New Orleans and include:

**1. Kevin B. Dermody  
Case No. C05020001.**

Kevin B. Dermody is named in this complaint, which alleges:

- a. Fraudulent misrepresentations in connection with the purchase and sale of securities to the plan, including misrepresentations concerning the compensation he would receive, how plan funds would be invested, his prior experience and registration status as an investment advisor, and failure to disclose his interest in Hilltopper Enterprises, L.L.C.;
- b. Participation in the sale of securities issued by Hilltopper Enterprises, L.L.C., without prior notice to or approval from Tower Square Securities, Inc.;
- c. Guaranteeing customers against losses in connection with proposed sales of securities to the plan; and
- d. Failure to respond to a request for information from NASD Regulation.

**2. Randall J. Veselik  
Case No. C05020002.**

Randall J. Veselik is named in this complaint, which alleges:

- a. Participation in the sale of securities issued by Hilltopper Enterprises, L.L.C., without

prior notice to and approval from the NASD member with which he was associated; and

- b. Failure to appear for testimony.

**3. Tower Square Securities, Inc.  
Case No C05020003.**

Tower Square Securities, Inc., settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

- a. The firm failed to supervise the activities of Dermody;
- b. The firm’s procedures prohibit registered representatives from maintaining discretionary authority over customer accounts, yet the firm neglected to investigate Dermody’s dealings with the plan after it received documentation reflecting a grant of discretionary authority to Dermody;
- c. The firm processed the sale to the plan of a variable life insurance contract issued by an insurance company affiliated with the firm without review and endorsement by a registered principal of the firm;
- d. The firm neglected to conduct a review of activity in the plan’s account;
- e. The firm failed to ensure that an individual working with plan participants was registered with the firm; and
- f. The firm failed to establish, maintain, and/or enforce adequate written supervisory procedures relating to review of customer account activity, providing adequate guidelines to registered representatives for recommendations to purchase variable contract

products, collection and review of customer suitability information, monitoring of branch office inspections, ensuring that employees are properly registered, monitoring and maintaining copies of electronic correspondence, and monitoring wire transfers.

The firm was censured, fined \$200,000, ordered to pay restitution in the amount of \$4,365,167.26, and ordered to engage a consultant to make recommendations for the adoption of policies and procedures with respect to the matters addressed in the settlement.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD Regulation 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.

Under NASD rules, individuals and firms named in complaints can file a response and request a hearing before an NASD Regulation disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD

**NASD Regulation Charges  
Credit Suisse First Boston  
With Siphoning Tens Of  
Millions Of Dollars Of  
Customers’ Profits In  
Exchange For “Hot” IPO  
Shares**

*Firm to Pay \$100 Million to Be Split Between the NASD and SEC—Record fine for NASD*

NASD Regulation censured Credit Suisse First Boston Corporation (CSFB) and directed it to pay \$50 million in monetary sanctions for taking millions of dollars from

customers in inflated commissions in exchange for allocations of “hot” Initial Public Offerings (IPOs). The inflated commissions essentially amounted to a “profit sharing” arrangement with CSFB as the IPO shares climbed in the secondary market. As part of the settlement, CSFB will also pay \$50 million to the Securities and Exchange Commission.

Following a 10-month investigation, which began in May 2000, NASD Regulation determined that CSFB’s IPO profit sharing practice was widespread, occurring between April 1999 and June 2000. The practice affected more than 300 accounts serviced by the firm’s Institutional Sales Trading Desk, its Private Client Services (PCS) Group, and its PCS Technology Group. Certain senior managers and other employees of the Equity Sales and Equity Capital Markets Departments directed the practice, instructing CSFB employees to give greater allocations to those accounts who agreed to share their profits with CSFB. During one quarter alone, these inflated commissions on profit-sharing trades accounted for over 22 percent of CSFB’s commission revenue.

Robert R. Glauber, Chairman and CEO of the NASD, said of today’s action, “The capital formation process will be well served and the investing public treated more fairly as a result of the disciplinary action announced today. Our prompt and forceful action to deal with these serious violations of ethics and NASD Rules brings a rapid close to this chapter. Along with the SEC, we will continue to look at what additional measures, if any, may be necessary to ensure that the IPO allocation and distribution process is fair.”

“This conduct was a blatant disregard of NASD Rules and a serious breach of a firm’s responsibility not to exploit its position as an underwriter,” said Mary L. Schapiro, President of NASD Regulation, Inc. “CSFB’s behavior undermines the integrity of the capital-raising process, which is essential to the health of our economy, and shakes the faith of investors in the fairness of the markets.”

Schapiro went on to say, “Given the enormous significance and complexity of this case, I am particularly pleased that we were able to work together with the SEC to reach a strong and consistent regulatory response to the conduct at issue.”

### The Case

As noted in the settlement, CSFB generally charged its clients six cents per share for executing an agency trade in a listed security of 10,000 shares or more. However, during the relevant period, CSFB allocated hot IPO shares to certain customers who, in exchange, paid the firm a portion of their IPO profits disguised as inflated brokerage commissions on transactions unrelated to the IPO. Thousands of transactions were executed with excessive commissions, including hundreds of trades with commission charges of \$1 per share or more, with some as high as \$3.15 per share. These commissions bore no relationship to the execution of the trade and were paid solely to provide the firm with a share of client profits on hot IPOs. Over 90 percent of the excessive commission transactions executed on the day of, the day before, or the day after a CSFB-managed IPO were done by accounts that were allocated shares by CSFB in that hot IPO.

- For example, during the last quarter of 1999, over 3,000 trades were done at these excessive commission rates, and hundreds of them were executed with a commission rate of \$1 per share or more. Customers paid brokerage commissions of over 12 percent of the principal amount of the trade and numerous accounts provided CSFB with unlawful payments of hundreds of thousands of dollars in a single day as part of these profit sharing arrangements.
- For example, after a CSFB customer obtained an allocation of 13,500 shares in the VA Linux IPO, the customer sold two million shares of Compaq and paid CSFB \$.50 a share—or \$1 million—as a purported brokerage commission. The customer immediately repurchased the shares through other firms at normal commission rates of \$.06 per share at a loss of \$1.2 million on the Compaq sale and repurchase because of the \$1 million paid to CSFB. On that same day, however, the customer sold the VA Linux IPO shares, making a one-day profit of \$3.3 million.
- For example, another CSFB account paid a \$650,000 commission or \$.65 per share for the purchase of 1 million shares of Disney shortly after receiving allocations of IPO shares of both VA Linux and FogDog. The account immediately sold the Disney shares through other broker/dealers at an average price of \$.027 per share and sustained a loss of over \$680,000 taking into account

the payment of \$650,000 to CSFB. Though the trade was not profitable to the client, commissions paid were well above the usual rate and provided CSFB with a share of the client's IPO profits. The client made a profit of \$2.35 million on the sale of its VA Linux and FogDog IPO shares.

NASD Regulation found that CSFB established and maintained specific ratios to which the firm expected certain customers to adhere. For example, accounts on a 3:1 ratio were expected to pay one-third of their profits on IPOs to CSFB in the form of commissions on secondary trades. Customers that shared their profits with CSFB would be allocated shares in upcoming IPOs. Those that refused would not receive additional IPO share allocations or would receive smaller allocations. The ratios changed over time, and were different for different customers. In PCS-Tech, located in the firm's California office, CSFB initially required hedge fund accounts to pay the firm 50 percent of profits, later increased to 65 percent. In virtually all events, CSFB expected that these customers would, at a minimum, return one-quarter of IPO profits in commissions on secondary trading.

- For example, when discussing allocations to a particular client, one senior manager wrote to another senior manager: "[Client] is on the 4 to 1 plan, which is generous. This should be really easy and painless \* \* \* [He] simply needs to be told what we have made him vs. what he has paid us. Weekly if required. I think he is behind, i.e. 6 to 1 or 8 to 1, but I am not sure \* \* \*"

- For example, a senior manager told another senior manager what would happen if profits in the account were not paid to CSFB: "Either [client] pays us, or he gets [expletive] nothing." The recipient responds "Agreed."
- For example, a trader in PCS-Tech communicated the following to his supervisor: "Basically, I told [client] that he was very far behind in commissions and that we expect a 65% return on all money that we make him. I said he still owes us for the LINUX deal not to mention the deals that have come since then. I then stated that he can do trades to increase his commissions but will be cut off from any syndicate in the future." The supervisor responded, "Out." The trader replied, "Done."

CSFB created and maintained several reports that were used to record and track the sharing of client profits with the firm. These included the New Issue Performance Report, that detailed the amount the client would have made on each IPO allocation if sold on certain dates. PCS-Tech maintained spreadsheets that detailed specific profits made by each account and the percentage of such profits paid to the CSFB. PCS-Tech also maintained a report entitled the Institutional Account Profit Comparison that compared accounts' monthly profits to secondary commissions paid and calculated a year-to-date percentage.

CSFB managers, brokers, and sales traders participated in each dollar of profit paid to the firm, some directly and some indirectly. One senior manager allocated

shares to his own clients who paid over \$2.7 million in inflated commission charges. PCS salesmen were paid one-third of the commissions generated by each of their accounts. One PCS broker, for example, earned over \$1 million from these excessive commission payments alone. PCS-Tech traders and salesmen were compensated through participation in a bonus pool funded, in part, by commissions generated by these accounts. Others in the firm, including senior managers, institutional sales traders, research sales persons, and Syndicate Desk personnel were paid largely through bonuses based, in part, on commission revenue generated by these firm accounts.

NASD Regulation found that CSFB's practice violated NASD Rules prohibiting member firms from sharing in the profits of client accounts. It also violated NASD Rules that require member firms to disclose information that may be material to, or part of, underwriting arrangements, and which may have a bearing on NASD's review of underwriting terms and arrangements. Here, CSFB failed to file information with the NASD that detailed the excessive commissions and profit-sharing arrangements the firm made for the allocation of IPO shares. CSFB's profit-sharing scheme further violated NASD Rules that require brokerage firms to adhere to just and equitable principles of trade, as well as supervisory and books and records requirements.

The NASD has earmarked funds from the settlement to be used for initiatives focusing on investor protection and education. These initiatives will include technology investments for enhanced surveillance and enforcement,

educational materials, and outreach programs for investors.

As part of the settlement, CSFB agreed to engage an Independent Consultant to conduct a review of the implementation of revised procedures regarding the areas of its business that were the subject of the action. In settling this matter, CSFB neither admitted nor denied NASD Regulation's allegations.

