

## INFORMATIONAL

# Anti-Money Laundering

## NASD Provides Guidance To Member Firms Concerning Anti-Money Laundering Compliance Programs Required By Federal Law

### SUGGESTED ROUTING

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

- Legal & Compliance
- Operations
- Registration
- Senior Management

### KEY TOPICS

- Compliance Programs
- Money Laundering

### Executive Summary

On October 26, 2001, President Bush signed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Patriot Act).<sup>1</sup> Title III of the Patriot Act, referred to as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (Money Laundering Abatement Act), imposes obligations on broker/dealers under new anti-money laundering (AML) provisions and amendments to the existing Bank Secrecy Act (BSA) requirements.<sup>2</sup>

Among other things, the Money Laundering Abatement Act requires all financial institutions, including broker/dealers, to establish and implement, by **April 24, 2002**, AML programs designed to achieve compliance with the BSA and the regulations promulgated thereunder. The NASD reminds members that violations of the AML laws could lead to criminal prosecution.

On February 15, 2002, the NASD filed with the Securities and Exchange Commission (SEC) a rule proposal to prescribe the minimum standards required for each member firm's AML compliance program. A copy of this rule filing can be found on the NASD Regulation AML Web Page. (See [www.nasdr.com/money.asp](http://www.nasdr.com/money.asp).) NASD Regulation's AML Web Page also provides links to other sites and documents to assist members in understanding their obligations under the AML rules and regulations.

On February 25, 2002, the SEC published the proposed rule change in the *Federal Register*. The SEC received four comment letters in response to the *Federal Register* publication. Before

becoming effective, the proposed rule change must be approved by the SEC.

The Securities Industry Association Anti-Money Laundering Committee recently released a preliminary guide for firms to use when developing their AML programs (SIA Guidance). The SIA Guidance generally discusses key elements for broker/dealers to consider in developing effective AML programs. NASD Regulation's AML Web Page provides a link to the SIA Guidance.

The NASD is issuing this *Notice* to provide guidance to assist members in developing AML compliance programs that fit their business models and needs. A table of contents has been provided for readers' convenience.

Because the Department of Treasury (Treasury) is still developing AML rules, the NASD will update its guidance as new rules become final. In the interim, firms must comply with the current requirements of the BSA and the provisions of the Money Laundering Abatement Act that now apply to broker/dealers and should familiarize themselves with the proposed rules that Treasury has issued to date. (For links to Treasury's proposed rules, see [www.nasdr.com/money.asp](http://www.nasdr.com/money.asp).)

### Questions/Further Information

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# Special NASD Notice to Members 02-21

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## Anti-Money Laundering Notice to Members

### TABLE OF CONTENTS

BACKGROUND.....	1
INTRODUCTION.....	1
Broker/Dealers And Existing Anti-Money Laundering Laws.....	1
New And Expanded Anti-Money Laundering Laws Applicable To Broker/Dealers.....	2
NASD ANTI-MONEY LAUNDERING PROGRAM RULE.....	4
ANTI-MONEY LAUNDERING PROGRAM GUIDANCE.....	5
Develop Internal Policies, Procedures, And Controls.....	5
<i>Identification And Verification Of Account Holders</i> .....	5
Opening Accounts.....	5
Online Brokers.....	7
Additional Due Diligence When Opening an Account.....	7
<i>Prohibitions On U.S. Correspondent Accounts With Foreign Shell Banks         And Special Due Diligence For Correspondent Accounts</i> .....	8
<i>Special Due Diligence For Private Banking Accounts</i> .....	8
<i>Monitoring Accounts For Suspicious Activity</i> .....	9
Money Laundering “Red Flags”.....	10
Reporting Procedures.....	11
Recordkeeping And Disclosure.....	12
Currency Transaction Reports.....	12
Currency And Monetary Instrument Transportation Reports.....	12
<i>Procedures For Sharing Information With And Responding To Requests         For Information From Federal Law Enforcement Agencies</i> .....	12
<i>Voluntary Information Sharing Among Financial Institutions</i> .....	13
Designate Compliance Officer.....	13
Establish An Ongoing Training Program.....	14
Establish An Independent Testing Function.....	15
INTRODUCING BROKERS AND CLEARING BROKERS.....	15
CONCLUSION.....	16
ENDNOTES.....	17

# **Special NASD Notice to Members 02-21**

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## **BACKGROUND**

The PATRIOT Act is designed to detect, deter, and punish terrorists in the United States and abroad and to enhance law enforcement investigation tools by prescribing, among other things, new surveillance procedures, new immigration laws, as well as new and more stringent AML laws. The Money Laundering Abatement Act expands and strengthens the AML provisions put into place by earlier legislation.

Several provisions of the Money Laundering Abatement Act are relevant to NASD members. Among other things, all broker/dealers must implement an anti-money laundering compliance program by April 24, 2002. The Money Laundering Abatement Act also requires Treasury to promulgate rules requiring broker/dealers to file suspicious activity reports (SARs), which identify and describe transactions that raise suspicions of illegal activity, and to establish certain procedures with regard to "correspondent accounts" maintained for foreign banks.<sup>3</sup> In late December 2001, Treasury released proposed rules regarding the filing of SARs by broker/dealers<sup>4</sup> and the maintenance of "correspondent accounts" for foreign banks.<sup>5</sup> In late February 2002, Treasury released proposed and final rules governing information sharing among law enforcement authorities, regulatory organizations, and financial institutions.<sup>6</sup> Treasury will continue to issue proposed and final rules throughout the year governing and providing further guidance with respect to customer identification, "correspondent accounts" with foreign banks, and the application of AML rules to the brokerage industry, among other matters. The NASD will continue to keep members apprised of AML rules and regulations that Treasury proposes and those that Treasury adopts.

## **INTRODUCTION**

Money laundering is generally defined as engaging in acts designed to conceal or disguise the true origin of criminally derived proceeds so that the unlawful proceeds appear to have derived from legitimate origins or constitute legitimate assets. Money laundering occurs in connection with a wide variety of crimes, including, but not limited to, drug trafficking, robbery, fraud, racketeering, and terrorism.

In general, money laundering occurs in three stages. Cash first enters the financial system at the "placement" stage, where the cash profits from criminal activity are converted into monetary instruments, such as money orders or traveler's checks, or deposited into accounts at financial institutions. At the "layering" stage, the funds are transferred or moved into other accounts or other financial institutions to separate further the proceeds from their criminal origin. At the "integration" stage, the funds are reintroduced into the economy and used to purchase legitimate assets or to fund further criminal or legitimate activities.<sup>7</sup>

### **Broker/Dealers And Existing Anti-Money Laundering Laws**

Broker/dealers are subject to most of the existing AML rules as well as the new AML provisions of the Money Laundering Abatement Act, which are discussed in detail later in the document.

Firms should be aware that there are potential severe civil and criminal penalties for violations of AML laws. Under the criminal statutes, a person or entity could be criminally prosecuted for assisting or facilitating a transaction involving money laundering by a customer if the firm (or person) knew or was willfully blind to the fact that the transaction involved illegally obtained funds.<sup>8</sup>

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## Special NASD Notice to Members 02-21

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All broker/dealers have been and will continue to be subject to existing BSA reporting and recordkeeping requirements, as briefly summarized below:

- **Currency Transaction Report (CTR):** Broker/dealers are required to file CTRs for transactions involving currency that exceed \$10,000. Because structuring is prohibited, multiple transactions are treated as a single transaction if they total more than \$10,000 during any one business day. CTRs are filed with the Financial Crimes Enforcement Network (FinCEN), a bureau of Treasury.
- **Currency and Monetary Instrument Transportation Report (CMIR):** Any person who physically transports, mails, or ships currency or other monetary instruments into or out of the United States, in aggregated amounts exceeding \$10,000 at one time, must report the event on a CMIR. Any person who receives any transport, mail, or shipment of currency, or other monetary instrument from outside the United States in an aggregate amount exceeding \$10,000 at one time also must report the receipt. CMIRs are filed with the Commissioner of Customs.
- **Report of Foreign Bank and Financial Accounts (FBAR):** Any person having a financial interest in, or signature or other authority over, financial accounts in a foreign country is required to report the relationship if the aggregate value of the accounts exceeds \$10,000. FBARs are filed with FinCEN.
- **Funds Transfers and Transmittals:** Broker/dealers effecting transmittals or transfers of funds, including wire fund transfers, of \$3,000 or more must collect, retain and record on the transmittal order certain information regarding the transfer, including the name and address of the transmitter and recipient, the amount of the transmittal order, the identity of the recipient's financial institution, and the account number of the recipient. Broker/dealers also must verify the identity of transmitters and recipients that are not established customers.

In addition, broker/dealers that are subsidiaries of banks or bank holding companies currently are required under the banking regulations to file SARs with FinCEN. Such broker/dealers currently are required to report known or suspected federal criminal offenses, at specified dollar thresholds, or suspicious transactions involving \$5,000 or more that they suspect (1) involve funds derived from illegal activity or an attempt to hide or disguise funds or assets derived from illegal activity, (2) are designed to evade the requirements of the BSA, or (3) have no apparent lawful or business purpose or vary substantially from normal practice. The NASD previously has recommended that members report suspicious transactions and has advised firms that the failure to do so could be construed as aiding and abetting money laundering violations, subjecting the member to civil and criminal liability.<sup>9</sup> Some firms, in fact, have been submitting SARs on a voluntary basis. As discussed in more detail later in the document, all broker/dealers will soon be required to file SARs.

### **New And Expanded Anti-Money Laundering Laws Applicable To Broker/Dealers**

As noted above, the Money Laundering Abatement Act imposes significant new obligations on broker/dealers through new AML provisions and amendments to the existing provisions of the BSA. A brief summary of the new requirements along with anticipated effective dates is provided below:

- **Section 312 (Due Diligence Requirements):** Section 312 requires special due diligence for all private banking and "correspondent" bank accounts (accounts established to receive deposits from, make payments on behalf of, or handle other financial transactions for a foreign bank) involving foreign persons, even if opened before Congress passed the PATRIOT Act.<sup>10</sup> Treasury is required to delineate, by regulation, the special due diligence

## **Special NASD Notice to Members 02-21**

policies, procedures, and controls by April 24, 2002. Regardless of whether final regulations have been promulgated, the minimum due diligence requirements set forth in Section 312 (as discussed below in the "Anti-Money Laundering Program Guidance" section) become **effective on July 23, 2002**.

- **Section 313 (Correspondent Account Prohibitions):** Section 313 prohibits certain financial institutions, including broker/dealers, from maintaining a "correspondent account" for, or on behalf of, a foreign "shell" bank (a foreign bank with no physical presence in any country). Financial institutions are also required to take reasonable steps to ensure that they are not indirectly providing correspondent banking services to foreign shell banks through foreign banks with which they maintain correspondent relationships. Section 313 became **effective on December 26, 2001**. Treasury released proposed regulations defining "correspondent account" in late December 2001.<sup>11</sup>
- **Section 314 (Financial Institution Cooperation Provisions):** Section 314 addresses increased cooperation among financial institutions, regulatory authorities, and law enforcement authorities. Treasury published regulations implementing Section 314 in the *Federal Register* on March 4, 2002.<sup>12</sup> Treasury included a proposed rule to establish a communication link between federal law enforcement and financial institutions to better share information relating to suspected terrorists and money launderers. In addition, Treasury issued an interim final rule, **effective March 4, 2002**, requiring financial institutions to file an initial, and annual thereafter, certification (which can be completed online at FinCEN's Web Site at [www.treas.gov/fincen](http://www.treas.gov/fincen)) if they wish to share information regarding terrorist financing and money laundering with other financial institutions or associations of financial institutions.<sup>13</sup>
- **Section 319(b) (Domestic and Foreign Bank Records Production):** Section 319(b) addresses the production of domestic and foreign bank records. A financial institution is required to produce account information relating to foreign bank accounts **within seven days** in response to requests from federal law enforcement. Section 319 became **effective on December 26, 2001**. As mentioned above, Treasury released proposed rules regarding maintaining "correspondent accounts" in late December 2001.<sup>14</sup>
- **Section 326 (Customer Identification Standards):** Section 326 requires Treasury and the SEC, jointly, to issue regulations that set forth minimum standards for customer identification in the account opening process. The regulations will need to require firms, at a minimum, to implement "reasonable procedures" to verify the identity of the customer opening an account, maintain records used to identify the customer, and consult government-provided lists of known or suspected terrorists. Final regulations prescribed under Section 326 will take effect **not later than October 26, 2002**. Treasury and the SEC have not yet released proposed regulations regarding customer identification.
- **Section 352 (AML Compliance Program Components):** Section 352 requires all financial institutions to develop and implement AML compliance programs **on or before April 24, 2002**. Section 352 requires the compliance programs, at a minimum, to establish (1) the development of internal policies, procedures, and controls, (2) the designation of a compliance officer with responsibility for a firm's anti-money laundering program, (3) an ongoing employee training program, and (4) an independent audit function to test the effectiveness of the anti-money laundering compliance program. Section 352 further requires Treasury by April 24, 2002, to issue regulations that consider the extent to which these requirements correspond to the size, location, and activities of different financial institutions. Section 352 further allows Treasury, at its discretion, to issue additional requirements for AML compliance programs before the April 24, 2002, deadline. As further discussed later in the document, the NASD has proposed a rule setting forth the minimum standards for its members' AML compliance programs.