This case was investigated by NASD Regulation's Enforcement Department, with assistance from NASD Regulation's Corporate Finance Department. NASD Regulation also acknowledges the substantial assistance and cooperation of the SEC's Northeast Regional Office in this matter.

## For Your Information

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### **NASD 2002 Renewals Program**

Member firms' Final Renewal Statements became available in Web CRD on January 2, 2002. All payments or requests for refunds must be received by March 15, 2002. Final Renewal Statements can be retrieved under the "Renewals" menu item in Accounting. Also, all Final Renewal Rosters are available in Web CRD for viewing and printing in the firm's ReportMart. Additional information regarding the 2002 Renewals Program is in the November 2001 and January 2002 *Notices to Members* and on the CRD Web Page of the NASD Regulation Web Site, [www.nasdr.com](http://www.nasdr.com), under the License Renewal Information menu item.

# NASD Notice to Members 02-16

## INFORMATIONAL

# Dispute Resolution

## NASD Dispute Resolution To Consolidate Western Region March 4, 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

### KEY TOPICS

- Arbitration/Mediation
- Dispute Resolution Regional Offices

### Executive Summary

On March 4, 2002, the NASD Dispute Resolution, Inc. (NASD DR) Western Region will consolidate its San Francisco and Los Angeles Regional Offices into one Regional Office in Los Angeles. The consolidated Western Regional Office will administer arbitrations and mediations in the San Francisco, Los Angeles, San Diego, Honolulu, Anchorage, Seattle, Portland, Oregon, Salt Lake City, and Las Vegas hearing locations. The decision to consolidate the two California offices is a business decision based on NASD DR's ongoing efforts to improve efficiency and to provide better service and consistency.

The Western Regional Office of NASD DR will close its San Francisco Office and consolidate it with its Los Angeles Office on March 4, 2002. The Los Angeles Office will administer all arbitration and mediation claims assigned to the San Francisco Office. San Francisco will remain as one of the nine hearing locations administered by the Western Region. Judith Hale Norris, Associate Vice President and Director of the Western Region, will relocate to Los Angeles to head the office. She has managed the Western Region since 1986. To accommodate the consolidation of the two offices, NASD DR has acquired additional space at One California Plaza, 300 South Grand Avenue, Los Angeles, California 90071, its present Los Angeles location. The main telephone number is (213) 613-2680. The fax number is (213) 613-2677.

### Questions/Further Information

Questions regarding this *Notice* may be directed to Judith Hale Norris, Associate Vice President and Director, NASD DR Western Region, at (213) 613-2680.

### Discussion

Linda D. Fienberg, President, NASD DR, and George Friedman, Executive Vice President, NASD DR, regularly review operational and business needs throughout the year. In July 2000, NASD DR became an independent subsidiary of the National Association of Securities Dealers, Inc. (NASD®), an action that required executive management to maintain a balanced, self-sustaining fiscal posture. Since the San Francisco Regional Office lease will expire in April 2002, senior management in 2000 analyzed the economic feasibility of maintaining two NASD DR offices in California. Due to the increased cost of rent in the San Francisco area, other associated overhead costs, the lower overall operating cost of the Los Angeles Regional Office, and anticipated technological efficiencies resulting from the deployment of a new case management computer system, senior management determined to consolidate the Western Region into one office in Los Angeles at 300 South Grand Avenue, NASD DR's current Los Angeles facility.

The decision was announced to the San Francisco staff nearly a year in advance. All employees were strongly encouraged to relocate to the Los Angeles office and assume their same jobs. Judith Hale Norris and other experienced San Francisco staff

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members will join the Los Angeles Office, assuring continuity of case administration. NASD DR has offered severance packages and out-placement assistance to those employees unable to relocate to Los Angeles.

The Western Region looks forward to continuing to provide the same level of service to the investing public, members, arbitrators, and mediators.

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## INFORMATIONAL

### Option Contracts

#### Alerting Customers To Adjustments To Option Contracts

## 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

## KEY TOPICS

- Options
- Options Self-Regulatory Council

### Executive Summary

NASD Regulation is providing this *Notice* on behalf of the Options Self-Regulatory Council. This *Notice* advises broker/dealers to review or develop procedures as necessary to alert their customers of adjustments to their option contracts caused by corporate actions.

### Questions/Further Information

Questions about this *Notice* may be directed to Gary L. Goldsholle, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8104.

### Discussion

The Options Self-Regulatory Council (OSRC)<sup>1</sup> has recently become aware that some broker/dealers may not be informing customers about adjustments to their options contracts that arise from corporate actions. The OSRC advises broker/dealers to review or develop procedures as necessary to alert their customers of adjustments to their option contracts caused by corporate actions.

Trading in options entails certain risks and is not suitable for all investors. To help ensure that options customers understand these risks, the rules of the options exchanges and other self-regulatory organizations (SROs) require members to deliver the options risk disclosure document entitled "Characteristics and Risks of Standardized Options" at or prior to the time a customer's account is approved for options trading. Broker/dealers must provide customers with revised

versions of the disclosure document as it is amended.

The options risk disclosure document discusses the effect that corporate actions, such as a stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, reclassification or similar event in respect to an underlying security, or a merger, consolidation, dissolution or liquidation of the issuer of the underlying security, may have on the terms of an options contract. As a general rule, corporate actions can result in an adjustment in the number of shares underlying an options contract or the exercise price, or both. Adjustments to options contracts are done to maintain fairness, so that the terms of the contract reflect the corporate action.

Adjustments to the terms of listed options contracts are governed by the rules of The Options Clearing Corporation (OCC). The OCC is the issuer of listed options and also provides clearance and settlement facilities. The OCC has a series of general adjustment rules to account for corporate actions. Adjustments to options contracts are made by a committee of those SROs on which the particular contract is traded on a case-by-case basis or by following statements of policy or interpretations having general application to specified types of events. The determinations of adjustments to particular contracts are disseminated to each options exchange as they are made. The OCC also provides information about adjustments to contracts on its Web Site at [http://www.optionsclearing.com/market/info\\_memos.jsp](http://www.optionsclearing.com/market/info_memos.jsp).

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Each options exchange, in turn, provides for the dissemination of information concerning these adjustments to specific option contracts to the exchange's members.

The OSRC is concerned that broker/dealers may not be passing on the specific information about contract adjustments to their affected options customers. Although broker/dealers provide notice to customers of the risks of corporate actions on their options contracts generally through the options risk disclosure document, the OSRC believes that broker/dealers should consider additional steps to ensure that customers are informed of particular adjustments to options contracts they hold. Failure to provide customers with information concerning adjustment to an options contract may violate the rules of an options exchange or SRO, including Just and Equitable Principles of Trade. Accordingly, the OSRC advises broker/dealers to review their procedures, or develop procedures as necessary, to alert customers of adjustments to their options contracts.

### Endnotes

- 1 The OSRC is a committee comprised of representatives from the options exchanges and other SROs that was created pursuant to a plan of delegation under Exchange Act Rule 17d-2 (17d-2 Plan). The 17d-2 Plan was established to reduce regulatory duplication of options-related sales practice matters for firms that are currently members of two or more SROs. The purpose of the OSRC is to administer the 17d-2 Plan and to address options-related sales practice matters in a common forum. The members of the OSRC are: the American Stock Exchange; the Chicago Board Options Exchange; the Chicago Stock Exchange; the International Securities Exchange; the National Association of Securities Dealers, Inc.; the New York Stock Exchange; the Pacific Exchange; and the Philadelphia Stock Exchange.

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# NASD Notice to Members 02-18

## INFORMATIONAL

### FIPS Changes

Fixed Income  
Pricing System<sup>SM</sup>  
Additions, Changes,  
And Deletions As Of  
January 22, 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.*

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

## KEY TOPICS

- FIPS

As of January 22, 2002, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>).

Symbol	Name	Coupon	Maturity
AEN.GF	AMC Entertainment Inc.	9.875	02/01/12
BCC.GH	Boise Cascade Corp.	7.500	02/01/08
COF.GD	Capital One Financial Corp.	8.750	02/01/07
CHK.GJ	Chesapeake Energy Corp.	8.375	11/01/08
STZ.GB	Constellation Brands Inc.	8.125	01/15/12
DMN.GB	Dimon Incorporated	9.625	10/15/11
ECSR.GD	EchoStar DBS Corp.	9.125	01/15/09
EQST.GA	Equistar Chemicals LP	6.500	02/15/06
EQST.GB	Equistar Chemicals LP	9.125	03/15/02
EQST.GC	Equistar Chemicals LP	7.550	02/15/26
GPS.GA	GAP Inc.	5.625	05/01/03
GPS.GB	GAP Inc.	6.900	09/15/07
GT.GA	Goodyear Tire & Rubber Co.	6.625	12/01/06
GT.GB	Goodyear Tire & Rubber Co.	7.000	03/15/28
GT.GC	Goodyear Tire & Rubber Co.	6.375	03/15/08
GT.GD	Goodyear Tire & Rubber Co.	8.125	03/15/03
GT.GE	Goodyear Tire & Rubber Co.	8.500	03/15/07
GT.GF	Goodyear Tire & Rubber Co.	7.857	08/15/11
HPCS.GB	Horizon PCS Inc.	13.750	06/15/11
HNBK.GA	Hornbeck-Leevac Marine Svcs Inc.	10.625	08/01/08
MAXZ.GA	Maxus Energy Corp.	9.375	11/01/03
MAXZ.GB	Maxus Energy Corp.	9.375	11/01/03
MRHO.GB	Meristar Hospitality Oper Partnership LP	9.125	01/15/11
MIKN.GA	Mikohn Gaming Corp.	11.875	08/15/08
REEL.GA	Regal Cinemas Corp.	9.375	02/01/12
SLR.GC	Solectron Corp.	9.625	02/15/09
CWMMR.GA	William Carter Co.	10.875	08/15/11

As of January 22, 2002, the following bonds were deleted from the Fixed Income Pricing System.

Symbol	Name	Coupon	Maturity
AAM.GA	Aames Financial Corp.	10.500	02/01/02
ARTT.GA	Advanced Radio Telecom	14.000	02/15/07
AMSD.GB	American Standard Inc.	9.250	12/01/16
GOAL.GA	Ascent Entertainment Group Inc.	11.875	12/15/04
BSC.GA	Bear Stearns Co. Inc.	8.250	02/01/02
BWS.GA	Brown Shoes Inc. New	9.500	10/15/06
CUID.GA	Cambridge Industries Inc.	10.250	07/15/07
CKE.GA	Carmike Cinemas Inc.	9.375	02/01/09
CTYA.GB	Century Communications Corp.	9.750	02/15/02
CCE.GA	Coca-Cola Enterprises	7.875	02/01/02
CLMU.GB	Columbia Healthcare Corp.	7.500	12/15/23
COL.GB	Columbia/HCA Healthcare Corp.	7.150	03/30/04

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COL.GC	Columbia/HCA Healthcare Corp.	8.360	04/15/24
COL.GD	Columbia/HCA Healthcare Corp.	7.190	11/15/15
COL.GE	Columbia/HCA Healthcare Corp.	7.050	12/01/27
COL.GF	Columbia/HCA Healthcare Corp.	7.250	05/20/08
COL.GG	Columbia/HCA Healthcare Corp.	7.000	07/01/07
COL.GH	Columbia/HCA Healthcare Corp.	6.910	06/15/05
COL.GJ	Columbia/HCA Healthcare Corp.	7.690	06/15/25
COL.GK	Columbia/HCA Healthcare Corp.	7.500	11/15/95
EDV.GB	Con Edison Inc.	6.625	02/01/02
FAMR.GA	Family Restaurants Inc.	9.750	02/01/02
FWAV.GA	First Wave Marine Inc.	11.000	02/01/08
GMA.GA	GENMA	6.000	02/01/02
GCS.GA	Gray Communications Sys Inc.	10.625	10/01/06
HMX.GA	Hartmarx Corp.	10.875	01/15/02
HCA.GA	HCA Inc.	8.750	09/01/10
HCA.GB	HCA Inc.	0.000	09/19/02
HCA.GC	HCA Inc.	7.875	02/01/11
HCA.GD	HCA Inc.	7.125	06/01/06
HPCA.GB	Hospital Corp. Amer	0.000	06/01/02
MVER.GB	MacSaver Financial Svs Inc.	7.400	02/15/02
MER.GA	Merrill Lynch Inc.	8.000	02/01/02
MOKC.GA	Morrison Knudsen Corp.	11.000	07/01/10
PKS.GA	Premier Parks Inc.	9.750	01/15/07
DGX.GA	Quest Diagnostics Inc.	10.750	12/15/06
SHW.GA	Sherwin-Williams Co.	6.500	02/01/02
SPSH.GA	Stop & Shop Cos Inc. New	9.750	02/01/02

As of January 22, 2002 changes were made to the symbols of the following FIPS bonds:

<u>New Symbol</u>	<u>Old Symbol</u>	<u>New Name/Old Name</u>	<u>Coupon</u>	<u>Maturity</u>
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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, NASDR Market Regulation, at (240) 386-4994.

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

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## INFORMATIONAL

# Auditor Independence

## SEC Review of Auditor Independence Rules

## 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
- Senior Management

## KEY TOPICS

- Auditor Independence

## Executive Summary

In November 2000, the Securities and Exchange Commission (SEC) completed a comprehensive review of outside services that auditors provide to their audit clients, and as a result, amended the auditor independence rules in Regulation S-X. In the final version of Release 33-7919 (the Release), published in February 2001, the SEC described the amendments as a "modernization" of its existing rules. The SEC's actions were prompted primarily by the increasing proportion of revenue that larger audit firms were generating from non-audit services, and the extent to which such services were being provided to their audit clients.

While the SEC's rules regarding auditor independence apply to all broker/dealers, the amendments are particularly relevant to NASD members as the SEC strictly limits the circumstances in which an auditor is permitted to provide accounting and bookkeeping services to an audit client without impairing his or her independence. Generally, the SEC prohibits an auditor from providing accounting and bookkeeping services to its audit client to avoid placing the auditor in the position of auditing his or her own work. The SEC permits an auditor to perform certain financial system services, only if the client has explicitly acknowledged its responsibility to actively maintain, monitor, and evaluate the financial information and reporting system.

During 2001, NASD Regulation conducted certain reviews that showed that an auditor's independence with respect to its broker/dealer client was impaired. The staff required broker/dealers to restrict the nature of the services obtained from their accountant or employ a different and

independent outside auditor. To provide background and guidance on auditor independence to our member firms, this *Notice* discusses the issues considered by the SEC and summarizes specific amendments we believe most relevant to NASD members. It also discusses the American Institute of Certified Public Accountants' (AICPA) current rules regarding certain auditor independence issues to highlight certain conclusions reached by the SEC. Finally, in this *Notice*, we focus on criteria that firms should consider in determining whether an auditor's independence may be impaired. The NASD Regulation staff will use the same criteria in determining whether an auditor's independence is impaired in any given situation.

We emphasize that with respect to broker/dealers, the SEC's rules regarding auditor independence take precedence over guidelines established by any other organization. Member firms are encouraged to read all or portions of the SEC's Release if they encounter complex circumstances or fact patterns regarding an auditor's involvement with the audit client.

## Questions/Further Information

Members should direct any questions on the issues discussed in this *Notice* to Andrew Labadie at (202) 728-8397 or Susan DeMando at (202) 728-8411, Member Regulation, NASD Regulation.

## Background

According to SEC Rule 17a-5(f)(3), an accountant must be independent to render an audit opinion on a broker/dealer's financial statements. The rule states that with regard to independence, the

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auditor needs to comply with the provisions of Rules 2-01(b) and (c) of Regulation S-X. In February 2001, the SEC amended its rules regarding auditor independence. The amendments apply to any auditor whose client files audited financial statements with the SEC, and consequently are applicable to any accountant who provides audit services to a broker/dealer. Among other things, the SEC was concerned with situations where an auditor, based on the full scope of the business relationship with an audit client, would not be considered capable of issuing an independent audit opinion regarding the client's financial statements. In particular, the SEC emphasized that *an audit firm cannot be in a position in which it is, or appears to be, auditing its own work*. This circumstance could arise if an auditor were to perform accounting and bookkeeping services, or design and implement financial information systems to such an extent that it contributes substantively in the creation and maintenance of the audit client's books and records.<sup>1</sup>

The AICPA has guidelines in its Code of Professional Conduct regarding an auditor's performance of non-audit services for an audit client. The guidelines emphasize that an auditor's independence could be impaired with respect to the audit client if the auditor was, or would appear to be, serving the audit client in a managerial capacity. The SEC took the AICPA's approach one step further, indicating that if an auditor is involved substantially in creating the audit client's books and records, he or she could be considered to effectively control or appear to control, the client's accounting process and preparation of the financial statements. The SEC believes that, "keeping the books is a management

function, the performance of which [by the auditor] leads to an inappropriate mutuality of interests between the auditor and the audit client." As a result of the SEC's amendments, the AICPA is planning to revise its guidelines, especially those sections pertaining to an auditor's performance of non-audit services for an audit client. A brief description of the SEC's amended rules and the AICPA's current guidelines in its Code of Professional Conduct is provided in the following section to assist NASD members in evaluating whether an auditor is independent.

### Two Perspectives

In the section of the Release discussing "Bookkeeping or Other Services Related to the Audit Client's Accounting Records or Financial Statements," the SEC concluded that the auditor could only provide bookkeeping services on an exceptional basis for the audit client without impairing independence. Specifically, the auditor can provide such services, "...in emergency or other unusual situations, provided the accountant does not undertake any managerial actions or make any managerial decisions..." or for a foreign division or subsidiary of the audit client, where the services are limited and the foreign subsidiary or affiliate is small relative to the client's operations.<sup>2</sup>

With respect to an auditor's involvement in the design and implementation of financial information systems for an audit client, the SEC and the AICPA are, to a great extent, in accord. The SEC indicated that, "...an accountant is not independent of an audit client if the accountant is directly or indirectly operating, or supervising the operation of, the audit client's information system

or managing the audit client's local area network." Yet, the auditor is permitted to, "...design or implement a hardware or software system that *aggregates source data* underlying the financial statements or *generates information* that is significant to the audit client's financial statements, taken as a whole..." if the client's management maintains an effective internal control system and has personnel capable of managing the design and implementation of a financial information and reporting system. [Emphasis added.]

In the section on Independence, paragraph 101-3 of the Code of Professional Conduct, the AICPA indicates that "an accountant in public practice who performs for a client services requiring independence may also perform other financial services for that client. "...[Yet], care should be taken *not to perform management functions or make management decisions* for an audit client, *the responsibility for which remains with the client's board of directors and management*." [Emphasis added.]

According to the AICPA, independence would *not be impaired* if the auditor were to perform the following bookkeeping services for an audit client:

- a. record transactions for which management has determined or approved the appropriate account classification, or post transactions, which have been classified by management, to the client's general ledger;
- b. prepare financial statements based on information in the trial balance;
- c. post client-approved entries to a client's trial balance; propose standard, adjusting,

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or correcting journal entries or other changes affecting the financial statements of the client; and

- d. provide data processing services.

Yet, the AICPA would consider independence to *be impaired* if in performing the above services the accountant were to:

- a. determine or change journal entries, account codings or classification for transactions, or other accounting records without obtaining client approval;
- b. authorize or approve transactions;
- c. prepare source documents or originate data; or
- d. make changes to source documents without client approval.

While the SEC considered the AICPA's guidelines appropriate, it believed that the existing rules – its own and those of the accounting profession – needed to better account for the structural changes in the provision of accounting services. We believe this is borne out by the comprehensive nature of its review.<sup>3</sup> Citing examples where the amounts paid by a firm to its auditor for non-audit services dwarfed the costs of the audit, the SEC questioned, and continues to question, whether the quality of the audit and the objectivity of the auditor were and are being compromised by the accounting profession's emphasis in expanding consultative services with both audit and non-audit clients.

### Guidelines

While the amendments were driven primarily by the

relationships between larger accounting firms and their clients with broad public ownership, they apply to all firms which file audited financial statements with the SEC. Thus broker/dealers regardless of size, and their respective auditors are affected by the new rules.

Broker/dealers that either cannot afford or choose not to employ personnel to perform accounting functions, need to obtain book-keeping and accounting services from accountants who are not controlled by the broker/dealer's auditor. As a way to clarify the respective duties and responsibilities of the auditor and audit client, broker/dealers should obtain an engagement letter from their auditor that explicitly outlines the nature and scope of the auditor's or accountant's services, and states categorically that both parties recognize that the broker/dealer is responsible for maintaining the integrity of its accounting system and preparing and presenting its financial statements.

Based upon the preceding discussion, the following examples should aid NASD members in determining whether an auditor's independence might be impaired.