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## Special NASD Notice to Members 02-21

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- **Section 356 (Broker/Dealer SAR Regulations):** By **July 1, 2002**, Treasury must publish final regulations requiring broker/dealers to file SARs. Treasury released proposed broker/dealer SAR regulations in late December 2001.<sup>15</sup> Under Treasury's proposed regulations, the suspicious activity reporting requirement would become effective *180 days after the date on which the final broker/dealer SAR regulations are published in the Federal Register.*

### NASD ANTI-MONEY LAUNDERING PROGRAM RULE

On February 15, 2002, the NASD filed with the SEC a rule proposal that would set forth minimum standards for broker/dealers' AML compliance programs.<sup>16</sup> As required by the Money Laundering Abatement Act itself, the rule proposal would require firms to develop and implement a written AML compliance program by April 24, 2002. The proposed rule would require the program to be approved in writing by a member of senior management and be reasonably designed to achieve and monitor the member's ongoing compliance with the requirements of the BSA and the implementing regulations promulgated thereunder. The proposed rule change would require firms, at a minimum, to:

- (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions;
- (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations;
- (3) provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party;
- (4) designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and
- (5) provide ongoing training for appropriate personnel.

Each firm's AML program must be designed to ensure compliance with the new provisions of the Money Laundering Abatement Act, the earlier provisions of the BSA, and the regulations promulgated thereunder. To be effective, those procedures must reflect the firm's business model and customer base. Further, in developing program criteria, firms should consider the guidelines established by the United States Sentencing Commission in the U.S. Sentencing Commission Guidelines for organizations, as well as the fiduciary responsibilities of officers and directors to ensure that the firm's compliance programs are viable and effective.<sup>17</sup>

Regardless of when and in what form the SEC approves the NASD proposed AML compliance rule, all firms are required by federal law (the Money Laundering Abatement Act) to have AML programs in place **by April 24, 2002**.<sup>18</sup> These AML programs must meet the minimum requirements articulated in Section 352 of the Money Laundering Abatement Act.<sup>19</sup>

Members should keep in mind that the obligation to develop and implement an AML compliance program is not a "one-size-fits-all" requirement. The general nature of the requirement reflects Congressional intent that each financial institution should have the flexibility to tailor its AML program to fit its business. This flexibility is designed to ensure that all entities covered by the statute, from the very large financial institutions to the small firms, will institute effective and appropriate policies and procedures to monitor for AML compliance.<sup>20</sup> In this regard, each broker/dealer, in developing an appropriate AML program that complies with the Money Laundering Abatement Act, should consider factors such as its size, location, business activities, the types of accounts it maintains, and the types of transactions in which its customers engage.

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## **Special NASD Notice to Members 02-21**

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### **ANTI-MONEY LAUNDERING PROGRAM GUIDANCE**

The required elements of an AML program are discussed in detail below.

#### **Develop Internal Policies, Procedures, And Controls**

Broker/dealers must develop internal policies, procedures, and controls to ensure compliance with the AML laws. The AML procedures should contain a statement that sets forth the member's policy of prohibiting money laundering and its overall efforts to detect, deter, and prevent any such violations. Broker/dealers also must establish internal controls to ensure that their AML policies and procedures are being enforced. As with any supervisory procedure, the firm must establish and implement controls and written procedures that explain the procedures that must be followed, the person responsible for carrying out such procedures, how frequently such procedures must be performed, and how compliance with the procedures should be documented and tested.

Firms must determine the manner in which AML procedures that address the following (each of which will be discussed more fully below) will apply to various accounts:

- account opening and maintenance, including verification of the identity of the customer;
- opening and maintaining "correspondent accounts" for foreign banks;
- monitoring of account activities, including but not limited to, trading and the flow of money into and out of the account, the types, amount, and frequency of different financial instruments deposited into and withdrawn from the account, and the origin of such deposits and the destination of withdrawals;
- separating the duties of employees where feasible to ensure a system of checks and balances (for example, firms may want to ensure that persons who handle cash do not open accounts or file CTRs);
- monitoring for, detecting, and responding to "red flags";
- responding to regulatory requests for AML information;
- establishing controls and monitoring employees' trading and financial activity in employee accounts; and
- ensuring that AML compliance programs contain a mechanism or process for the firm's employees to report suspected violations of the firm's AML compliance program procedures and policies to management, confidentially, and without fear of retaliation.

#### ***Identification And Verification Of Account Holders***

##### *Opening Accounts*

Prior to the enactment of the Money Laundering Abatement Act, broker/dealers already had significant obligations to gather information about their customers in order to, among other things, know their customers. NASD Rule 3110 requires member firms to obtain certain information about their customers when opening an account, including the following: the customer's name and residence; whether the customer is of legal age; the signature of the registered representative introducing the account and signature of the member or partner, officer, or manager who accepts the account; and if the customer is a corporation, partnership, or other

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## Special NASD Notice to Members 02-21

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legal entity, the names of any persons authorized to transact business on behalf of the entity. Member firms are also required to make reasonable efforts to obtain the following additional information (for accounts other than institutional accounts and accounts in which investments are limited to transactions in open-end investment company shares not recommended by the member or its associated persons) prior to the settlement of an initial transaction in the account: a customer's tax identification and Social Security number; the customer's occupation and name and address of the employer; and whether the customer is an associated person of another member.

Member firms also are required under NASD Rules 2110 and 2310 to obtain additional customer information. Members are required under NASD Rule 2110 to comply with general "Know Your Customer" requirements. Pursuant to these requirements, members must make reasonable efforts to obtain certain basic financial information from customers so that members can protect themselves and the integrity of the securities markets from customers who do not have the financial means to pay for transactions.<sup>21</sup> NASD Rule 2310 relates to a member's suitability obligations to its customers and requires each member to use reasonable efforts to obtain information concerning a customer's financial status, tax status, and investment objectives prior to making any recommendations to the customer regarding the purchase, sale, or exchange of securities.

The information required under NASD Rules 3110, 2110, and 2310 is the starting point for new AML customer identification procedures. The Money Laundering Abatement Act imposes additional customer identification requirements on member firms. Effective October 26, 2002 (or earlier, if final customer identification regulations are effective prior to October 26, 2002), broker/dealers are required to implement reasonable procedures for identifying customers and verifying their information.<sup>22</sup> These procedures, at a minimum, must require a firm:

- to verify, to the extent reasonable and practicable, the identity of any customer seeking to open an account;<sup>23</sup>
- to maintain records of information to verify a customer's identity; and
- to check that a customer does not appear on any list of known or suspected terrorists or terrorist organizations such as those persons and organizations listed on Treasury's Office of Foreign Assets Control (OFAC) Web Site ([www.treas.gov/ofac](http://www.treas.gov/ofac)) (and available on [www.nasdr.com/money.asp](http://www.nasdr.com/money.asp)) under "Terrorists" or "Specially Designated Nationals and Blocked Persons" (SDN List), as well as the list of embargoed countries and regions (collectively, the OFAC List).<sup>24</sup>

Under the new AML customer identification requirements, broker/dealers will be required to make reasonable efforts to obtain and verify information about a customer. If the customer is an individual, a firm will need, to the extent reasonable and practicable, to obtain and verify certain information concerning the individual's identity, such as the individual's name, address, date of birth, and government issued identification number. Possible sources of this information include:

- physical documents, such as a driver's license, passport, government identification, or an alien registration card,<sup>25</sup> or, for businesses, a certificate of incorporation, a business license, any partnership agreements, any corporate resolutions, or other similar documents; or
- databases, such as Equifax, Experion, Lexis/Nexis, or other in-house or custom databases.

Firms opening accounts should verify the identification information at the time the account is opened, or within a relatively short time period thereafter (*e.g.*, within five business days after account opening). Because of the unknown risk that the prospective customer could be involved



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## Special NASD Notice to Members 02-21

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in criminal activity, members should consider, depending on the nature of a transaction and an account, not effecting a transaction prior to verifying the information. If a potential customer refuses to provide any of the information described above, or appears to have intentionally provided false or misleading information, a firm should not open the account. If an existing customer fails to provide the requested information, the firm, after considering the known and unknown risks involved, may consider closing the account. Moreover, in either of these situations, the firm's AML compliance personnel should be notified so that a determination can be made as to whether the circumstance should be voluntarily reported to FinCEN or OFAC, as appropriate.

In the context of AML compliance, members should implement procedures that allow the firm to collect and use information concerning the account holder's wealth, net worth, and sources of income to detect and deter possible money laundering activity. Such a review should be integrated into the new accounts supervisor's existing procedures before such supervisor authorizes the opening of an account. Moreover, the supervisor's review should be documented and reviewed to ensure that the account-opening procedures are being conducted properly. Firms should consider using a checklist that lists the types of information required and documents explanations for why an account was opened absent such information.

### *Online Brokers*

Online brokers generally do not meet or speak directly to their prospective or existing clients. These firms must acquire information about customers and, as mentioned earlier, make maximum use of other means of verifying customer identity, such as electronic databases (Equifax, Experian, Lexis/Nexis, or other in-house or custom databases). As is required of all firms, such verification of customer information must take place at the time the account is opened or within a short period thereafter (*e.g.*, five business days). Online firms should also consider conducting computerized surveillance of account activity to detect suspicious transactions and activity. Given the global nature of online brokerage activity, it is essential that online brokers confirm the customer data and review the OFAC List to ensure that customers are not prohibited persons or entities and are not from embargoed countries or regions.

### *Additional Due Diligence When Opening An Account*

Broker/dealers should perform the following additional due diligence when opening an account, depending on the nature of the account, and to the extent reasonable and practicable:

- inquire about the source of the customer's assets and income so that the firm can determine if the inflow and outflow of money and securities is consistent with the customer's financial status;
- gain an understanding of what the customer's likely trading patterns will be, so that any deviations from the patterns can be detected later on, if they occur;
- maintain records that identify the owners of accounts and their respective citizenship;
- require customers to provide street addresses to open an account, and not simply post office addresses, or "mail drop" addresses;
- periodically contact businesses to verify the accuracy of addresses, the place of business, the telephone, and other identifying information; and
- conduct credit history and criminal background checks through available vendor databases.

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## **Special NASD Notice to Members 02-21**

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### ***Prohibitions On U.S. Correspondent Accounts With Foreign Shell Banks And Special Due Diligence For Correspondent Accounts***

Broker/dealers are prohibited from establishing, maintaining, administering, or managing a "correspondent account" (see note 3) in the United States for an unregulated foreign shell bank. Firms should have procedures in place to ensure that this does not occur and should immediately terminate such accounts if they have any. The broker/dealer's AML compliance personnel should be notified upon discovery or suspicion that the firm may be maintaining or establishing a "correspondent account" in the United States for a foreign shell bank.

The Money Laundering Abatement Act requires broker/dealers to maintain records identifying the owners of foreign banks that maintain "correspondent accounts" in the United States and the name and address of an agent residing in the United States authorized to accept service of legal process for such banks.<sup>26</sup> Broker/dealers should require their foreign bank account holders to complete model certifications issued by Treasury to the extent possible. U.S. depository institutions and broker/dealers can send the certification forms to their foreign bank account holders for completion. The certification forms generally ask the foreign banks to confirm that they are not shell banks and to provide the necessary ownership and agent information. Use of the certification forms will help firms ensure that they are complying with requirements concerning "correspondent accounts" with foreign banks and can provide a broker/dealer with a safe harbor for purposes of complying with such requirements.<sup>27</sup> Firms are required to recertify (if relying on the certification forms) or otherwise verify any information provided by each foreign bank, or otherwise relied upon, at least every two years or at any time the firm has reason to believe that the information is no longer accurate.