Indications that an auditor is *not* independent:

In addition to performing the audit, the auditor:

- 1. posts, classifies, or codes the original entry of client transactions;
- 2. reconciles subsidiary ledgers to records of original entry;
- 3. prepares periodic accruals and related adjustments on an on-going basis;
- 4. reconciles client records to bank statements;

- 5. resolves open fails;
- 6. monitors information flow leading to preparation of financial records;
- 7. prepares general ledger and/or financial statements; or
- 8. supervises such tasks.

Also, if the member firm does not engage an employee who is capable of actively managing the firm's accounting functions and preparing its financial statements, and the member uses its auditor to provide accounting and book-keeping services, the question arises as to whether the firm is reliant on its auditor for the maintenance and management of its financial records. If so, the auditor would *not* be independent of the firm.

In contrast, the following activities, in and of themselves, do not indicate that the auditor is **not** independent.

The auditor limits his or her activities to:

- 1. observing the member's business operations;
- 2. inquiring about the nature and extent of the member's accounting practices and procedures;
- 3. reviewing documents of original entry;
- 4. verifying completeness of subsidiary and general ledgers;
- 5. questioning reconciliation differences and open fails;
- 6. testing automated systems for completeness and reliability;
- 7. performing and documenting analytical review of firm's operations and financial condition; and

8. determining the representational faithfulness of the member firm's financial statements.

Annually, members are encouraged to review the services provided by their outside auditors to ensure that the auditor's independence is not impaired. We strongly recommend that the member obtain an engagement letter from the auditor outlining the services to be provided and the respective responsibilities of both parties. The engagement letter should also include a representation from the auditor that he or she is either a certified public accountant duly registered or a public accountant entitled to practice in good standing under the laws of his or her place of residence or principal office. While the person or group performing the audit may be independent, neither the NASD nor the SEC will accept audited financial statements prepared by someone who is not qualified in accordance with SEC's Rule 17a-5.

## Endnotes

- 1 The SEC's amendments also addressed "...rules for determining whether an auditor is independent in light of investments by auditors or their family members in audit clients, and employment relationships between auditors or their family members and audit clients." The revisions, if anything, are less restrictive than the AICPA's guidelines in its Code of Professional Conduct, and thus are likely to be less of an issue with respect to evaluating an auditor's independence with respect to the broker/dealer. The SEC sought to modernize these particular rules by, "...significantly reducing the number of audit firm employees and their family members whose investments in audit clients are attributed to the auditor for purposes of determining the auditor's independence, and shrinking the circle of family and former firm personnel whose employment impairs an auditor's independence." The SEC's goal with respect to these situations was to focus solely on those parties who could realistically affect the outcome of the audit.
- 2 With respect to such services, the final amended Rule 2-01 of Regulation S-X states,
- "... (4) Non-audit services. An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides [any of] the following non-audit services to an audit client:
- (i) Bookkeeping or other services related to the audit client's accounting records or financial statements.
- (A) Any service involving:
- (1) Maintaining or preparing the audit client's accounting records;
- (2) Preparing the audit client's financial statements that are filed with the Commission or form the basis of financial statements filed with the Commission; or
- (3) Preparing or originating source data underlying the audit client's financial statements.

(B) Notwithstanding paragraph (c)(4)(i)(A) [the above paragraph] of this section, the accountant's independence will not be impaired when the accountant provides these services:

- (1) In emergency or other unusual situations, provided the accountant does not undertake any managerial actions or make any managerial decisions; or
- (2) For foreign divisions or subsidiaries of an audit client, provided that:
- (i) The services are limited, routine, or ministerial;
- (ii) It is impractical for the foreign division or subsidiary to make other arrangements;
- (iii) The foreign division or subsidiary is not material to the consolidated financial statements;
- (iv) The foreign division or subsidiary does not have employees capable or competent to perform the services;
- (v) The services performed are consistent with local professional ethics rules; and
- (vi) The fees for all such services collectively (for the entire group of companies) do not exceed the greater of 1% of the consolidated audit fee or \$10,000."
- 3 In the Executive Summary section of the Release, the Commission emphasized that, "...to promote investor confidence, we must ensure that our auditor independence requirements remain relevant, effective, and fair in light of significant changes in the profession, structural reorganizations of accounting firms, and demographic changes in society. There have been important developments in each of these areas since we last amended our auditor independence requirements in 1983.
- "...the accounting industry has been transformed by significant changes in the structure of the largest firms. Accounting firms have woven an increasingly complex web of business and financial relationships with their audit clients. The nature of the non-



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audit services that accounting firms provide to their audit clients has changed, and the revenues from these services have dramatically increased. In addition, there is more mobility of employees and an increase in dual-career families.

"...we are adopting rules, modified in response to almost 3,000 comment letters we received on our proposal, written and oral testimony from four days of public hearings (about 35 hours of testimony from almost 100 witnesses), academic studies, surveys and other professional literature."

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# Disciplinary Actions

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## Disciplinary Actions Reported For March

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of February 2002.

### Firms Fined, Individuals Sanctioned

**Dain Rauscher, Inc. (CRD #31184 Minneapolis, Minnesota) and Gary Franklin Hayden (CRD #240386, Registered Representative, Seattle, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. In addition, the firm and Hayden were jointly and severally liable for costs of the exchange of shares offered to public customers of \$82,942.87 and Hayden was fined \$15,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Hayden recommended the purchase of Class B shares of growth funds to public customers and omitted to inform the customers that they would have benefited from investing in Class A shares because of the ability to receive discounts on sales charges of large purchases and the lower ongoing fees and expenses of the Class A shares.

The findings also stated that Hayden failed to disclose material facts necessary to make the statements made in the course

of his recommendations not misleading, including a comparison of the 12b-1 fees, front-end sales charges, and the impact of time on these costs and charges; thus, the customers were not adequately informed of their investment options. The NASD determined that the firm failed to maintain adequate procedures to provide for the prompt review of large purchases of Class B mutual funds or otherwise provide specific tools or other supervisory policies to assist its sales practice supervisors in adequately assessing the suitability of Class B share purchases by public customers. Furthermore, the findings stated that the firm had no automated or manual system in place to detect mutual fund breakpoints, purchase limitations, or problematic patterns in Class B share purchases of mutual funds. Finally, the firm's written supervisory procedures gave no direction to branch office managers or other supervisors as to how to detect and prevent breakpoint problems, Class B share purchase suitability problems, and how to evidence their supervisory review.

Hayden's suspension began February 19, 2002, and concluded at the close of business March 4, 2002. (NASD Case #C04020002)

**Pacific Crest Securities, Inc. (CRD #6619, Portland, Oregon) and Scott Edwards Sandbo (CRD #2410092, Registered Principal, Portland, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000 and Sandbo was fined \$45,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the

described sanctions and to the entry of findings that the firm, acting through Sandbo, failed to ensure that Sandbo was properly registered as a principal when he was actively engaged in the management of the firm's business, or to remove him from active engagement in the management of the firm's business until properly registered. The findings also stated that the firm, acting through another individual, permitted the individual to act as a registered person when his registration status with the NASD was inactive due to his failure to complete the Regulatory Element of the NASD's Continuing Education Requirement. In addition, the NASD found that the firm used a non-compliant, non-synchronized, mechanical time stamp machine that failed to provide the "seconds" field to document the times of receipt and execution of customers' orders.

Sandbo's suspension began February 18, 2002, and concluded at the close of business March 1, 2002. **(NASD Case #C3B020001)**

#### **Firm And Individual Fined**

**Magna Securities Corp. (CRD #30935, New York, New York) and Patricia Ann Winans (CRD #1526364, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$22,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and the entry of findings that the firm, acting through Winans, permitted individuals to act in a capacity that required registration while their registration status with the NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education

Requirement. The findings also stated that the firm, acting through Winans, failed to complete a training needs analysis and to develop a written training plan as required by the Firm Element of the NASD's Continuing Education Requirement. **(NASD Case #C10020005)**

#### **Firms Fined**

**American United Life Insurance Company (CRD #1075, Indianapolis, Indiana)** submitted an Offer of Settlement in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it distributed advertising materials and sales literature for variable annuity contract products that contained material omissions, unbalanced representations, or misrepresentations. The findings also stated that the firm failed and neglected to establish, maintain, and enforce adequate written supervisory procedures governing the review, approval, and distribution of advertising materials and sales literature relating to variable annuity contract products. **(NASD Case #C05010011)**

**Ascend Financial Services, Inc., n/k/a Securian Financial Services, Inc. (CRD #15296, St. Paul, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce adequate written supervisory procedures relating to the supervision of registered representatives who were general agents of the insurance company

affiliated with the firm. **(NASD Case #C05020004)**

**C. E. Unterberg, Towbin (CRD #24790, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, required to pay \$22,219.94, plus interest, in restitution to investors, and ordered 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 it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings also stated that the firm, as a registered market maker in securities, failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, and upon presentment, failed to honor its published quotation. In addition, the findings 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 firm quote compliance. 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 the 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 #CMS020003)**

**Global Capital Securities Corporation (CRD #16184, Englewood, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$17,500, and required to pay \$3,888.69, plus interest, in restitution to investors. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions; failed to report transactions in eligible securities to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) within 90 seconds after execution; failed to report an accurate execution price to ACT; and reported a nonexistent transaction to ACT. The findings also stated that the firm failed to show the correct time of execution and/or the correct time of entry on the memorandum of brokerage orders and failed to preserve for a period of not less than three years, the first two in an accessible place, the memorandum of brokerage orders. **(NASD Case #CMS020011)**

**Gruntal & Co., L.L.C. (CRD #372, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$42,500, required to pay \$928.13, plus interest, in restitution to customers, and required to revise its written supervisory procedures concerning the reporting of transactions in high-yield corporate debt securities to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT, last-sale

reports of transactions in Nasdaq National Market (NNM) and Nasdaq SmallCap<sup>SM</sup> securities, and failed to designate through ACT such last-sale reports as late. The findings also stated that the firm failed to report to ACT the correct time of execution in transactions in NNM securities and failed to report to ACT a transaction in an NNM security that it was required to report. Furthermore, the NASD found that the firm failed to contemporaneously or partially execute customer limit orders in Nasdaq securities after it traded each security for its own market making account at a price that would have satisfied each customer's limit order; failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions; and, when acting as a principal for its own account, failed to provide written notification disclosing to its customers the reported price.