In addition, broker/dealers will be required under Section 312 of the Money Laundering Abatement Act to establish appropriate, specific, and, where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering for any "correspondent account" established, maintained, administered, or managed for a foreign bank. *At a minimum*, in the case of foreign banks licensed by certain high-risk jurisdictions or operating under an offshore banking license, broker/dealers are required to take reasonable steps:

- to determine the ownership of the foreign bank;
- to conduct enhanced scrutiny of the account to detect and report suspicious activity; and
- to determine whether the foreign bank maintains "correspondent accounts" for any other bank, and if so, the identity of those banks.<sup>28</sup>

### ***Special Due Diligence For Private Banking Accounts***

Similarly, the Money Laundering Abatement Act requires broker/dealers, *at a minimum*, to take reasonable steps to determine the identity of the nominal and beneficial account holders of, and the source of funds deposited into, a private banking account maintained by or on behalf of a non-U.S. citizen, and to conduct enhanced scrutiny of accounts requested or maintained by, or on behalf of, a senior foreign political figure,<sup>29</sup> or any immediate family member or close associate of a senior foreign political figure. A private bank account is an account (or combination of accounts) that requires an aggregate deposit of funds or other assets of more than \$1,000,000 established on behalf of one or more individuals who have a direct or beneficial ownership interest in the account, and is assigned to, or administered by, in whole or in part, an officer,

employee, or agent of a financial institution acting as a liaison between the institution and the direct or beneficial owner of the account.<sup>30</sup> This enhanced monitoring or scrutiny should be reasonably designed to detect and report transactions that may involve the proceeds of foreign official corruption.<sup>31</sup> Broker/dealers should monitor future pronouncements from Treasury, while also determining the extent to which they offer "private banking accounts," and ensure that their AML compliance program includes enhanced monitoring and scrutiny of accounts requested or held on behalf of foreign officials who may be involved in corrupt activities. The special due diligence requirements discussed in this section will become effective on July 23, 2002, regardless of whether Treasury has promulgated final regulations.

### ***Monitoring Accounts For Suspicious Activity***

The Money Laundering Abatement Act requires Treasury to adopt regulations requiring broker/dealers to file SARs.<sup>32</sup> Under Treasury's proposed regulations, SARs would be filed with FinCEN. Broker/dealers would be required to file SARs for:

- any transaction conducted or attempted by, at or through a broker/dealer involving (separately or in the aggregate) funds or assets of \$5,000 or more for which:
  - the broker/dealer detects any known or suspected federal criminal violation involving the broker/dealer, or
  - the broker/dealer knows, suspects, or has reason to suspect that the transaction:
    - involves funds related to illegal activity,<sup>33</sup>
    - is designed to evade the regulations, or
    - has no business or apparent lawful purpose and the broker/dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

Although the reporting threshold begins at \$5,000, in its proposed regulations, Treasury notes that a risk-based approach to developing compliance procedures that can be reasonably expected to promote the detection and reporting of suspicious activity should be the focus of a broker/dealer's AML compliance program. Treasury further notes that a compliance program that allows for the review of only those transactions that are above a set threshold, regardless of whether transactions at a lower dollar threshold may involve money laundering or other risks, would probably not be a satisfactory program.<sup>34</sup> Broker/dealers should file a SAR and in some circumstances notify law enforcement authorities of all transactions that arouse articulable suspicion that proceeds of criminal, terrorist, or corrupt activities may be involved.

Treasury could amend its proposed regulations based on comments it receives from interested parties. Treasury is required to issue final SAR regulations by July 1, 2002, and firms will be required to file SARs beginning 180 days after final broker/dealer SAR regulations are published in the *Federal Register*. To demonstrate a strong commitment to compliance with AML principles and goals, broker/dealers should consider filing SARs voluntarily prior to the effective date of the regulations. NASD Regulation will keep members informed as Treasury's proposed regulations are amended and finalized.

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## Special NASD Notice to Members 02-21

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### *Money Laundering "Red Flags"*

Broker/dealers need to look for signs of suspicious activity that suggest money laundering.<sup>35</sup> If a broker/dealer detects "red flags," it should perform additional due diligence before proceeding with the transaction. Examples of "red flags" are described below:

- The customer exhibits unusual concern regarding the firm's compliance with government reporting requirements and the firm's AML policies, particularly with respect to his or her identity, type of business and assets, or is reluctant or refuses to reveal any information concerning business activities, or furnishes unusual or suspect identification or business documents.
- The customer wishes to engage in transactions that lack business sense or apparent investment strategy, or are inconsistent with the customer's stated business strategy.
- The information provided by the customer that identifies a legitimate source for funds is false, misleading, or substantially incorrect.
- Upon request, the customer refuses to identify or fails to indicate any legitimate source for his or her funds and other assets.
- The customer (or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations.
- The customer exhibits a lack of concern regarding risks, commissions, or other transaction costs.
- The customer appears to be acting as an agent for an undisclosed principal, but declines or is reluctant, without legitimate commercial reasons, to provide information or is otherwise evasive regarding that person or entity.
- The customer has difficulty describing the nature of his or her business or lacks general knowledge of his or her industry.
- The customer attempts to make frequent or large deposits of currency, insists on dealing only in cash equivalents, or asks for exemptions from the firm's policies relating to the deposit of cash and cash equivalents.
- The customer engages in transactions involving cash or cash equivalents or other monetary instruments that appear to be structured to avoid the \$10,000 government reporting requirements, especially if the cash or monetary instruments are in an amount just below reporting or recording thresholds.
- For no apparent reason, the customer has multiple accounts under a single name or multiple names, with a large number of inter-account or third-party transfers.
- The customer is from, or has accounts in, a country identified as a non-cooperative country or territory by the Financial Action Task Force (FATF).<sup>36</sup>
- The customer's account has unexplained or sudden extensive wire activity, especially in accounts that had little or no previous activity.
- The customer's account shows numerous currency or cashiers check transactions aggregating to significant sums.
- The customer's account has a large number of wire transfers to unrelated third parties inconsistent with the customer's legitimate business purpose.

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## Special NASD Notice to Members 02-21

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- The customer's account has wire transfers that have no apparent business purpose to or from a country identified as a money laundering risk or a bank secrecy haven.
- The customer's account indicates large or frequent wire transfers, immediately withdrawn by check or debit card without any apparent business purpose.
- The customer makes a funds deposit followed by an immediate request that the money be wired out or transferred to a third party, or to another firm, without any apparent business purpose.
- The customer makes a funds deposit for the purpose of purchasing a long-term investment followed shortly thereafter by a request to liquidate the position and transfer of the proceeds out of the account.
- The customer engages in excessive journal entries between unrelated accounts without any apparent business purpose.
- The customer requests that a transaction be processed in such a manner to avoid the firm's normal documentation requirements.
- The customer, for no apparent reason or in conjunction with other "red flags," engages in transactions involving certain types of securities, such as penny stocks, Regulation "S" (Reg S) stocks, and bearer bonds, which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity.)
- The customer's account shows an unexplained high level of account activity with very low levels of securities transactions.
- The customer maintains multiple accounts, or maintains accounts in the names of family members or corporate entities, for no apparent business purpose or other purpose.
- The customer's account has inflows of funds or other assets well beyond the known income or resources of the customer.<sup>37</sup>

The above-listed money laundering "red flags" are not exhaustive; however, an awareness of the "red flags" will help ensure that broker/dealer personnel can identify circumstances warranting further due diligence. Appropriate "red flags" should be described in the written policies and AML compliance procedures of the broker/dealer.

### *Reporting Procedures*

Although final regulations concerning the filing of SARs may not be adopted until July 1, 2002, voluntary reporting is useful to the government and helpful to firms in order to provide a defense to charges of aiding and abetting money laundering violations. Furthermore, in anticipation of the adoption of the final broker/dealer SAR requirements, all broker/dealers should be preparing to establish and implement procedures to detect and report suspicious transactions by means of SARs. Firms should implement systems, preferably automated ones, that would allow firms to monitor trading, wire transfers, and other account activity to allow firms to determine when suspicious activity is occurring. If a firm decides to monitor customer accounts manually, it must review a sufficient amount of account activity to ensure the detection of suspicious activity by allowing the member to identify patterns of activity and more importantly, new patterns or patterns that are inconsistent with the customer's financial status or make no economic sense.

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## **Special NASD Notice to Members 02-21**

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Exception reports should consider the transaction size, location, type, number, and the nature of the activity. Firms should create guidelines for employees that identify examples of suspicious activity that may involve money laundering and form lists of high-risk clients whose activities may warrant further scrutiny. Firms should develop procedures for following-up on transactions that have been identified as suspicious or high-risk.

Broker/dealers should also develop administrative procedures concerning SARs. The procedures should address the process for filing SARs and reviewing SAR filings and the frequency of filings for continuous suspicious activity. In addition, a broker/dealer should consider requiring that all of its SAR filings be reported periodically to its Board of Directors and/or to senior management. In the event of a high-risk situation, broker/dealers should require that a report be made immediately to the Board of Directors and/or senior management.<sup>38</sup>

### *Recordkeeping And Disclosure*

Firms should develop procedures to maintain the confidentiality of the SAR filings and to maintain copies of SARs for a five-year period. Firms are prohibited from notifying any person involved in a reported transaction that the transaction has been reported on a SAR. In addition, firms may not disclose SARs or the fact that a SAR was filed, other than to law enforcement agencies or securities regulators. Firms must also have procedures in place to ensure the denial of any subpoena requests for SARs or information in SARs, and for informing FinCEN of any subpoena received. It may be advisable to segregate SAR filings and supporting documentation from other books and records of the firm to avoid violating the prohibitions on disclosure of these records. The broker/dealer should also establish procedures and identify a contact person to handle requests for a subpoena or other requests that call for disclosure of a SAR.

### *Currency Transaction Reports*

Broker/dealers should have procedures to ensure compliance with the BSA provision requiring broker/dealers to file CTRs with FinCEN.

### *Currency And Monetary Instrument Transportation Reports*

Broker/dealers should have procedures to ensure compliance with the BSA provision requiring broker/dealers to file CMIRs with the Commissioner of Customs when any person physically transports, receives, mails, or ships currency or other monetary instruments into or out of the United States, in aggregated amounts exceeding \$10,000 at one time.

### ***Procedures For Sharing Information With And Responding To Requests For Information From Federal Law Enforcement Agencies***

Broker/dealers should develop procedures to handle requests for information from FinCEN relating to money laundering or terrorist activity. Under Treasury's *proposed* regulations implementing Section 314, which were published in the *Federal Register* on March 4, 2002, FinCEN may require broker/dealers to search their records to determine whether they maintain or have maintained any account for, or have engaged in any transaction with, each individual, entity, or organization named in FinCEN's request. If a broker/dealer identifies an account or transaction identified by FinCEN, it would be required to report the identity of the individual, entity, or organization, the account number, all identifying information provided by the account holder when the account was established, and the date and type of transaction. Broker/dealers would be required to report the information to FinCEN as soon as possible either by e-mail to [patriot@fincen.treas.gov](mailto:patriot@fincen.treas.gov), by calling the Financial Institutions Hotline (1-866-556-3974), or by any other means that FinCEN specifies.

## **Special NASD Notice to Members 02-21**

Broker/dealers also should identify contact persons and have procedures in place for providing information to and handling requests from enforcement authorities about the firms' AML efforts, as well as customers engaged in possible money laundering. This information must be provided to the appropriate agency and made available at a specified location when requested. Firms should establish procedures to provide such information *not later than seven days* after receiving a written enforcement agency request.

Firms should also have procedures in place to terminate a correspondent relationship with a foreign bank *within 10 business days* of receiving written notice from Treasury or the United States Attorney General that the foreign bank failed either to comply with a summons or subpoena or to contest it in United States court.

Finally, in the course of performing due diligence or during the opening of an account, firms should immediately contact Federal law enforcement by telephone in appropriate emergency situations as described below:

- a customer is listed on the OFAC List;
- a customer's legal or beneficial account owner is listed on the OFAC List;
- a customer attempts to use bribery, coercion, undue influence, or other inappropriate means to induce a broker/dealer to open an account or proceed with a suspicious or unlawful activity or transaction; and
- any other situation that a firm reasonably determines requires immediate government intervention.

### ***Voluntary Information Sharing Among Financial Institutions***

To the extent desired and/or appropriate, broker/dealers should have procedures in place for sharing information with other financial institutions about those suspected of terrorism and money laundering. Under Treasury's *interim rule*, which became effective on March 4, 2002, broker/dealers that share this information must file an annual certification with FinCEN.<sup>39</sup> The certification requires broker/dealers to take steps necessary to protect the confidentiality of the information and to use the information only for purposes specified in the rule. The certification can be found at: [www.treas.gov/fincen](http://www.treas.gov/fincen). Broker/dealers should have adequate procedures to protect the security and confidentiality of such information.

### **Designate Compliance Officer**

Every broker/dealer compliance program must designate a compliance officer ("AML Compliance Officer") to help administer the firm's AML compliance program efforts. Broker/dealers should vest this person with full responsibility and authority to make and enforce the firm's policies and procedures related to money laundering. The AML Compliance Officer does not need to be the firm's current compliance officer. Some larger firms have placed this responsibility on the firm's risk manager. Firms may, however, consider incorporating AML compliance requirements into the existing duties of a firm compliance officer. Whomever the firm designates as its AML Compliance Officer should have the authority, knowledge, and training to carry out the duties and responsibilities of his or her position.