The NASD also determined that the firm failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis amount in relation to the size associated with the firm's bid or offer in each such security; when it acted as principal for its own account, failed to provide written notification disclosing to its customers the correct reported trade price and to disclose to its customers that it was a market maker in each such security; and

failed to disclose on customer confirmations the correct symbol indicating whether the transactions were buy or sell transactions. The NASD also determined that the firm failed to provide written notification disclosing to its customers its correct capacity in the transactions; failed to provide written notification disclosing to its customers that the transaction was executed at an average price; failed to maintain a record of a customer confirmation; failed to report to ACT the correct symbol indicating whether the firm executed a transaction in an eligible security in a principal or agency capacity; and failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities.

In addition, the NASD found 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 trading and market making functions, best execution, the Limit Order Protection Interpretation, the Limit Order Display Rule, customer confirmation disclosure, the SEC's One Percent Rule, rules applicable to the Small Order Execution System, the rule applicable to locked or crossed markets, and the rules applicable to short sales and front running. 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 the 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 #CMS020008)**

**J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$14,000, 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 the firm failed to report to ACT the contra side executing broker transactions in eligible securities. 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 the following: ACT compliance, best execution, limit order protection, limit order display, firm quote rule, the SEC's One Percent Rule, the registration of traders and supervisors, trade reporting, books and records, locked and crossed markets, pricing convention, size convention, coordination of quotes, late and inaccurate trade reporting, exchange of proprietary information, improper collaboration and coordination, the failure to honor quotes, harassment, short sales, and Order Audit Trail System (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 the 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. **(NASD Case #CMS020004)**

**J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$40,000, and required to revise its written supervisory procedures with respect to trade reporting compliance. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT, last-sale reports of transactions in NNM, Nasdaq SmallCap, and OTC Equity securities and failed to designate through ACT such last-sale reports as late. The findings also stated that the firm failed to report the time of execution through ACT; failed to show on memorandum late last-sale reports in NNM, Nasdaq SmallCap, and OTC Equity securities reported outside of normal market hours with the ".T" modifier; and failed to report the time of execution through ACT in last-sale reports in NNM, Nasdaq SmallCap, and OTC Equity securities reported more than 90 seconds after execution.

Furthermore, the NASD found that the firm failed to show the correct time of execution, the correct order entry time, the correct price of execution, the execution price, an order entry time, and that the orders were sales transactions. In addition, the findings 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 trade-reporting compliance. 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 the 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 #CMS020005)**

**Roth Capital Partners, LLC (CRD #15407, Newport Beach, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to pay \$7,367, plus interest, in restitution to customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. **(NASD Case #CMS020014)**

**Sanders Morris Harris Inc. (CRD #20580, Houston, Texas)** 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 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, upon

presentment, failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning firm quote compliance. Specifically, the firm's supervisory system did not include written supervisory procedures providing for a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020001)**

**The Third Market Corporation (CRD #30181, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$16,000, and required to revise its written supervisory procedures relating to short sales and OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it purchased an eligible security at or below the price at which it held an unexecuted limited price order to purchase such security for a customer. The findings also stated that the firm failed to display immediately customer limit orders in its public quotation, when each such order was at a price that would have improved its bid or offer in each such security. Also, 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 and regulations concerning short sales and 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 the 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. Furthermore, the findings stated that the firm failed to synchronize and maintain the synchronization of its business clocks used for recording the date and time of events that must be recorded pursuant to NASD By-Laws or rules to the time source designated by the NASD in conformity with the procedures prescribed by the NASD. **(NASD Case #CMS020012)**

**Wachovia Securities, Inc. (CRD #431, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that its supervisory system failed to detect unsuitable activity in the accounts of public customers because the firm failed to follow its written supervisory procedures pertaining to the review and monitoring of customer account activity. **(NASD Case #C07020001)**

#### **Individuals Barred Or Suspended**

**George Anaya, Jr. (CRD #2830436, Registered Representative, Jupiter, Florida)** submitted an Offer of Settlement in which he was fined \$40,000, including the disgorgement of \$20,000 of commissions received, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Anaya reassociates with any NASD member following the suspension

or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Anaya consented to the described sanctions and to the entry of findings that he engaged in a course of excessive and unsuitable trading in the account of a public customer. The findings also stated that Anaya failed to respond to NASD requests to appear and give testimony.

Anaya's suspension began February 19, 2002, and will conclude at the close of business February 18, 2004. **(NASD Case #C07010064)**

**John Robert Bacon (CRD #4064268, Registered Representative, Deerfield Beach, Florida)** was barred from association with any NASD member in any capacity and required to pay \$5,000 in restitution to a public customer. The sanctions were based on findings that Bacon received checks totaling \$5,000 made payable to him from a public customer to be invested. Rather than establish an account and make the investment as instructed, Bacon converted the funds to his own use and benefit. In addition, Bacon failed to respond to NASD requests for information. **(NASD Case #C07010074)**

**Richard Theodore Bredhoff (CRD #1425420, Registered Representative, East Windsor, New Jersey)** 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, Bredhoff consented to the described sanction and to the entry of findings that he effected the sale of unregistered shares of common stock to his member firm's customers. The NASD also

found that Bredhoff, on behalf of a member firm, sold shares of a penny stock prior to receiving a manually executed and dated written statement from any of the unaccredited investors. The findings also stated that a member firm, acting through Bredhoff, utilized the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital. Furthermore, the NASD found that a member firm, acting through Bredhoff, filed a false and misleading FOCUS report and permitted individuals to engage in the investment banking or securities business and/or function as representatives and/or principals with the firm without properly qualifying and/or registering in the appropriate capacities. In addition, the findings stated that Bredhoff failed to respond completely to NASD requests for documents and information. **(NASD Case #C9B020005)**

**Jeffrey Charles Bruteyn (CRD #2575306, Registered Principal, Dallas, Texas)** submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Bruteyn reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bruteyn consented to the described sanctions and to the entry of findings that he executed purchase transactions in the account of a public customer without the customer's prior knowledge or consent. The findings also stated that Bruteyn guaranteed a public customer's account against loss in exchange for the customer granting Bruteyn discretionary

authority over her account. The NASD also found that Bruteyn failed to follow a customer's instructions to terminate the margin agreement on her account, to use only the cash in her account to make investments, not to borrow against her securities account to make investments, and to liquidate the customer's securities account. The findings further stated that Bruteyn represented to the customer that he had followed the customer's instructions when, in fact, he continued to execute margin transactions in the customer's account.

Bruteyn's suspension began February 19, 2002, and will conclude at the close of business August 18, 2003. **(NASD Case #C06010029)**

**Stephen Daniel Carcaterra (CRD #2674226, Registered Representative, Seabright, New Jersey)** was suspended from association with any NASD member in any capacity for 30 business days for engaging in private securities transactions and barred from association with any NASD member in any capacity for failure to appear. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Carcaterra participated in a private securities transaction without giving his member firm prior written notice. The findings also stated that Carcaterra failed to respond to an NASD request to appear for an on-the-record interview.

Carcaterra's bar became effective December 13, 2001. **(NASD Case #C10000165)**

**Pat James Cenicola (CRD #855316, Registered Representative, Hackensack, New Jersey)** 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 \$54,000 in disgorgement of commissions in partial restitution to the customers. The restitution amounts must be paid before Cenicola reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cenicola consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. **(NASD Case #C9B020003)**

**Ramon Todd Chimelis (CRD #1632927, Registered Representative, Maitland, 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, Chimelis consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C07010088)**

**John Right Crawford (CRD #710758, Registered Supervisor, High Point, North Carolina)** 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, Crawford consented to the described sanction and to the entry of findings that he received approximately \$29,294 of funds from an investment club for

investment purposes, failed to deposit the funds as directed, and converted the funds to his own use and benefit. **(NASD Case #C07020004)**

**Anthony Francis DeCarlo (CRD #2568723, Registered Representative, Woodbridge, New Jersey)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, DeCarlo consented to the described sanctions and to the entry of findings that he reimbursed a public customer for the surrender charge incurred without the knowledge or approval of his member firm. The NASD also found that DeCarlo provided false and/or misleading testimony during an NASD on-the-record interview.

DeCarlo's suspension began March 4, 2002, and will conclude at the close of business March 3, 2003. **(NASD Case #C9B010085)**

**Daren John DeLuca (CRD #1675213, Registered Representative, Howell, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$27,000, representing disgorgement of net commissions, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before DeLuca reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, DeLuca consented to the described sanctions and to the entry of findings that he exercised control over the account of a public customer and effected numerous and excessive securities

transactions in the account, in a manner that was inconsistent with the customer's investment objectives. The NASD found that DeLuca recommended and engaged in purchase and sale transactions in the account of a public customer and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer on the basis of her financial situation, investment objectives, and needs.

DeLuca's suspension began February 19, 2002, and will conclude August 18, 2002. **(NASD Case #C9B020001)**

**Donald Matthew Dirren (CRD #1409432, Registered Representative, Scottsdale, Arizona)** 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 Dirren reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dirren consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer (Form U-4).

Dirren's suspension began February 19, 2002, and will conclude at the close of business February 19, 2003. **(NASD Case #C3A020003)**

**Dennis A. Dudnik (CRD #2805579, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,610, including the disgorgement of

\$110 in commissions received, and suspended from association with any NASD member in any capacity for 20 days. Without admitting or denying the allegations, Dudnik consented to the described sanctions and to the entry of findings that he failed to execute a public customer's order to sell shares of stock. The NASD also found that Dudnik purchased and sold shares of stocks in the accounts of public customers without their authorization.

Dudnik's suspension began February 19, 2002, and concluded March 10, 2002. **(NASD Case #C9B020004)**

**Jack Michael Ferraro (CRD #709674, Registered Principal, Scarborough, 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 180 days. Without admitting or denying the allegations, Ferraro consented to the described sanctions and to the entry of findings that he failed to provide written notice to his member firm that he had engaged in business activities, for compensation, outside the scope of his employment with his firm. The findings also stated that Ferraro failed to inform clients for whom he had discretionary trading authority and purchased shares of stock in three companies that he had helped raise money for, and had been compensated by, these companies.

Ferraro's suspension began February 19, 2002, and will conclude August 17, 2002. **(NASD Case #CAF020003)**

**Jeremiah Richard Fink (CRD #3173563, Registered Representative, New Lenox, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent



in which he was suspended from association with any NASD member in any capacity for 15 business days. In light of the financial status of Fink, no monetary sanction has been imposed. Without admitting or denying the allegations, Fink consented to the described sanction and to the entry of findings that he exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written approval of the account as discretionary by his member firm.