The AML Compliance Officer should monitor compliance with the firm's AML program and help to develop communication and training tools for employees. The AML Compliance Officer should also regularly assist in helping to resolve or address heightened due diligence and "red flag" issues.

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## **Special NASD Notice to Members 02-21**

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### **Establish An Independent Testing Function**

In addition to the firm's overall supervisory responsibility to ensure that its procedures are being followed properly, broker/dealers must have an independent testing function to review and assess the adequacy of and level of compliance with the firm's AML compliance program. Either member personnel or a qualified outside party may perform the testing function, depending in part on the firm's size and resources. Smaller firms, for example, may consider using a qualified outside party to complete this function or they may find it more cost effective to use appropriately trained firm personnel. If a firm uses internal personnel, sufficient separation of functions should be maintained to ensure the independence of the internal testing personnel.

The independent testing should be performed annually. After a test is complete, the internal testing personnel or qualified outside party should report its findings to senior management or to an internal audit committee, as appropriate. The firm should ensure that there are procedures for implementation of any of the internal testing personnel's or third party's recommendations and corrective or disciplinary action as the case may warrant.

### **INTRODUCING BROKERS AND CLEARING BROKERS**

The NASD wishes to emphasize that both introducing brokers and clearing brokers have responsibilities under the Money Laundering Abatement Act. **All** broker/dealers should devote special attention to potentially high-risk areas for money laundering. Both introducing brokers and clearing brokers must establish and implement the appropriate AML procedures identified above to comply with the Money Laundering Abatement Act's requirements.

In order to detect suspicious activity, it is imperative that introducing and clearing brokers work together to achieve compliance with the Money Laundering Abatement Act. For instance, introducing brokers generally are in the best position to "know the customer," and thus to identify potential money laundering concerns at the account opening stage, including verification of the identity of the customer and deciding whether to open an account for a customer.<sup>40</sup> In essence, introducing brokers should understand that they are the first line of defense in detecting and deterring suspicious activity. Clearing firms, in turn, may be in a better position to monitor customer transaction activity, including but not limited to, trading, wire transfers, and the deposit and withdrawal into and out of accounts of different financial instruments. To assist introducing brokers and, more importantly, satisfy their own obligations under federal law, clearing firms should establish both automated systems to detect suspicious activity and procedures to share AML information and responsibilities with introducing brokers, consistent with the Money Laundering Abatement Act. For example, both the introducing broker and clearing firm may have information concerning a customer relevant to an assessment of whether a wire transfer out of an account to a particular destination raises any AML concerns.

Importantly, introducing brokers must have a basis for assuring themselves that their clearing firms are monitoring customer account activity on their behalf. Similarly, clearing firms must have a basis for assuring themselves that their introducing firms are following appropriate customer identification procedures. Responsibilities relating to AML compliance should be clearly allocated between the parties, and such responsibilities should be specified in the parties' clearing agreements pursuant to NASD Rule 3230. Any such allocation, however, would not relieve either party from its independent obligation to comply with AML laws.

In short, introducing brokers and clearing firms need to work together to allow each firm to meet its obligation to comply with the AML laws.



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## **Special NASD Notice to Members 02-21**

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### **CONCLUSION**

As stated above, the NASD will update its guidance as new AML rules and regulations become final. In the interim, the NASD reminds members to comply with the provisions of the Money Laundering Abatement Act that currently apply to broker/dealers. Although the obligation to develop and implement an AML compliance program is not a "one-size-fits-all" requirement, all broker/dealers must have an AML compliance program designed to achieve compliance with the BSA and the regulations promulgated thereunder.

## Special NASD Notice to Members 02-21

### ENDNOTES

- 1 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).
- 2 31 U.S.C. §§ 5311, *et seq.*
- 3 In its proposed rules released in December 2001, Treasury defines "correspondent account" for purposes of broker/dealers as "an account established to receive deposits from, make payments on behalf of a foreign bank, or handle other financial transactions related to such bank." See 66 Fed. Reg. 67,459 (December 28, 2001). The NASD will keep members apprised of any changes to the definition of "correspondent account" when Treasury releases its final rules in this area. Please also note that Treasury's definition is different from the definition of correspondent brokerage accounts.
- 4 See 66 Fed. Reg. 67,669 (December 31, 2001). NASD Regulation's AML Web Page provides links to Treasury's proposed and final regulations.
- 5 See 66 Fed. Reg. 67,459 (December 28, 2001).
- 6 See 67 Fed. Reg. 9873 (March 4, 2002); 67 Fed. Reg. 9879 (March 4, 2002).
- 7 See generally *Anti-Money Laundering, Efforts in the Securities Industry*, Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate, GAO-02-111 (October 2001).
- 8 Title 18 U.S.C. §§ 1956 and 1957 make knowingly engaging in, or attempting to engage in, financial transactions involving the proceeds of certain unlawful activities a criminal offense. Therefore, under the criminal statutes, a person or entity could be prosecuted for assisting or participating in money laundering perpetrated by its customer if the firm (or person) knew or was willfully blind to the fact that the transaction involved illegal funds. Criminal penalties include fines up to \$500,000 or twice the value of the property involved in the transaction, whichever is greater, and prison sentences as long as 20 years. In addition to criminal penalties, violators may face civil penalties up to the greater of the value of the property, funds, or monetary interests involved in the transaction or \$10,000, as well as forfeiture of any property involved in the transaction. The BSA also imposes criminal and civil penalties for violations of the BSA or its implementing regulations. Generally, a person can be subject to a criminal fine of up to \$250,000 or imprisonment of up to 5 years, or both. A person who violates the BSA while violating another law of the United States, or engaging in a pattern of illegal activity, is subject to a criminal fine of up to \$500,000 or imprisonment of up to 10 years, or both. The Money Laundering Abatement Act adds additional criminal and civil penalties that can be up to two times the amount of the transaction, not to exceed \$1,000,000 for violations of certain BSA provisions.
- 9 See *NASD Notice to Members 89-12, Reporting Suspicious Currency and Other Questionable Transactions to the IRS/Customs Hotline*.
- 10 See note 3.
- 11 See 66 Fed. Reg. 67,459 (December 28, 2001).
- 12 See 67 Fed. Reg. 9873 (March 4, 2002); 67 Fed. Reg. 9879 (March 4, 2002).
- 13 See 67 Fed. Reg. 9873 (March 4, 2002); 67 Fed. Reg. 9879 (March 4, 2002).
- 14 See 66 Fed. Reg. 67,459 (December 28, 2001).
- 15 See 66 Fed. Reg. 67,669 (December 31, 2001).
- 16 See File No. SR-NASD-2002-24.
- 17 The U.S. Sentencing Commission Guidelines for organizations set out the following criteria for an effective corporate compliance program: (1) whether the company's compliance standards and procedures are reasonably capable of reducing the prospect of criminal activity; (2) whether there is oversight of the compliance program by high-level personnel; (3) whether the company exercises due care in delegating substantial authority; (4) whether the company communicates effectively to all levels of employees; (5) whether the company has in place viable systems for monitoring, auditing, and reporting suspected misconduct without fear of reprisal; (6) whether the company enforces compliance standards in a consistent manner using appropriate disciplinary measures; and (7) whether the company has taken reasonable steps to respond to and prevent further similar offenses upon detection of a violation. See also *In Re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996); *McCall V. Scott*, 250 F. 3d 1997 (9th Cir. 2001).
- 18 The New York Stock Exchange (NYSE) has also proposed Rule 445, which mirrors the NASD's proposed rule. See File No. SR-NYSE-2002-10 (filed with the SEC on February 27, 2002).
- 19 31 U.S.C. § 5318(h) (amended by Section 352 of the Money Laundering Abatement Act).
- 20 See *USA Patriot Act of 2001: Consideration of H.R. 3162 Before the Senate* (October 25, 2001) (statement of Sen. Sarbanes); *Financial Anti-Terrorism Act of 2001: Consideration Under Suspension of Rules of H.R. 3004 Before the House of Representatives* (October 17, 2001) (statement of Rep. Kelly) (provisions of the Financial Anti-Terrorism Act of 2001 were incorporated as Title III in the PATRIOT Act.)
- 21 See *Notice to Members 96-32; Notice to Members 96-70; and Notice to Members 99-11*.

## Special NASD Notice to Members 02-21

- 22 Treasury has until October 26, 2002 to promulgate additional customer identification requirements.
- 23 Firms should authenticate customer identity at the time of account opening, and not just when an account shows suspicious activity.
- 24 See *Notice to Members 01-67, Terrorist Activity*. Executive Order 13224 prohibits transactions with those persons and organizations listed on the OFAC Web Site on the SDN List as well as with the listed embargoed countries and regions; See also Section 326 of the Money Laundering Abatement Act. The OFAC Web Site is updated frequently, so members should consult the list on a regular basis. Software programs that allow firms to perform this function in a more user friendly and automated manner are available.
- 25 Note that under the BSA, firms must record a current passport number or other valid government identification number for transfers or transmittals of \$3,000 or more by or for non-resident alien accounts. See 31 C.F.R. 103.33 (2001).
- 26 31 U.S.C. § 5318(k) (amended by Section 319(b) of the Money Laundering Abatement Act).
- 27 31 U.S.C. § 5318(j) (amended by Section 313 of the Money Laundering Abatement Act). Please note that Treasury included a model certification form in its December 2001 rule proposal, available at [www.nasdr.com/money.asp](http://www.nasdr.com/money.asp).
- 28 31 U.S.C. § 5318(i) (amended by Section 312 of the Money Laundering Abatement Act).
- 29 Treas. Dept., Bd. of Gov. of Fed. Res., Comp. Of the Currency, F.D.I.C., O.T.S. and State Dept., *Guidance on Enhanced Scrutiny for Transactions that May Involve the Proceeds of Foreign Official Corruption*, (Jan. 2001) and at [www.ustreas.gov/press/releases/guidance.htm](http://www.ustreas.gov/press/releases/guidance.htm).
- 30 31 U.S.C. § 5318(i) (amended by Section 312(a)(i)(4)(B) of the Money Laundering Abatement Act).
- 31 31 U.S.C. § 5318(i) (amended by Section 312(a)(i)(3) of the Money Laundering Abatement Act).
- 32 31 U.S.C. § 5318(g).
- 33 Evidence that a broker/dealer knows that the property involved in a financial transaction constitutes the proceeds of unlawful activity and nonetheless conducts (or attempts to conduct) the financial transaction with the unlawful proceeds with the intent to promote the unlawful activity or knowing that the transaction is designed to conceal or disguise the nature, source, or ownership of the unlawful proceeds, can subject a broker/dealer to criminal prosecution. See 18 U.S.C. § 1956.
- 34 66 Fed. Reg. 67,669 at 67,674 (Dec. 31, 2001).
- 35 Firms are also reminded to notify self-regulatory organizations and the SEC if they detect indicators of securities laws violations. Firms should note that there are exceptions to the proposed broker/dealer SAR requirements, including that a broker/dealer is not required to file a SAR to report a possible violation of any of the federal securities laws or rules of a self-regulatory organization by the broker/dealer or any of its officers or directors, employees, or other registered representatives, other than certain rules, so long as such violation is properly reported to the SEC or a self-regulatory organization. See 66 Fed. Reg. 67,669 at 67,676-677 (Dec. 31, 2001).
- 36 The FATF is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering. The FATF monitors members' progress in implementing anti-money laundering measures, reviews money laundering techniques and counter-measures, and promotes the adoption and implementation of anti-money laundering measures globally. See links to the FATF Web Site at [www.nasdr.com/money.asp](http://www.nasdr.com/money.asp).
- 37 See Speech by Lori Richards, Director of Securities and Exchange Commission's Office of Compliance Inspections and Examinations, *Money Laundering: It's on the SEC's Radar Screen* (May 8, 2001); See also SIA, *Preliminary Guidance for Deterring Money Laundering Activity*, at 12-13 (Feb. 2002); Sarah B. Estes, Sutherland, Asbill & Brennan LLP, *Securities Broker-Dealers and Money Laundering: The Obligations of Broker-Dealers Under Money Laundering Laws* at 5-6 (2001).
- 38 Firms may wish to consult FinCEN's Web Site for more information (see [www.treas.gov/fincen](http://www.treas.gov/fincen)), including, annual SAR Activity Review reports and SAR Bulletins, which discuss trends in suspicious activity reporting and give helpful tips.
- 39 See 67 Fed. Reg. 9873 (March 4, 2002).
- 40 All broker/dealers should consider using electronic databases (such as Equifax, Experion, Lexis/Nexis, or other in-house or custom databases) to verify customer identity.