Fink's suspension began March 4, 2002, and will conclude at the close of business March 22, 2002. **(NASD Case #C8A020005)**

**Cavin Wayne Galtieri (CRD #3051437, Registered Representative, Austin, Texas)**

submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Galtieri reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Galtieri consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U-4.

Galtieri's suspension began February 19, 2002, and will conclude August 18, 2002. **(NASD Case #C06010049)**

**Candice Anna Gill (CRD #801714, Registered Representative, Chandler, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD

member in any capacity. Without admitting or denying the allegations, Gill consented to the described sanction and to the entry of findings that she falsified new account information for public customers. Specifically, the NASD determined that Gill recommended that the customers purchase various limited partnerships. However, based on their financial situations, the customers did not qualify for the limited partnerships as set out in the Offering Memoranda. The NASD findings stated that in order to qualify the customers for the investments and thereby consummate the transactions, Gill inserted false financial information including annual income, net worth, and liquid net worth on subscription documents and new account information to qualify the customers for the recommended investments. The findings also stated that Gill sold illiquid limited partnership interests to public customers without having reasonable grounds for believing that the recommendations were suitable for each customer based on other security holdings, financial situations, and needs. **(NASD Case #C3A020004)**

**Dmitry Gorodetsky (CRD #3074712, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,185, including the disgorgement of \$185 of commissions received, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Gorodetsky consented to the described sanctions and to the entry of findings that he failed to execute a public customer's order to sell shares of stock. The NASD also found that Gorodetsky purchased and sold shares of

stocks in the accounts of public customers without their authorization.

Gorodetsky's suspension began March 4, 2002, and will conclude at the close of business April 2, 2002. **(NASD Case #C9B020004)**

**Luther Allen Hanson (CRD #1956960, Registered Representative, Charlestown, West Virginia)**

was fined \$79,105.62, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a general securities representative within six months. The NAC imposed the sanctions following the review of an OHO decision. The sanctions were based on findings that Hanson engaged in private securities transactions without providing prior written notice to, and obtaining written approval from, his member firm.

Hanson's suspension began January 21, 2002, and will conclude July 20, 2002. **(NASD Case #C9A000027)**

**Robert John Hilgers (CRD #1200193, Registered Representative, Barrington, Illinois)**

submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to pay \$50,035 in disgorgement. The disgorgement must be paid before Hilgers reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hilgers consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to, or receiving written permission from, his

member firm to participate in the transactions. **(NASD Case #C3A020005)**

**James Howard Jones (CRD #731895, Registered Representative, Indianapolis, Indiana)** submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Jones reassociates with any NASD member following the suspension 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 finding that he received a \$5,735 check from a public customer to purchase shares in a variable annuity product. The NASD found that Jones failed to apply the funds as directed, and without the knowledge and authorization of the customer, used the funds for his own benefit or for some purpose other than the benefit of the customer.

Jones' suspension began January 22, 2002, and will conclude at the close of business July 21, 2003. **(NASD Case #C8A010037)**

**Fereadoon Kalantari (CRD #1611327, Registered Representative, Jonesboro, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$90,000, including the disgorgement of \$84,537.55 of commissions received, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Kalantari reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting

or denying the allegations, Kalantari consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation, failed to provide prompt written notice to his firm, and failed to amend his Form U-4 to add this affiliation.

Kalantari's suspension began February 19, 2002, and will conclude at the close of business February 18, 2003. **(NASD Case #C07020003)**

**Linda Lee Kangur (CRD #4351780, Associated Person, West Chester, Pennsylvania)** 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 30 business days. The fine must be paid before Kangur reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kangur consented to the described sanctions and to the entry of findings that she willfully failed to disclose a material fact on a Form U-4.

Kangur's suspension began February 19, 2002, and will conclude at the close of business April 1, 2002. **(NASD Case #C9A020004)**

**Nicholas Nicolaou (CRD #2901449, Associated Person, Jersey City, New Jersey)** 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, Nicolaou consented to the described sanction and to the entry of findings that he engaged in the investment banking or securities

business and/or functioned as a representative and/or principal with a former member firm without properly qualifying and/or registering in the appropriate capacities. **(NASD Case #C9B020007)**

**John Perez (CRD #1093871, Registered Representative, Alhambra, California)** was barred from association with any NASD member in any capacity and required to pay \$5,000 in restitution to a public customer. The sanctions were based on findings that Perez received \$5,000 from public customers to be invested and, rather than make the investment as instructed, he converted the funds for his own use and benefit. In addition, Perez failed to respond to NASD requests for information. **(NASD Case #C07010067)**

**Michael Pizzulli (CRD #2478300, Registered Representative, Millstone, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, including the disgorgement of \$230 in commissions earned, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Pizzulli consented to the described sanctions and to the entry of findings that he executed an unauthorized purchase transaction of shares of stock in the account of a public customer, without the customer's prior knowledge or consent.

Pizzulli's suspension began March 4, 2002, and concluded at the close of business March 8, 2002. **(NASD Case #C9B020008)**

**Jay R. Rice (CRD #1832274, Registered Representative, Salt Lake City, Utah)** was fined \$130,363, suspended from

association with any NASD member in any capacity for 12 months, ordered to requalify by examination in all capacities for engaging in private securities transactions, and fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days for the failure to disclose information on a Form U-4. The sanctions were based on findings that Rice participated in private securities transactions without providing prior written notification to, or receiving approval from, his member firm to participate and to receive compensation, and for failing to disclose material information on his Form U-4.

Rice's suspensions began February 4, 2002, and will conclude at the close of business February 4, 2003. **(NASD Case #C3A010005)**

**William Ferd Schaufert (CRD #412722, Registered Representative, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Schaufert consented to the described sanctions and to the entry of findings that he engaged in a securities transaction away from his member firm and failed to provide his firm detailed written notice of the transaction, his role therein, and to obtain permission from the firm to engage in the transaction.

Schaufert's suspension began March 4, 2002, and will conclude at the close of business April 2, 2002. **(NASD Case #C8B020002)**

**Jose Luis Serrano, Jr. (CRD #2616498, Registered Representative, Chicago, Illinois)** was fined \$5,000 and suspended from association with any NASD member in all capacities for one year for forgery, and barred from association with any NASD member in any capacity for failing to respond. The fine shall be due and payable prior to Serrano's reentry into the securities business. The sanctions were based on findings that Serrano forged a public customer's name on a form without the authorization or consent of the customer. In addition, Serrano failed to respond to NASD requests for information.

Serrano's bar became effective January 7, 2002. **(NASD Case #C8A010050)**

**Douglas Adam Sheinberg (CRD #1912229, Registered Representative, Del Ray Beach, 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, Sheinberg consented to the described sanction and to the entry of findings that he effected transactions in the account of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C10020008)**

**Jerry Herbert Shulak (CRD #1993089, Registered Representative, Scottsdale, Arizona)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 31 days. Without admitting or denying the allegations, Shulak consented to the described sanctions and to

the entry of finding that he engaged in excessive trading in the account of public customers.

Shulak's suspension began March 4, 2002, and will conclude at the close of business April 3, 2002. **(NASD Case #C3A010048)**

**Alayna Michelle Slaughter (CRD #4365152, Registered Representative, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Slaughter consented to the described sanction and to the entry of findings that she willfully failed to disclose a material fact on a Form U-4. The findings also stated that Slaughter failed to respond to NASD requests for information. **(NASD Case #C04020003)**

**Anthony Salvatore Socci (CRD #1863263, Registered Representative, Trumbull, Connecticut)** 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 three months. Without admitting or denying the allegations, Socci consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he forged the customer's signature to a form, authorizing an insurance company to debit the customer's checking account for the purpose of paying insurance premiums.

Socci's suspension began February 19, 2002, and will conclude May 18, 2002. **(NASD Case #C11020005)**

**Nick James Spatola (CRD #3053271, Associated Person, Morganville, New Jersey)**

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, Spatola consented to the described sanction and to the entry of findings that he engaged in the investment banking or securities business and/or functioned as a representative and/or principal with a former member firm without properly qualifying and/or registering in the appropriate capacities. **(NASD Case #C9B020006)**

**Genifer Claudia St. Ange (CRD #2615002, Associated Person, Union, New Jersey)**

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 one year. The fine must be paid before St. Ange reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, St. Ange consented to the described sanctions and to the entry of findings that she altered an annuity application for a public customer by taking an annuity application that the customer had completed for an earlier annuity investment and changing the information thereon and submitting such application for processing without the customer's knowledge or consent.

St. Ange's suspension began February 19, 2002, and will conclude at the close of business February 19, 2003. **(NASD Case #C9B020002)**

**Richard Goodwin Whitley (CRD #1195472, Registered Representative, Monroe, North Carolina)**

submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Whitley consented to the described sanction and to the entry of findings that he caused checks totaling \$7,700 to be issued as loans against the insurance policy of a public customer without the customer's authorization, obtained the proceeds of the checks, and then converted the proceeds for his own use and benefit. **(NASD Case #C07020002)**

**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.

**Vernard Benny Green, Jr. (CRD #2831764, Registered Representative, Brooklyn, New York)**

was named as a respondent in an NASD complaint alleging that he made purchases in the individual retirement accounts of public customers without reasonable grounds for believing that the purchases were suitable for the customers on the basis of their investment objectives, other security holdings, and financial situation and needs. The complaint also alleges that, in connection

with the purchase and sale of securities in the accounts of public customers, Green, directly or indirectly, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, employed artifices, devices, or schemes to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit. In addition, the complaint alleges that Green effected transactions in, or induced the purchase or sale of, securities by means of a manipulative, deceptive, or other fraudulent device or contrivance.