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## **Special NASD Notice to Members 02-21**

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The AML Compliance Officer should ensure that AML records are maintained properly and that SARs are filed as required pursuant to the firm's procedures. In short, the AML Compliance Officer should be the primary contact for the firm on AML compliance implementation and oversight.

Finally, to the extent applicable, the AML Compliance Officer should report to a member of the Board of Directors (or other high level executive officer) on AML compliance issues. This senior officer or director should communicate with firm employees on AML issues to further demonstrate the firm's commitment to AML compliance. The firm's senior management should work with the AML Compliance Officer to help ensure that the firm's AML policies, procedures, and programs meet all applicable government standards and that they are effective in detecting, deterring, and punishing or correcting AML misconduct. The firm's senior management also should work with the AML Compliance Officer to ensure that the AML compliance policies, procedures, and programs are updated and reflect current requirements.

### **Establish An Ongoing Training Program**

The Money Laundering Abatement Act requires firms to develop ongoing employee training programs on AML issues. The AML employee training should be developed under the leadership of the AML Compliance Officer or senior management. Educational pamphlets, videos, intranet systems, in-person lectures, and explanatory memos are all appropriate training vehicles for AML training. The training may vary based on the type of firm and its size, its customer base, and its resources. The NASD urges its members to instruct their employees about the following topics, at a minimum:

- how to identify "red flags" and possible signs of money laundering that could arise during the course of their duties;
- what to do once the risk is identified;
- what their roles are in the firm's compliance efforts;
- how to perform their roles;
- the firm's record retention policy; and
- disciplinary consequences, including civil and criminal penalties for non-compliance with the Money Laundering Abatement Act.

The NASD advises its members, *at a minimum*, to implement AML training on an annual basis. Frequent evaluation of training programs may be necessary to ensure that firms are informing employees about any new developments with the rules and regulations. As noted above, firms should update their training materials, as necessary, to reflect new developments in the law. Incorporation of money laundering compliance training into continuing education programs is recommended for both registered representatives and supervisors.

A broker/dealer should scrutinize its operations to determine if there are certain employees who may need additional or specialized training due to their duties and responsibilities. For example, employees in Compliance, Margin, and Corporate Security may need more comprehensive training. The firm should train these employees or have these employees receive the appropriate instruction to ensure compliance with the Money Laundering Abatement Act.

**INFORMATIONAL**

## Continuing Education

### Securities Industry/Regulatory Council On Continuing Education Issues A Status Report On The Securities Industry Continuing Education Program

**SUGGESTED ROUTING**

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

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

**KEY TOPICS**

- Continuing Education
- Firm Element
- Regulatory Element

### Executive Summary

The Securities Industry/Regulatory Council on Continuing Education (the Council), which has advisory and consultative responsibilities for the development, implementation, and ongoing operation of the Securities Industry Continuing Education Program (Program), has issued a Status Report on recent developments in both the Regulatory and Firm Elements of the Program. A short list of frequently asked questions (FAQs) addresses significant changes to the Program since the previous Status Report in August 1998 or provides clarification to major aspects of the Program.

The Council has 20 representatives — six from self-regulatory organizations (SROs),<sup>1</sup> and 14 from the industry. The industry representatives serve staggered three-year terms and are selected through a nominating committee process designed to maintain representation from a broad cross section of broker/dealers. Liaisons from the Securities and Exchange Commission and the North American Securities Administrators Association also participate in Council matters.

Questions about this *Notice* may be directed to John Linnehan, Director, Continuing Education, NASD Regulation, at (240) 386-4684.

### Endnote

- 1 The American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Municipal Securities Rulemaking Board, the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

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Securities Industry Continuing Education Program

# Status Report on the Securities Industry Continuing Education Program

## Introduction

As Chairman of the Securities Industry/Regulatory Council on Continuing Education (Council), I am pleased to provide this *Status Report* on recent developments in both the Regulatory and Firm Elements of the Securities Industry Continuing Education Program (Program). At the end of the Status Report are several *Frequently Asked Questions* (FAQs) that address significant changes to the Program since the last *Status Report* in August 1998 or provide clarification to major aspects of the Program. FAQ #3, for example, summarizes how firms now use Web CRD to learn about the Regulatory Element obligations of their registered persons. For a complete list of continuing education FAQs, please visit the Council's new Web Site—[www.securitiescep.com](http://www.securitiescep.com). The FAQs and other Web Site features described below make the Council Web Site the best available source of information about the Securities Industry Continuing Education Program. I encourage you to visit and use it often.

## The Regulatory Element

Over 155,000 Regulatory Element sessions are delivered every year, and now there are three separate Regulatory Element programs. The General Program (S101) is the original Regulatory Element program developed in 1995. It is for all registrations except Series 6 and Principal/Supervisor registrations. The Series 6 Program (S106) was introduced January 14, 2002, for Investment Company Products/Variable Contracts Representatives. The Supervisor Program (S201) is for principals and supervisors, and was introduced in October 1998. The Council's goal is to

"refresh" each Regulatory Element program with all new scenarios on a cycle so that each participant sees topical and current scenarios at each Regulatory Element requirement.

### *In-Firm Delivery of the Regulatory Element*

In-Firm Delivery is the name given to the arrangement whereby a broker/dealer, adhering to certain technology, proctoring, and regulatory standards, delivers the Regulatory Element to its registered persons on firm premises. The In-Firm Delivery program was introduced in the first quarter of 2001 and a number of firms are now participating.

### *Regulatory Element Delivery Outside North America.*

The Regulatory Element and qualification exams are delivered outside North America at sites in London, which has been in operation for many years, and Paris, Frankfurt, Hong Kong, Seoul, Singapore, Sydney, and Tokyo, all of which opened in 2001.

## The Firm Element

### *The Council Web Site*

In November 2001, the Council launched its own Web Site to serve as the single location of its published material and a provider of continuing and comprehensive information and assistance. Significant features of [www.securitiescep.com](http://www.securitiescep.com) are:

- The *Firm Element Organizer*, a software application to assist firms to conduct their Firm Element Needs Analysis and develop Firm Element training plans. The *Firm Element Organizer* database may also be independently searched for an area of interest.
- Computer-based training scenarios that have been cycled out of the Regulatory Element can be ordered to use for Firm Element or compliance training.
- Users can register for e-mail alerts that will notify them whenever new SRO notices, publications, and rule and regulation updates are added to the *Firm Element Organizer* database.
- A comprehensive list of *Frequently Asked Questions* about the Regulatory and Firm Elements.
- A facility to e-mail continuing education questions and receive prompt answers.

## Looking to the Future

The Continuing Education Program has made great strides over the years, and the Council looks forward to enhancing the Program further by:

- Examining whether to incorporate new instructional design and formatting alternatives that could enhance the effectiveness of the Regulatory Element programs.
- Reviewing the procedures and requirements of the In-Firm Delivery program with an eye to increasing participation.
- Encouraging firms to use the CE Web Site as an idea-sharing medium. The Council might also periodically survey Web Site users for suggestions about how to continually improve the Site.

I encourage everyone in the securities industry to assist the Council by communicating their observations and ideas to the Council members listed in this Status Report.

Mary N. Owen, Council Chairman  
Managing Director-Compliance  
Deutsche Bank Securities Inc.

# Members of The Securities Industry/Regulatory Council on Continuing Education

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MML Investors Services, Inc.

**Ruth C. Hannenberg**

Senior Managing Director  
Mesirow Financial

**Annette Tomarazzo**

Director  
Enforcement and Investigations  
American Stock Exchange

**Susan Hechtlinger**

Senior Vice President and Director of Compliance  
Banc of America Investment Services

**James A. Tricarico, Jr.**

Formerly General Counsel, Executive Vice President  
Prudential Securities, Inc.

**Kristin Hunnibell**

Senior Vice President and Chief Financial Officer  
Arthur W. Wood Company, Inc.

**Gregory D. Tyler**

Executive Director, Investment Management Training  
USAA Investment Management Company

**Loretta Jones**

Director of Professional Qualifications  
Municipal Securities Rulemaking Board

**Donald van Weezel**

Vice President, Regulatory Affairs  
New York Stock Exchange

**Frank J. McAuliffe**

Senior Vice President  
Testing and Continuing Education  
NASD Regulation, Inc.

**Bruce Zwigard**

Chairman and CEO  
Investacorp, Inc.



# Frequently Asked Questions And Answers Regarding The Securities Industry Continuing Education Program

NOTE: The seven FAQs below address significant changes to the Program since the last Status Report in August 1998 or provide clarification to major aspects of the Program. For a comprehensive list of FAQs, visit the Securities Industry/Regulatory Council on Continuing Education Web Site at [www.securitiescep.com](http://www.securitiescep.com).

1. Q. *What registration categories are covered by the Regulatory Element?*

**A. Those who hold the following registrations are subject to the Regulatory Element requirements:**

- 4 Registered Options Principal \*
- 6 Investment Company Products/Variable Contracts Limited Representative
- 7 General Securities Representative
- 7 Securities Trader (NYSE)
- 7 Trading Supervisor (NYSE)
- 7A Floor Members Engaged in Public Business with Professional Customers (NYSE)
- 7B Floor Clerks of Members Engaged in Public Business with Professional Customers (NYSE)
- 8 or 9/10 General Securities Sales Supervisor \*
- 8 or 9/10 Branch Office Manager (NYSE) \*
- 11 Assistant Representative—Order Processing
- 12 General Securities Sales Supervisor (NYSE) \*
- 13 Allied Member (NYSE)
- 14 Compliance Official (NYSE) \*
- 15 Foreign Currency Options
- 16 Supervisory Analyst (NYSE) \*
- 17 Limited Registered Representative (United Kingdom)
- 22 Direct Participation Programs Limited Representative
- 24 General Securities Principal \*
- 26 Investment Company Products/Variable Contracts Limited Principal \*
- 27 Financial and Operations Principal \*

28	Introducing Broker-dealer Financial and Operations Principal *
37	Canada Module of the General Securities Representative Examination (Options included)
38	Canada Module of the General Securities Representative Examination (Options not included)
39	Direct Participation Programs Limited Principal *
47	Japan Module of the General Securities Representative Examination
52	Municipal Securities Representative
53	Municipal Securities Principal *
55	Equity Trader
62	Corporate Securities Limited Representative
72	Government Securities Representative
—	Government Securities Principal *
—	Securities Lending Representative (NYSE)
—	Securities Lending Supervisor (NYSE)
82	Limited Representative Private Securities Offerings

\* Persons with these Principal/Supervisor registrations participate in the Principal/Supervisor Regulatory Element computer-based training module (the Supervisor Program—S201).

2. Q. *Who is currently grandfathered from the Regulatory Element?*

A. **A registered person who can answer “Yes” to all of *either* set of conditions is currently grandfathered from the Regulatory Element.**

Those Registered as a Principal	Those Not Registered as a Principal
<ol style="list-style-type: none"> <li>I had been continuously registered as a principal for more than 10 years as of July 1, 1998.</li> <li>I have not been the subject of significant disciplinary action after June 30, 1988.</li> </ol>	<ol style="list-style-type: none"> <li>As of July 1, 1998, I was not registered as a principal and had been continuously registered for more than 10 years.</li> <li>I have not been the subject of a significant disciplinary action after June 30, 1988.</li> <li>I did not become registered as a principal after July 1, 1998.</li> </ol>

3. Q. *How do broker/dealers learn of the Regulatory Element requirements of their registered persons?*
- A. **Broker/dealers must use CRD to obtain information about the Regulatory Element requirements of their registered persons. Specifically, firms must periodically review the continuing education information in their *Firm Queues* on CRD. The *Firm Queues* are listed in the Individual Processing column of the CRD Site Map, the first page after the log-in screen. CRD also makes available supplemental CE reports and e-mail notifications to assist firms in identifying and tracking their registered representatives for Regulatory Element purposes.**

## Continuing Education Firm Queues

### ***Approaching CE Requirement Queue***

Lists individuals with CE Windows starting within 28 days.

### ***Currently CE Required Queue***

Lists all individuals currently in their 120-day CE Window.

### ***Recently CE Satisfied Queue***

Lists individuals who have completed the Regulatory Element within a time period specified by the user.

### ***CE Inactive Queue***

Lists *approved* individuals at the firm who are currently CE Inactive.

### ***Current Individual Deficiencies Queue<sup>1</sup> — CE Inactive***

Lists *new hires* of the firm who are CE Inactive and whose registrations are therefore not approved. (Note: CRD does not approve the registrations of persons who are inactive unless and until those persons satisfy the Regulatory Element. Persons in this situation have CRD registrations with a status of DEFICIENT-CE.)

### ***Currently 2-Year CE Termed Queue***

Lists all individuals who have had their registrations administratively terminated because they had been CE Inactive for two years.

<sup>1</sup> CE Inactive Deficiencies are found in the Registrations Queue. To access, first click on the Registrations Queue => Current Individual Deficiencies => CE Inactive from the deficiencies list.

## **Supplemental CE Reports Available From CRD**

CRD will also provide firms with various reports to complement the Continuing Education Queues. Reports marked with an asterisk (\*) may be imported into a spreadsheet or database where the user may then sort the data. To request any of these reports, please send an e-mail request to [crdreports@nasd.com](mailto:crdreports@nasd.com) or call the Gateway Call Center at (301) 869-6699.

### ***CE Download\****

This report defines the CE base date for actively registered individuals with the firm who are subject to the Regulatory Element.

### ***Approaching CE Queue Download\****

This report allows firms to download the list of individuals in the firm's Approaching CE Requirement Queue.

### ***Approaching CE Queue Report***

This report will provide the firm with a "printable" list of individuals in the firm's Approaching CE Requirement Firm Queue.

### ***Current Inactive CE Individuals Within A Firm***

This report lists all individuals currently employed with the requesting firm who have a status of CE Inactive at the time the report is requested.

### ***Previously Inactive CE Individuals Within A Firm***

This report lists all individuals who were employed by the requesting firm and who had a status of CE Inactive during the timeframe specified.

### ***Approaching CE 2 Year Termed Report***

This report lists individuals who *will be* administratively terminated within the next 10 days (if they remain CE Inactive) for failure to satisfy the Regulatory Element requirement. These individuals have had a status of CE Inactive for two years from their most recent requirement window end date.

### ***CE 2 Year Termed Report***

This report lists individuals who were employed by the requesting firm and were administratively terminated during the timeframe specified. Individuals on this report will need to re-qualify for registration by a qualification examination and must submit an Initial Form U-4 to re-activate their registrations.

## E-Mail Notifications

There are two types of e-mail notifications that firms can request from CRD. The first is an e-mail sent to the firm whenever a registered person has not satisfied his or her Regulatory Element requirement within the first 30 days of his or her 120-day requirement window. The second is an e-mail sent to the firm whenever a registered person at the firm becomes inactive for failing to satisfy the Regulatory Element requirement. To request these e-mails, firms should:

1. Log onto CRD and go to the CRD *Main* tab. This is the Site Map.
  2. In the *Organization* column on the Site Map, click on *NFI Organization Search* under the *Organization Non-Filing Info* heading.
  3. Click on *Firm Notification* on the Navigation Panel at the left of the screen, OR on the footer at the bottom of the screen. (**Important Note:** if you do not see *Firm Notification* on the Navigation Panel or at the bottom of the screen, it is probably because you do not have authorization for this function. Contact your firm's CRD Account Administrator to obtain authorization.)
  4. Enter the e-mail address to which you would like the e-mail notifications sent, and the contact individual's name and phone number.
  5. Click on the box or boxes that represent the continuing education e-mail notification(s) you wish to receive.
  6. Click on Save.
- 
4. *Q. How many different Regulatory Element programs are there?*
    - A. **There are currently three different Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors, the S106 Series 6 Program for Investment Company Products/Variable Contracts Representatives, and the S101 General Program for all other registrations.**
  5. *Q. Are there examples of Regulatory Element questions available?*
    - A. **Yes. Firms may order S101 General Program scenarios from the Council Web Site: [www.securitiescep.com](http://www.securitiescep.com) => *Regulatory Element* => *Regulatory Element Scenario Catalog*. The available scenarios have been removed from the S101 program to accommodate new content. Broker/dealers have used the scenarios for their Firm Element training programs and also to provide their registered persons with examples of the S101 General Program. The S101 scenarios are very similar to the S106 Series 6 scenarios. S201 Supervisor Program scenarios will become available in 2002.**

6. Q. *What is the Firm Element Organizer?*
- A. **The *Firm Element Organizer* is a software application that firms can use when undertaking their Firm Element Needs Analysis and in developing written training plans. At the heart of the Firm Element Organizer is a database of *NASD Notices to Members*, *NYSE Information Memos*, and publications from other SROs and the SEC from the past three years. To keep the database current, new items are added regularly. The Firm Element Organizer and a link to a tutorial showing how the Firm Element Organizer might be used when developing a training plan for training about variable annuities at XYZ Co., a hypothetical firm with one office and 25 registered persons, can be found at [www.securitiescep.com](http://www.securitiescep.com) => *Firm Element* => *Firm Element Organizer*.**
7. Q. *Can registered persons who volunteer or are called into active military duty obtain relief from continuing education (Regulatory and Firm Element) obligations for the period of time that they are on active duty?*
- A. **Yes. Both the NYSE and the NASD (see amended IM-1000-2) provide relief to registered persons who volunteer or are called into active military duty. The procedure requires the broker/dealer of the registered person to notify the CRD/Public Disclosure Department by means of a letter (on firm letterhead) identifying the name and CRD number of the person called into active duty, the name and CRD number of the firm (or firms) with whom the person is associated, and a copy of the official call-up notification. Letters should be mailed to P.O. Box 9495, Gaithersburg, MD 20898-9495 or faxed to (240) 386-4751.**

**ACTION REQUESTED BY  
MAY 13, 2002**

## **Business Continuity Plans**

### **The NASD Seeks Comment On Proposed Rules Relating To Member Firm Business Continuity Plans And Emergency Contact Information**

**SUGGESTED ROUTING**

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

- Executive Representative
- Institutional
- Internal Audit
- Legal & Compliance
- Operations
- Registration
- Senior Management
- Systems

**KEY TOPICS**

- Business Continuity
- Disaster Recovery
- Emergency Preparedness

### **Executive Summary**

The NASD is seeking comment from NASD members, investors, and other interested parties on proposed rules that would require members to create and maintain business continuity plans. Following the events of September 11th, most member firms were able to resume their business operations relatively quickly. Building upon the lessons learned from September 11th, the NASD is considering steps that member firms can take to ensure that they are prepared for possible future business disruptions. Through an extensive fact gathering process, including a significant survey initiative, the NASD obtained a wealth of data on the business continuity plans of NASD member firms.

The NASD is seeking comment on whether to require members to create and maintain business continuity plans. Further, the NASD is soliciting comment on whether the NASD should, through the Member Firm Contact Questionnaire, collect additional information about member firms to assist the NASD in the event of future significant business disruptions.

### **Action Requested**

The NASD encourages all members, investors, and interested parties to comment. Comments can be submitted using the following methods:

- 1) mailing in checklist (Attachment B);
- 2) mailing in written comments;
- 3) e-mailing written comments to *pubcom@nasd.com*; or
- 4) submitting comments online at NASD Regulation's Web Site (*www.nasdr.com*).

Written comments should be mailed to:

*Barbara Z. Sweeney  
Senior Vice President  
Office of the Corporate Secretary  
NASD Regulation, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500*

The only comments that will be considered are those submitted in writing, either via e-mail, regular mail, or NASD Regulation's Web Site.

Before becoming effective, the NASD Regulation Board of Directors must adopt, and the Securities and Exchange Commission (SEC) must approve, any rule change.

### **Questions/Further Information**

Questions regarding this *Notice to Members* may be directed to Daniel M. Sibears, Senior Vice President and Deputy, Member Regulation, NASD Regulation, at (202) 728-6911, and Brian J. Woldow, Attorney, Office of General Counsel, NASD Regulation, at (202) 728-6927.

### **Background And Discussion**

In the wake of the events of September 11, 2001, the securities markets and industry showed an impressive ability to recover and continue their business. It is a tribute to the strength of the U.S. financial markets that broker/dealers were able to return to relatively normal operations so quickly. After the events of this period, the NASD decided to examine the industry's recovery capability in greater detail and to determine whether any regulatory action is needed to assure swift recovery in the event of any future significant business disruptions.

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## **NASD Notice to Members 02-23—Request For Comment**

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### ***NASD Survey Initiative***

To fully understand the ability of members to respond to significant business disruptions, such as those resulting from the tragedy of September 11th, the staff surveyed 150 randomly selected member firms and 120 of the largest member firms. The 150 firms chosen to participate in the survey represent a statistically random sample of the entire NASD membership (approximately 5,600 NASD members) proportionately separated into the three categories of introducing, clearing/self-clearing, and specialty products firms. In addition, the staff selected 120 of the largest member firms to survey based on the number of registered persons associated with the firm. These firms collectively represent 70 percent of the registered representative population. The survey questions sent to the 120 large firms were identical to those sent to the 150 randomly selected firms. The results received from the survey sent to large firms are distinct from the random sample and do not overlap.

As further detailed below, the survey revealed many encouraging results. At the same time, the survey showed that a significant number of the randomly selected member firms do not have business continuity plans. In addition, a significant number of smaller and mid-sized firms do not store back-up data and systems in a geographically separate location from their primary systems and records. Approximately two-thirds of the randomly selected firms and almost all of the larger firms can recover data from a remote site. Further, less than half of the randomly selected firms and three-fourths of the larger firms have back-up facilities in place that have

the capacity to handle the same volume of trading as the primary facility. Nearly all member firms perform daily or weekly back-up of records.

Not surprisingly, the maintenance of trading and investor records by a clearing firm for an introducing firm is common. Financial records, however, are less likely to be maintained by a correspondent's clearing firm. Although clearing firms do maintain certain records for introducing firms, over one-fourth of the introducing firms reported that there are significant records that are not kept at their clearing firm. This was confirmed by clearing firms.

The survey results showed that approximately 85 percent of the larger firms have back-up systems to accommodate investor communications between the firm and its customers. In comparison, less than half of the randomly selected firms maintain such systems. Almost three-fourths of the larger firms and less than one-fourth of the randomly selected firms maintain Internet Web Sites that allow for customer transactions and emergency communications with investors.

Importantly, the survey also focused on the capability of firms following the September 11th tragedy to ensure that customers had access to their accounts. Very few firms reported that their customers were unable to execute securities transactions in their accounts when the markets became operational following the September 11th tragedy.

The survey examined the ability of members to communicate with key staff during a significant business disruption. Virtually all of the randomly selected firms and the larger firms maintain a readily

available list of contact information for the purpose of locating and communicating with key staff during a significant business disruption. In addition, approximately three-fourths of randomly selected firms and almost all of the larger firms maintain a readily available list of contact information for clearance and settlement organizations, banks, counterparties, key business relationships, and regulators.

Finally, the survey questioned whether it would be helpful for the NASD to serve as a central repository for firms' business continuity plans and emergency contact numbers for key organizations (e.g., Securities and Exchange Commission, Depository Trust & Clearing Corporation, National Securities Clearing Corporation, Federal Reserve Bank). A substantial number of firms believed a repository service would be helpful.

### ***NASD Proposed Rules***

Based upon the survey findings, discussions with the SEC and the Government Accounting Office, and the experiences of September 11th, the NASD is soliciting comment on a proposal that would require member firms to create and maintain business continuity plans. The proposal recognizes that business continuity plans should take into account the particular operations and activities of a member. Based upon the diverse nature of the NASD membership, the proposal allows member firms to tailor plans to suit their size, business, and structure. In particular, the NASD is seeking comment on the scope of business continuity plans. The proposal states that a member's business



## NASD Notice to Members 02-23—Request For Comment

continuity plan must, at a minimum, address:

- data back-up and recovery (hard copy and electronic);
- mission critical systems;
- financial and operational assessments;
- alternate communications between customers and the firm;
- alternate communications between the firm and its employees;
- business constituent, bank and counter-party impact;
- regulatory reporting; and
- communications with regulators.

The proposed rule language defines “mission critical system” as any system that is necessary, depending on the nature of a member’s business, to ensure prompt and accurate processing of securities transactions, including order taking, entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts, and the delivery of funds and securities. This definition is materially consistent with the SEC’s definition of “mission critical system” in its Year 2000 Rule.<sup>1</sup>

The proposal requires that each member conduct a yearly review of its business continuity plan to determine whether any modifications are necessary in light of changes to the member’s operations, structure, business, or location. The NASD is seeking comment on whether members believe that this requirement is sufficient.

The proposal only requires that plans be available for inspection

by NASD staff. The NASD also anticipates offering a voluntary repository service for members’ business continuity plans. In the event that a member is unable to gain access to its business continuity plan, the member could contact NASD staff to obtain a copy of its plan. Similarly, if the NASD could not contact a particular firm due to a disaster, it would have a greater opportunity to protect investors and the marketplace, and assist the firm, if it had the firm’s plan on file. A reasonable filing fee will need to be charged for this service, but the specific amount of the fee has not yet been determined.