Furthermore, the complaint alleges that Green failed to respond to NASD requests to provide documents and/or information. **(NASD Case #C10010164)**

**Richard Scott Gregory (CRD #2837455, Registered Representative, Dallas, Texas)**

was named as a respondent in an NASD complaint alleging that he executed a purchase transaction in the account of a public customer without the customer's prior knowledge or authorization. **(NASD Case #C06010045)**

**Chet C. Harris (CRD #2770791, Registered Representative, Brooklyn, New York)**

was named as a respondent in an NASD complaint alleging that, in connection with the sale and purchase of securities, Harris, directly or indirectly, by the use of any means or instrumentalities of interstate commerce or the mails, or of any facility of any national securities exchange, employed artifices, devices, or schemes to

defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit. The complaint also alleges that Harris effected transactions in, or induced the purchase or sale of, securities by means of a manipulative, deceptive, or other fraudulent device or contrivance. **(NASD Case #C10010166)**

**Timothy Joseph O'Hare (CRD #2350627, Registered Representative, Long Beach, New York)** was named as a respondent in an NASD complaint alleging that he effected transactions in the joint account of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C10020004)**

**David Phillip Scheyer (CRD #1362617, Registered Representative, Cincinnati, Ohio)** was named as a respondent in an NASD complaint alleging that he received funds totaling at least \$8,459.01 from members of the public, representing insurance premium payments, and failed to apply the payments to the applicable policies or in any other manner for the benefit of the members of the public. The complaint also alleges that Scheyer failed to respond to NASD requests for information. **(NASD Case #C8B020001)**

**Firms 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.

**O'Donnell Securities Corp.**  
Mayfield Heights, Ohio  
(January 22, 2002)

**Shamrock Partners, Ltd.**  
Media, Pennsylvania  
(January 23, 2002)

**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.)**

**Adkins, James R.**  
Prescott Valley, Arizona  
(January 28, 2002)

**Andrina, Robert I.**  
Seattle, Washington  
(January 14, 2002)

**Atienza, Jr., Prospero**  
Buena Park, California  
(January 22, 2002)

**Awes, Michael G.**  
Long Lake, Minnesota  
(January 24, 2002)

**Davis, Rodney J.**  
West New York, New Jersey  
(January 15, 2002)

**Farris, Lorette**  
Hempstead, New York  
(January 25, 2002)

**Grant, Holly V.**  
Tyler, Texas  
(January 31, 2002)

**Hartlieb, Michael**  
St. Petersburg, Florida  
(January 15, 2002)

**Hubbard, George**  
Virginia Beach, Virginia  
(January 28, 2002)

**Johnson, Eric K.**  
South Branch, New Jersey  
(January 22, 2002)

**Knopp, Brian D.**  
Vacaville, California  
(January 24, 2002)

**Lalle, Gregory**  
Clearwater, Florida  
(January 22, 2002)

**Lam, Thach N.**  
Westminster, California  
(January 28, 2002)

**Levin, Stephanie S.**  
New York, New York  
(January 24, 2002)

**Navard, Masoud H.**  
Columbus, Ohio  
(January 14, 2002)

**Nhekairo, Mabasha**  
Alpharetta, Georgia  
(January 28, 2002)

**Spector, Gary J.**  
Burbank, California  
(January 22, 2002)

**Stern, Howard B.**  
Boca Raton, Florida  
(January 22, 2002)

**Thomas, Mark Allen**  
St. Joseph, Missouri  
(January 22, 2002)

**Yacapraro, Jr., Joseph-Anthony**  
Coshocton, Ohio  
(January 28, 2002)

**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.)**

**Macaluso, Susan**  
McAllen, Texas  
(February 1, 2002)

**Pierre, Petruce**  
Spring Valley, New York  
(January 18, 2002)

**Rooney, Patrick W.**  
Chula Vista, California  
(January 10, 2002)

**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.

**Bodenstein, Dennis**  
New York, New York  
(January 11, 2002 - February 5, 2002)

**Burke, Jr., John P.**  
Bozeman, Montana  
(January 30, 2002)

**Cerny, Timothy C.**  
Ft. Lauderdale, Florida  
(January 28, 2002)

**O'Malley, Michael P.**  
Madison, Wisconsin  
(January 28, 2002)

**Soler, Stephen**  
New York, New York  
(January 25, 2002 - February 4, 2002)

**NASD Regulation Expels First Federal Securities, Inc. And Bars Its Owner And President For False Membership Information**

NASD Regulation, Inc., announced that it expelled First Federal Securities, Inc., of Las Vegas, NV, and barred its owner and President Kellie McKinzie for intentionally providing false information in connection with the firm's application for membership with the NASD.

First Federal applied for NASD membership in January 2001. In the application, McKinzie misrepresented that she was its sole owner and that there were no other principals affiliated with the firm. The firm and McKinzie specifically did not disclose that Jeffrey Schwertfeger, an Investment Company/Variable Contracts Products Representative, who was then the subject of an NASD Regulation disciplinary proceeding alleging sales practice violations, was affiliated with First Federal. McKinzie was aware at the time she filed the application for First Federal's membership that NASD Regulation considered this fact to be material to the application.

On March 15, 2001, McKinzie falsely reaffirmed to NASD Regulation that this individual was not affiliated with First Federal and four days later, NASD Regulation approved First Federal's membership. Subsequently, NASD Regulation obtained additional facts and determined that Schwertfeger was in fact in control of the management and policies of First Federal.

NASD Regulation found that the firm and McKinzie engaged in conduct inconsistent with just and equitable principles of trade. NASD Regulation barred McKinzie

and expelled First Federal from association with an NASD member. The expulsion and bar were imposed through a settlement in which the firm and owner did not admit or deny the allegations.

NASD rules require that all information filed with respect to membership be complete, accurate and not otherwise misleading. In addition, an applicant is obligated to correct any inaccurate or misleading information given during the application process. Where, as here, if a firm is admitted to membership based on misleading or inaccurate information, NASD Regulation may bring a disciplinary action to bar the responsible individual and expel the firm from membership. NASD Regulation's Los Angeles District Office investigated this case.

## For Your Information

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### Regulation Form Filing: New Firm Contacts Screen

Regulation Form Filing is a Web-based system for various applications used by member firms to report regulatory information to NASD Regulation. The applications include: FOCUS, Blue Sheets, Customer Complaints, Reg T/15c3-3 Extension Requests, and Short Interest Reporting.

Form Filing Account Administrators will be responsible for providing and maintaining the new Firm Contacts fields with the most current and accurate information.

This information is necessary in the event that an application's designated person needs to be notified of any system problems or for verification of information that was submitted by the member firm. The Form Filing contact information needs to be provided for each of the following systems, where applicable:

- Blue Sheets
- 3070 Customer Complaints
- FOCUS
- INSITE Firm Data Filing
- Market Volatility
- Reg-T & 15c3-3
- Shorts

The name, title, address, telephone number, fax number, and e-mail address for the firm's designated primary and secondary contacts should be provided for each application. In addition, in order to enable NASD Regulation to process Blue Sheets data requests in a timely manner, member firms should also provide and/or update the Blue Sheets contact information via e-mail to the Market Regulation Department at *bluesheets@nasd.com*.

For further information or if you have questions about the Web-based form filing regulation applications, call (800) 321-NASD, or send an e-mail to: *nasdregfiling@nasd.com*.

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### INFORMATIONAL

## Revised Forms U-4 And U-5

SEC Approves Technical Changes To Forms U-4 And U-5 And Amendment To NASD Interpretive Material 8310-2; **Effective Date: March 18, 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.*

- Continuing Education
- Legal & Compliance
- Operations
- Registered Representatives
- Registration
- Senior Management
- Training

### KEY TOPICS

- Central Registration Depository System
- IM 8310-2
- Investment Adviser Representatives
- U-4
- U-5

### Executive Summary

The Securities and Exchange Commission (SEC) has approved technical changes to Forms U-4 and U-5, effective March 18, 2002. The SEC also has approved an amendment to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Interpretive Material (IM) 8310-2, which authorizes the NASD to release to the public disciplinary and other information on NASD members and their associated persons.

The revised forms are effective March 18, 2002. Copies of the new forms are available on the NASD Regulation Web Site at [www.nasdr.com](http://www.nasdr.com). Members are not required to "re-file" Forms U-4 and U-5 for their associated persons.

Questions concerning this *Notice* may be directed to Richard E. Pullano, Chief Counsel and Director, CRD/Public Disclosure, NASD Regulation, Inc., at (240) 386-4821; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8844.

### Background And Discussion

The Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and the Uniform Termination Notice for Securities Industry Registration ("Form U-5") are used by NASD member firms (*i.e.*, broker/dealers) to register, transfer, and terminate the registration of their associated persons with self-regulatory organizations (SROs) and states, as appropriate. Broker/dealers have filed Forms U-4 and U-5 electronically to fulfill registration-related obligations of their associated persons since the implementation of Web CRD<sup>SM</sup> in August 1999.<sup>1</sup> Investment adviser firms also use Forms U-4 and U-5

to fulfill state licensing obligations for investment adviser representatives (called "RAs" on the revised Forms U-4 and U-5), but until now, they have been required to submit those forms to individual states in hard copy.<sup>2</sup>

In July 2000, the SEC formally designated NASD Regulation as the entity to establish and maintain the Investment Adviser Registration Depository (IARD<sup>SM</sup>), a system designed to enable investment advisers to fulfill their registration-related obligations with federal and state regulators through an electronic Internet-based filing system.<sup>3</sup> In January 2001, NASD Regulation implemented the first phase of the IARD system, which allows investment adviser firms to file electronically Forms ADV and ADV-W, and amendments thereto. The second phase of the system, which will enable investment adviser representatives to register and terminate electronically their state registrations, is scheduled to be deployed on March 18, 2002, concurrent with the implementation of the revised Forms U-4 and U-5.

In connection with this second phase of the IARD system, NASD Regulation worked with representatives of the North American Securities Administrators Association (NASAA), the states, the broker/dealer and investment adviser communities and other SROs to craft changes to Forms U-4 and U-5 that: (1) accommodate the electronic submission of investment adviser representative filings in the IARD system; (2) establish procedures that enable broker/dealer and investment adviser firms that employ the same person to concur with information contained in Forms U-4 filed by the other firm



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on that person; (3) clarify the filing instructions; (4) provide separate paper filing instructions for investment adviser representative filers and other state-only filers that do not use the CRD or IARD systems; (5) clarify items that have been confusing to filers; (6) make formatting and technical changes to Forms U-4 and U-5 that complete the transition from a paper-based filing model to an electronic-filing model; and (7) update form U-4 to add examination and registration categories not previously included. The SEC also approved a technical amendment to IM-8310-2(a), which addresses the NASD's release of information through the Public Disclosure Program, to reflect the correct reference to the disclosure section on Form U-4, which has changed from Item 23 to Item 14 on the revised Form U-4.

The approved Forms changes do not alter the reporting or disclosure requirements applicable to broker/dealers or their registered persons. Therefore, member firms are not required to "re-file" disclosure or administrative information for their associated persons.

This *Notice* highlights the changes included in the March 2002 Forms U-4 and U-5. Additional background and explanatory information may be found in the Securities Exchange Act of 1934 ("Exchange Act") Release No. 45531, the SEC release approving Forms U-4 and U-5 revisions.