The NASD’s experience in the aftermath of September 11th confirms that the NASD needs a fully reliable means of contacting firms in the event of an emergency. As a result, the NASD is soliciting comment on whether the NASD should, through the existing Member Firm Contact Questionnaire, collect additional information about member firms to assist the NASD in the event of future business disruptions. The proposal requires members to file and keep current with the NASD certain key information that would be of particular importance during significant business disruptions, including:

- emergency contact information for key staff;
- identification of a designated contact person;
- location of books and records (including back-up locations);
- clearance and settlement information;
- identification of key banking relationships; and
- alternative communication plans for investors.

To lessen any burden imposed by this proposal, the NASD believes that the emergency contact information should be collected through the Member Firm Contact Questionnaire on the NASD Regulation Web Site. Pursuant to Article IV, Section 3 of the NASD By-Laws, members are required to appoint an executive representative to represent, vote, and act for the member in nearly all of the affairs of the NASD. The member must appoint an executive representative and update contact information for the executive representative via the Member Firm Contact Questionnaire on the NASD Regulation Web Site. Amending the questionnaire, rather than creating a new form or amending Form U-4 or Form BD, would minimize any regulatory burden placed on members and limit the costs associated with supplying the NASD with emergency contact information. Finally, the proposal requires members to update their emergency contact information in the event of any material change, and at a minimum to review the information twice a year, to ensure its accuracy.

NASD Regulation anticipates issuing additional guidance to assist firms in satisfying obligations under any final rules that may result from this proposal.

### Endnote

<sup>1</sup> See 17 C.F.R. § 240.15b7-3T(g)(1) (2001).

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**ATTACHMENT A****Text of Proposed Rules****Rule 3500: Emergency Preparedness****Rule 3510: Business Continuity Plans**

- (a) Members of the Association must create and maintain a written business continuity plan identifying procedures to be followed in the event of an emergency or significant business disruption. The business continuity plan must be made available upon request to NASD staff.
- (b) Members must conduct a yearly review of their business continuity plan to determine whether any modifications are necessary in light of changes to the member's operations, structure, business or location.
- (c) The requirements of a business continuity plan are flexible and may be tailored to the size and needs of a member. Each plan, however, must, at a minimum, address:
  - (1) Data back-up and recovery (Hard copy and electronic);
  - (2) All mission critical systems;
  - (3) Financial and operational assessments;
  - (4) Alternate communications between customers and the firm;
  - (5) Alternate communications between the firm and its employees;
  - (6) Business constituent, bank and counter-party impact;
  - (7) Regulatory reporting; and
  - (8) Communications with regulators.
- (d) "Mission critical system" means any system that is necessary, depending on the nature of a member's business, to ensure prompt and accurate processing of securities transactions, including order taking, entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities.
- (e) "Financial and operation assessments" means a procedure created by a firm to test and determine the firm's capability to conduct business.

**Rule 3520: Emergency Contact Information**

- (a) Members must maintain and supply the NASD with information required by the Member Firm Contact Questionnaire through the NASD Regulation Web Site.
- (b) Members must update the Member Firm Contact Questionnaire in the event of any material change, but at a minimum must review the information contained therein twice a year to ensure its accuracy.

# NASD Notice to Members 02-23—Request For Comment

## ATTACHMENT B

### Request For Comment Checklist

We have provided below a checklist that members and other interested parties may use in addition to or in lieu of written comments. This checklist is intended to offer a convenient way to participate in the comment process, but does not cover all aspects of the proposal described in the *Notice*. We therefore encourage members and other interested parties to review the entire *Notice* and provide written comments, as necessary.

### Instructions

Comments must be received by **May 13, 2002**. Members and interested parties can submit their comments using the following methods:

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

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

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

### Business Continuity Plans

1. Should the NASD require members to create and maintain business continuity plans?

Yes  No  See my attached written comments

2. The proposal requires that a member's business continuity plan, at a minimum, address: (1) data back-up and recovery (hard copy and electronic); (2) mission critical systems; (3) financial and operational assessments; (4) alternate communications between customers and the firm; (5) alternate communications between the firm and its employees; (6) business constituent, bank, and counter-party impact; (7) regulatory reporting; and (8) communications with regulators.

Are these categories **over**-inclusive?

Yes  No  See my attached written comments

Are these categories **under**-inclusive?

Yes  No  See my attached written comments

3. Does the definition of "mission critical system" adequately address all systems necessary to ensure prompt and accurate processing of securities transactions?

Yes  No  See my attached written comments

4. Would members benefit from the NASD serving as a repository for members to submit business continuity plans on a voluntary basis?

Yes  No  See my attached written comments

5. Should members be required to file their plans with the NASD?

Yes  No  See my attached written comments

**INFORMATIONAL****FIPS Changes**

Fixed Income  
Pricing System<sup>SM</sup>  
Additions, Changes,  
And Deletions As Of  
**February 21, 2002**

**SUGGESTED ROUTING**

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

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

**KEY TOPICS**

- FIPS

As of February 21, 2002, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>).

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
AELU.GB	American Cellular Corp.	9.500	10/15/09
CIIF.GA	CII Financial	9.500	09/15/04
CVNA.GA	Covanta Energy Corp.	9.250	03/01/22
CVH.GA	Coventry Healthcare Inc.	8.125	02/15/12
ETRD.GA	Entercom Radio LLC	7.625	03/01/14
ISEM.GB	ISP Chemco Inc.	10.250	07/01/11
KEG.GC	Key Energy Svcs Inc.	8.375	03/01/08
NXFC.GA	NexStar Finance Holdings LLC	16.000	05/15/09
NXLK.GI	Nextlink Communications Inc.	12.500	04/15/06
NWAC.GF	Northwest Airlines Inc.	9.875	03/15/07
SPOT.GC	PanAmSat Corp.	8.500	02/01/12
PENN.GC	Penn National Gaming Inc.	8.875	03/15/10
PIC.GA	Piccadilly Cafeterias Inc.	12.000	11/01/07
PCH.GA	Potlatch Corp.	10.000	07/15/11
SLYM.GC	Sealy Mattress Co.	9.875	12/15/07
SESI.GA	SESI LLC	8.875	05/15/11
PKS.GG	Six Flags Inc.	8.875	02/01/10
TKPX.GD	Tekni-Plex Inc.	11.250	04/01/07
TRTL.GB	Tritel PCS	10.375	01/15/11
TPCS.GB	Triton PCS Inc.	8.750	11/15/11
TPCS.GC	Triton PCS Inc.	9.375	02/01/11

As of February 21, 2002, the following bonds were deleted from the Fixed Income Pricing System.

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
ONE.GA	Bank One Corp.	8.100	03/01/02
BRWI.GA	Broadwing Communications Inc.	12.500	08/15/09
CBSA.GA	Coastal Bankcorp Inc.	10.000	06/30/02
CCMH.GB	Coinmach Corp.	11.750	11/15/05
DAL.GE	Delta Airlines Inc.	8.500	03/15/02
EQST.GB	Equistar Chemicals LP	9.125	03/15/02
GLCS.GA	Global Crossing Holdings LTD	8.700	08/01/07
HTG.GA	Heritage Media Corp.	8.750	02/15/06
IESC.GA	Indesco International Inc.	9.750	04/15/08
ISPH.GA	ISP Holdings Inc.	9.000	10/15/03
LEH.GM	Lehman Bros Hldgs	8.875	03/01/02
MCDT.GA	McDermott Inc.	9.375	03/15/02
MSKX.GA	Missouri Kan Tex RR Co.	5.500	01/01/33
PCGE.GB	Pacific Gas & Electric Co.	7.875	03/01/02
RBXC.GA	RBX Corp.	11.250	10/15/05
RBXC.GB	RBX Corp.	12.000	01/15/03
RCL.GJ	Royal Caribbean Cruises	8.750	02/02/11
SKO.GA	Shopko Stores Inc.	8.500	03/15/02
SCEP.GM	Southern Calis Edison Co.	5.875	01/15/01
SVRN.GA	Sovereign Bancorp Inc.	8.500	09/15/02

## **NASD Notice to Members 02-24**

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As of February 21, 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.

**INFORMATIONAL**

**Trade Date—  
Settlement Date**

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

**SUGGESTED ROUTING**

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

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

**KEY TOPICS**

- Holiday Trade Date—  
Settlement Date Schedule

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

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, May 27, 2002, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
May 21	May 24	May 29
22	28	30
23	29	31
24	30	June 3
27	Markets Closed	—
28	31	4

Questions regarding the application of these settlement dates to a particular situation may be directed to the Market Integrity Department at (203) 375-9609.

\* 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."

# Disciplinary Actions

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## Disciplinary Actions Reported For April

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 March 2002.

### **Firm Expelled, Individuals Sanctioned**

**Barron Chase Securities (CRD #18969, Boca Raton, Florida), Robert Thomas Kirk, Jr. (CRD #1204425, Registered Principal, Parkland, Florida), and Brian Dean Fitzgerald (CRD #1259552, Registered Principal, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was expelled from NASD membership and Kirk was barred from association with any NASD member in any capacity. Fitzgerald was fined \$7,500, suspended from association with any NASD member in any capacity for 30 days, and ordered to requalify by exam for the Series 24 license before acting again in a principal 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 lead managing underwriter for many initial public offerings (IPOs), that the firm and Kirk failed to ensure that the prospectus for an IPO was not false and misleading, and that they failed to amend the prospectus to reflect material changes in the offering and the use of IPO proceeds.

The findings also stated that the firm, acting through Kirk, engaged in continuing distributions of other IPOs while maintaining a market, bidding for, and purchasing the stock and warrants prior to the completion of the distribution. The firm transferred the IPO balances from the firm's syndicate account to its trading account and continued the distribution of IPO securities while the firm maintained a market in the securities and sold the securities to the firm's public customers at prevailing higher aftermarket prices. The NASD found that Kirk failed to inform the firm's brokers or customers that the firm had withheld IPO shares and warrants, made the inventory transfers of the IPO securities, and sold the IPO shares and warrants to the customers at inflated aftermarket prices. In addition, the NASD found that Fitzgerald assisted in the firm's and Kirk's violations of Regulation M by opening aftermarket trading in securities before their distribution was completed and transferring the IPO securities from the firm's syndicate account to its trading account without verifying that these distributions were complete. Moreover, Fitzgerald assisted the firm's and Kirk's violation of the Freeriding and Withholding Interpretation by failing to verify that the firm maintained inventory balances in the IPO securities. Furthermore, the NASD found that Kirk failed to respond to NASD requests to provide information and documents and to appear to give testimony.

Fitzgerald's suspension began April 1, 2002, and will conclude at the close of business April 30, 2002. **(NASD Case #CAF020008)**

## **Firms Fined, Individuals Sanctioned**

**J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California) and James Alexander (CRD #2762, Registered Principal, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$62,500, jointly and severally. In addition, the firm was censured and fined \$7,500, jointly and severally, with another individual, and Alexander was 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 they permitted an individual who was barred from associating with any NASD member in any capacity to function as an associated person. The findings also stated that the firm failed to establish, modify, or revise its written supervisory procedures to be in compliance with NASD Conduct Rule 3010. Furthermore, the NASD determined that the firm permitted individuals associated with the firm to perform the duties of registered persons while their registration status with the NASD was inactive due to their failure to timely complete the Regulatory Element of the NASD's Continuing Education Requirement.

Alexander's suspension began March 18, 2002, and will conclude at the close of business April 16, 2002. **(NASD Case #C02020007)**

**vFinance Investments (CRD #25121, Boca Raton, Florida) and Steven David Schwartz (CRD #832419, Registered Principal, Mt. Laurel, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and

fined \$70,000, jointly and severally. The firm was fined an additional \$5,000 and Schwartz was fined an additional \$10,000, barred from association with any NASD member in any principal or supervisory position, and suspended from association with any NASD member in any capacity for 30 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 Schwartz, issued transaction confirmations to public customers that were materially inaccurate in that they failed to disclose its capacity in the transactions as "dual agent" when acting as principal and failed to disclose the markup or markdown it derived in addition to the disclosed commission. The findings also stated that the firm failed to meet the requirements of NASD Conduct Rule 2320(g) in non-Nasdaq securities transactions. In addition, the NASD found that the firm failed to properly report through the Automated Confirmation Transaction Service® (ACT®) transactions in National Market System securities, Nasdaq SmallCap<sup>SM</sup> securities, and over-the-counter (OTC) Equity securities; failed to timely report certain trades; improperly aggregated certain trades into a single report; reported an incorrect volume for certain trades; failed to accept or decline transactions in ACT in eligible securities within 20 minutes after execution; and failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity.