### ❖ **Section Headers Replace Numbered Fields**

The numbered fields used in previous versions of the Forms U-4 and U-5 have been removed because the electronic interactive filing format used in the Web CRD and IARD systems presents information in a specified order, thereby eliminating the need for

numbered data fields. Instead, the revised Forms U-4 and U-5 contain numbered "section headers" that clearly describe the types of information elicited or action required by the applicant or firm, with applicable subquestions contained within each section. Organizing the current fields into sections has changed the question numbers, but there are no substantive changes to the questions. Of note, Question 14 on Form U-4 replaces Question 23 as the "Disclosure Question," and contains subquestions numbered 14A, 14B, etc.<sup>4</sup>

### ❖ **Explanation of Terms and Specific Instructions**

The revised "Explanation of Terms" and "Specific Instructions" sections have been generally revised and simplified to include instructive language. The Explanation of Terms section includes seven new terms and an alphabetical list of definitions to better aid applicants and firms.<sup>5</sup> In addition, the Specific Instructions include directions for investment adviser representative-only applicants (*i.e.*, those individuals who are not also registered or seeking registration with a broker/dealer), as well as separate instructions for paper filers.

### ❖ **Private Residence Check Box**

The new "General Information" section contains a "private residence check box" that allows individuals to notify regulators that their office of employment address is a private residence. This feature was added to address privacy concerns raised by the investment adviser community in connection with the potential release to the public through open records laws or other programs of the home addresses of investment advisers who are sole practitioners operating out of their homes.

Functionality within the CRD and IARD systems enables regulators to block the release of such information.

### ❖ **Fingerprint Information**

A new "Fingerprint Information" section replaces Question 8a on the 1999 Form U-4 and addresses procedures for submitting fingerprints to register with SROs and states. This section includes a representation affirming that an electronic filer who seeks registration with a broker/dealer is submitting or will promptly submit fingerprint cards consistent with SRO rules. The revised Form U-4 permits an applicant firm to represent that the subject of a filing is exempt from the fingerprint requirement if the applicant meets one or more of the exemptions established by Rule 17f-2 under the Exchange Act. In addition, this section also addresses the applicable scenarios for the filing of fingerprint cards by individuals who are filing only as investment adviser representatives, and who may not be required to submit fingerprint cards for one or more jurisdictions.

### ❖ **Dual Registration/Affiliated Firms**

Because the meaning of "dual registration" in Questions 9 and 10 on the 1999 Forms U-4 and U-5 caused some confusion for both regulators and member firms, the revised Forms U-4 and U-5 replace former Questions 9 and 10 with the "Registration with Unaffiliated Firms" and "Registration with Affiliated Firms" sections, respectively. The "Registration with Unaffiliated Firms" section states the majority view of "dual registration" within the states, *i.e.*, those individuals who answer this question affirmatively will be considered to be "dually registered." Individuals/

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firms are instructed to consult applicable state or SRO rules to determine whether dual registrations are permitted. The "Registration with Affiliated Firms" section applies only to individuals registering with firms that are under common ownership or control.

### ❖ **Registration Categories**

The revised Forms U-4 and U-5 include changes to the registration categories to accommodate the addition of, among others, the International Securities Exchange (ISE) as a new national securities exchange, and the new Private Placement (PR) position required by the Gramm-Leach-Bliley Act.<sup>6</sup>

### ❖ **Professional Designations Section**

The revised Form U-4 adds Section 8, "Professional Designations," to enable an individual requesting registration as an investment adviser representative to seek a waiver from examinations if he or she currently maintains certain designations (*i.e.*, Certified Financial Planner, Chartered Financial Consultant, Personal Financial Specialist, Chartered Financial Analyst, or Chartered Investment Counselor).

### ❖ **Signature and Acknowledgment Sections**

New Section 15 on Form U-4 enables individuals and appropriate signatories to go directly to designated signature fields to execute signatures electronically required by the Forms U-4 and U-5. Sections 15A and 15B address the individual/applicant's acknowledgment and consent and the firm/appropriate signatory's representations, both of which must be completed on all initial or Temporary Registration

form filings. Section 15C addresses the Temporary Registration Acknowledgment, which must be completed for all temporary registrations. Section 15D has been added to address an individual/applicant's acknowledgment and consent to amendments to the disclosure questions or the Disclosure Reporting Pages (DRPs). Firms and appropriate signatories must complete Section 15E for all amendment form filings.

In addition, as discussed in more detail below, Section 15F, "Firm/Appropriate Signatory Concurrence," enables one firm to "concur" with, and thereby adopt as its own, a filing made by another firm with which an individual is also registered (*i.e.*, an individual registered with more than one broker/dealer and/or investment adviser firm). The concurrence filing provides firms with a faster, more efficient method of fulfilling their reporting obligations on an associated person who also is associated with another entity.

Section 8 of the revised Form U-5 addresses the signature requirements on that Form, including the firm acknowledgment in Section 8A and a new individual acknowledgment and consent in Section 8B. Although only appropriate signatories of firms are required to sign Form U-5 in the ordinary course of business, individuals who are the subject of Form U-5 may be required to submit signatures under two scenarios: (1) formerly registered individuals must submit to the CRD system address changes for two years following the termination of their registration under NASD rules;<sup>7</sup> and (2) registered or formerly registered individuals may file an Internal Review DRP-Part II to respond to a report on Form U-5

by that individual's previous employer that the individual is subject to an internal review. New Section 8B enables individuals submitting an address change or Internal Review DRP-Part II to attest that the information being submitted is accurate and complete.

### *Concurrence Filing Procedures*

With the implementation of electronic filing for investment adviser representatives, investment advisers will be able electronically to submit Forms U-4 and U-5 to register and terminate the registrations of their representatives with appropriate state regulators. Individuals who are registered with both a registered investment adviser firm and a broker/dealer will share a single registration record on the CRD and IARD systems. As discussed above, the changes to Form U-4 allow a member broker/dealer to concur with a filing submitted by any other broker/dealer or investment adviser with which a registered person is also registered. Enabling member broker/dealers to concur with filings submitted by an investment adviser regarding a particular person will streamline the registration process and make it more efficient for members to comply with their reporting obligations on an associated person who also is associated with another entity.

To implement this new process, the CRD and IARD systems will automatically notify a member firm of the submission of a Form U-4 or amendment for one of its associated persons by another broker/dealer or an investment adviser that also employs that individual. The firm that is notified will then be able to review the information that has been

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submitted and execute a “concurrent filing,” which communicates to the CRD and IARD systems (and, therefore, all appropriate regulators) that it has adopted the filing as its own.<sup>8</sup>

In the event that multiple firms associated with any particular individual submit different DRPs on the same disclosure event, NASD Regulation staff will “flag” the affected record on the CRD and IARD systems to put regulators and the involved firms on notice that differences between the two filings exist. The “difference flag” will be set whenever there is a difference between the information provided in any of the fields eliciting objective factual information (*i.e.*, any of the DRP fields, with the exception of the last field on the DRP, which is reserved for the registered representative’s summary or commentary on the event).<sup>9</sup>

### *Uniform Forms Reference Guide*

In connection with the revised Forms U-4 and U-5, NASD Regulation has created a *Uniform Forms Reference Guide* to provide member firms and other users of the Forms U-4 and U-5 with resource and contact information. The *Reference Guide* is available on the [www.nasdr.com](http://www.nasdr.com) Web Site.

### Endnotes

- 1 In 1999, the SEC approved amendments to Forms U-4 and U-5 that included both technical and formatting changes in anticipation of the implementation of the Web CRD system and electronic filing. See *Securities Exchange Act Rel. No. 41560 (June 25, 1999)*, 64 FR 36059 (July 2, 1999). Also, see *Notice to Members 99-63*.
- 2 Registration/licensing categories for investment adviser representatives were added to Forms U-4 and U-5 in 1996 in anticipation of the processing of these and other non-member categories through the CRD system. See *Securities Exchange Act Rel. No. 37404 (July 5, 1996)*, 61 FR 36595 (July 11, 1996). Note that for technical reasons, the designation for investment adviser representatives has changed from “IAR” to “RA” on the revised Forms U-4 and U-5.
- 3 See *Investment Advisers Act of 1940 (“Advisers Act”) Rel. 1888 (July 28, 2000)*, 65 FR 47809 (Aug. 3, 2000). As noted in the order, in 1996, Congress gave the SEC authority “to participate in an electronic system for the registration of investment advisers.” As a result, Congress enacted Section 203(A)(d) of the Advisers Act, which enables the SEC to require investment advisers to file registration and other forms “through any entity designated [by the SEC] for that purpose” and to “pay the reasonable costs associated with [these] filings.” A description of the IARD system is provided in *Advisers Act Rel. 1862 (Apr. 5, 2000)*, 65 FR 20524 (Apr. 17, 2000). Although the IARD system functions in a manner similar to the Web CRD system, NASD Regulation does not act as an SRO for investment advisers or investment adviser representatives.
- 4 The SEC also approved an amendment to IM-8310-2 to change the reference in paragraph (a)(4)(A) from Item 23 to Item 14 to accurately reflect the correct item number on the revised Form U-4.
- 5 The revised Forms U-4 and U-5 now define the following terms: *affiliated, applicant, designated entity, filing firm, firm, firm CRD number, and individual CRD number*.
- 6 The PR position was implemented in May 2001 as required by the Gramm-Leach-Bliley Act of 1999, which added a new subsection (j) to Section 15A of the Exchange Act and created a new NASD registration category for individuals engaged only in private securities offerings. See *Section 203, P.L. 102, Gramm-Leach-Bliley Act (Nov. 12, 1999)*.
- 7 See generally Article V, Section 4 of the NASD By-Laws, Forms U-4 and U-5.
- 8 Firms will receive notice filings for all Form U-4 filings that affect their associated persons who are also registered with another broker/dealer or investment adviser firm. Such firms would not be required to make concurrence filings where the Form U-4 amends information that is relevant only to the broker/dealer or investment adviser that initially filed the Form U-4 (*e.g.*, such firms will not have to submit concurrence filings for changes to registrations, office of employment address, etc. that are specific to the entity making the initial filing).
- 9 When a difference is flagged, NASD staff will alert the firms involved to request that they resolve the difference. If the firms are not able to reach an agreement within 30 calendar days, NASD staff will refer the matter to a state regulator and/or internal NASD department, as appropriate, based on the facts and circumstances of the situation, for review and resolution.

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