Moreover, the NASD found that the firm, acting through Schwartz, failed to disclose in writing to public customers information regarding payment for order flow in which the firm acted as agent

and, in penny stock transactions, failed to provide public customers a penny stock risk disclosure document and obtain a manually signed and dated written acknowledgement of receipt of the document from the customers. Furthermore, the firm failed to cause its director of investment banking to become registered as a general securities principal or to preclude him from performing functions and activities requiring registration in that capacity. The NASD also found that the firm participated in public offerings of securities that traded in the immediate aftermarket and failed to comply with IM-2110-1 in that in each offering the firm effected sales and retained securities that were part of the offering in firm accounts. In addition, the NASD found that the firm submitted materially false and inaccurate Free-Riding and Withholding Questionnaires to the NASD and failed to transmit funds from investors to whom it sold units to a bank escrow account or to deposit the funds into a separate bank account as agent or trustee. Finally, the NASD found that the firm and Schwartz failed to establish a supervisory system, and failed to establish and maintain written policies and procedures reasonably designed to prevent the above violations.

Schwartz' suspension began March 18, 2002, and will conclude at the close of business April 16, 2002. **(NASD Case #C9A020007)**

## **Firms And Individuals Fined**

**Barington Capital Group, L.P. (CRD #29383, New York, New York), Jerome Snyder (CRD #602640, Registered Principal, Fair Haven, New Jersey), and John Davis Telfer (CRD #1099745, Registered Principal, Floral Park, New York)** submitted



a Letter of Acceptance, Waiver, and Consent in which they were censured. The firm was fined \$10,000, jointly and severally, with Snyder, and was fined \$10,000, jointly and severally, with Telfer. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the firm's purchase of active accounts from another member firm, Barington Capital did not have new account forms for any of the accounts and, in many instances, the brokers' books were missing other essential information from the accounts. The findings also stated that the firm failed to provide public customers with required penny stock risk disclosures and the required market and price information regarding each of their penny stock holdings on their monthly account statements. Snyder and Telfer were the principals responsible for the firm's new account review, recordkeeping, and oversight of the firm's penny stock transactions. **(NASD Case #C10020024)**

**Winslow, Evans & Crocker, Inc. (CRD #29686, Boston, Massachusetts) and Peter Laverack Winslow (CRD #470119, Registered Principal, Essex, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,000, jointly and severally. The firm was also fined an additional \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm operated its business as an introducing firm and claimed an exemption which prohibits the receipt of customer funds and/or securities. The NASD found that the firm, acting through Winslow, failed to comply with their claimed

exemption in that the firm received checks made payable to the firm rather than to their clearing firm. The NASD also found that the firm, acting through Winslow, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital. The findings also stated that the firm failed, within 90 seconds of execution, to transmit transactions in OTC equity securities through ACT, and failed to designate through ACT these transactions as late. The findings also stated that the firm failed to report to ACT the correct price of the transactions on Nasdaq National Market® (NNM®) securities and failed to identify through ACT in a last sale report of transactions on NNM securities that such report was an aggregated transaction report. In addition, the NASD determined that the firm reported to ACT the incorrect capacity designation on transactions. Furthermore, the NASD found that the firm failed to show the correct execution time on order tickets and failed to have required order tickets. The NASD also determined that the firm failed to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and the rules of the NASD regarding trading reporting, time stamping of sales memoranda, and the receipt of customer checks. **(NASD Case #C11020008)**

#### **Firms Fined**

**Baron Capital, Inc. (CRD #10538, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to submit revised written supervisory procedures with respect to compliance with the

Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) rules. 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.® 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, that the system did not include written supervisory procedures providing for a statement of the steps to be taken to achieve compliance with the OATS reporting rule, a statement as to how often such steps should be taken, and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020020)**

**Citistreet Equities LLC (CRD #7447, East Brunswick, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit filings required to be reported under NASD Conduct Rule 3070 with the NASD in a timely manner. The NASD also found that the firm failed to establish, maintain, and enforce procedures, including written supervisory procedures, reasonably designed to ensure compliance with NASD Conduct Rule 3070. **(NASD Case #C9B020012)**

**Continental Broker-Dealer Corp. (CRD #14048, Carle Place, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$25,000. Without admitting or denying the allegations, the firm consented to the entry of findings that it failed to establish and maintain supervisory procedures reasonably designed to ensure that orders placed in an IPO had been authorized by customers. The findings also stated that the firm made an exception to its usual practice of verifying 50 percent of all customer orders with respect to the IPO. **(NASD Case #CAF020005)**

**Dirks & Company, Inc. (CRD #42185, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$18,000, and required to revise its written supervisory procedures with respect to the firm quote rules. 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 it failed, within 90 seconds after execution, to transmit through ACT, last sale reports of transactions in Nasdaq National Market (NNM), Nasdaq SmallCap,<sup>SM</sup> and OTC Equity securities, and failed to designate through ACT such last sale reports as late; failed to designate as ".T" through ACT last sale reports of transactions in NNM and OTC Equity securities executed outside normal market hours; and failed, within 90 seconds after execution, to transmit through ACT last sale reports. Furthermore, the NASD

determined that the firm did not provide for supervision reasonably designed to achieve compliance with respect to firm quote rules. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with the firm quote 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 #CMS020019)**

**FAM Distributors, Inc. (CRD #4100, Plainsboro, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to act as a general securities representative prior to properly qualifying and/or registering in the appropriate capacity. The NASD also found that the firm permitted registered representatives to perform duties as registered persons while their registration status with the NASD was inactive due to their failure to timely complete the Regulatory Element of the NASD's Continuing Education Rule. In addition, the findings stated that the firm failed to enforce written supervisory procedures reasonably designed to achieve compliance in the areas of Continuing Education Regulatory Element and Registration. **(NASD Case #C9B020013)**

**Fifth Third Securities, Inc. (CRD #628, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was

fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it permitted individuals to function in capacities requiring registration when their registrations had been deemed inactive for failure to complete the Regulatory Element Continuing Education requirement. **(NASD Case #C8B020005)**

**H & R Block Financial Advisors, Inc. (CRD #5979, Detroit, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a required market maker in securities, an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size. The firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. 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, which caused a locked or crossed market condition to occur in each instance. Furthermore, the NASD found that the firm was a party to a locked or crossed market condition prior to the market opening and received a trade-or-move message in each instance through SelectNet<sup>®</sup> and, within 30 seconds of receiving such messages, 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

that would have unlocked/uncrossed the market; and caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation that locked/crossed another market maker's quotations without immediately thereafter sending through SelectNet to the market maker whose quote it locked or crossed a trade-or-move message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. **(NASD Case #CMS020035)**

**J. B. Hanauer & Co. (CRD #6958, Parsippany, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to act as equity traders while failing to have them registered in such capacities. The NASD also found that the firm failed to report Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>) eligible securities to FIPS as required. **(NASD Case #C9B020011)**

**Jefferies & Company, Inc. (CRD #2347, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, the firm was a party to a locked or crossed market condition prior to the market opening and received a trade-or-move message in each instance through SelectNet,<sup>®</sup> and within 30 seconds of receiving such messages, 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 that would have unlocked/uncrossed the market. **(NASD Case #CMS020023)**

**Pacific Growth Equities, Inc. (CRD #24835, San Francisco, California)** 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 with respect to applicable securities laws and regulations 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 thereby failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with 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 of the steps that the persons responsible at the firm should take to ensure compliance; a statement of the steps that such person should take to ensure compliance with the NASD and Securities and Exchange Commission (SEC) firm quote rules; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020034)**

**Peters Securities Co., LP (CRD #15970, Chicago, Illinois)** submitted a Letter of Acceptance,

Waiver, and Consent in which the firm was censured, fined \$172,000, required to pay \$1,045.94, plus interest, in restitution to investors, and ordered 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 use reasonable diligence to ascertain the best prevailing 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; executed transactions and failed to record the time of execution on the memoranda reflecting these transactions; failed to maintain memoranda memorializing securities transactions; failed to reflect correctly the terms and conditions of limit orders received by the firm on the memoranda memorializing such orders; failed to register as a market maker and publicly disseminate its best bids, offers, and quotation sizes in exchange listed securities within 10 business days after the end of the quarter when aggregate trading volume in these securities exceeded one percent; and failed to display immediately customer limit orders in covered securities 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 each such 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 change in relation to the size associated with the firm's bid or offer in each such security.

The findings also stated that the firm failed to execute orders fully and promptly; executed short sale orders in certain securities and failed to maintain a written record

of the affirmative determination made for such orders; executed four short sale transactions in certain securities, all of which were NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security; executed seven transactions in listed securities for its own account while holding unexecuted customer limit orders to buy or sell the same securities at equal or better prices; and executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. In addition, the NASD determined that the firm failed to report to ACT the correct symbol indicating whether the transactions reported to ACT were a buy, sell short, sell short exempt or cross for transactions in eligible securities and failed to report the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity; failed to preserve for a period of not less than three years, the first two in an accessible place, memorandum of each order received reflecting open limit orders and cancellations of orders; failed to indicate on the memoranda reflecting the sale of certain listed securities whether such orders were long or short sales; failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in ACT-eligible securities which constitutes a pattern or practice of late reporting without exceptional circumstances; and failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM and Nasdaq securities, a Nasdaq SmallCap security, and eligible securities, and failed to designate through ACT such last sale reports as late. The NASD also determined that the firm incorrectly designated as ".SLD" through ACT last sale

reports of transactions in NNM securities reported to ACT within 90 seconds of execution, incorrectly designated as ".SLD" through ACT last sale reports of transactions in eligible securities reported to ACT within 90 seconds of execution, and incorrectly designated as ".T" through ACT two last sale reports of transactions in NNM securities executed during normal market hours and failed to designate through ACT such last sale reports as late; and entered priced broadcast orders into SelectNet that were each priced better than the firm's public quote reflecting each such order in the firm's public quote as required by SEC Rule 11a1-1(c)(5).

Furthermore, 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: ACT compliance, one percent rule, Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>), trade reporting, locked and crossed markets, 21(a) report issues, best execution, books and records, limit order protection and display, short sales, short sale compliance, OATS compliance, and transaction 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 applicable rules; a statement of the steps that such person should take to ensure compliance therewith; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020030)**

**Raymond James & Associates, Inc. (CRD #705, St. Petersburg, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that 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 which caused a locked or crossed market condition to occur in each instance. **(NASD Case #CMS020021)**

**Stifel, Nicolaus & Company, Inc. (CRD #793, St. Louis, Missouri)** 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 with respect to applicable securities laws and regulations concerning firm quote compliance. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size. The firm failed to execute the orders upon presentment and thereby, failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with 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 #CMS020031)**

**Terra Nova Trading, LLC (CRD #37761, Chicago, Illinois)**

submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$12,500, and required to revise its written supervisory procedures with respect to compliance with OATS reporting. 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 in a timely manner any order data for its orders for equity securities traded on The Nasdaq Stock Market, and transmitted reports to OATS containing inaccurate data as to the limit order display indicator and the routing method code with respect to orders for equity securities traded on The Nasdaq Stock Market. The NASD found that the firm transmitted to OATS reports containing inaccurate data as to the firm order received date and firm order received timestamp 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 applicable securities laws and regulations concerning OATS reporting, in that it did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with

applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020029)**

**Individuals Barred Or Suspended**

**Marc Craig Adereth (CRD #2113263, Registered Representative, Cliffside Park, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Adereth consented to the described sanction and to the entry of findings that, without the prior knowledge, authorization, or consent from a public customer, he executed, or caused to be executed, unauthorized transactions in the account of a public customer.

Adereth's suspension began March 18, 2002, and will conclude at the close of business May 16, 2002. **(NASD Case #C02020006)**

**Cameron Michael Benton (CRD #2709062, Registered Representative, Poncha Spring, Colorado)** was fined \$10,000 and suspended from association with any NASD member for 30 business days for engaging in private securities transactions and barred from association with any NASD member in any capacity for failing to respond. The fine must be paid before Benton reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that

Benton engaged in private securities transactions without providing prior written notice to his member firm. Benton also failed to respond to NASD requests for information.

Benton's bar become effective February 14, 2002. **(NASD Case #C3A010029)**

**William Allen Blackwell, III (CRD #4061567, Associated Person, Los Angeles, California)** was fined \$5,000 and barred from association with any NASD member in any capacity. The fine must be paid before Blackwell reassociates with any NASD member firm. The sanctions were based on findings that Blackwell provided false responses on his Uniform Application for Securities Industry Registration or Transfer (Form U-4). Blackwell also failed to respond to NASD requests for information. **(NASD Case #C02010043)**

**Bennie Eugene Braswell, Jr. (CRD #2916727, Registered Representative, Hephzibah, Georgia)** 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 five business days. The fine must be paid before Braswell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Braswell consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss in her securities account.

Braswell's suspension began March 18, 2002, and concluded at the close of business March 22, 2002. **(NASD Case #C07020009)**

**John Montgomery Buckley (CRD #2351891, Registered Representative, Atlanta, Georgia)** 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, Buckley consented to the described sanction and to the entry of findings that he effected unauthorized trades in the account of a public customer. **(NASD Case #C07020005)**

**Joseph Ryan Carrico (CRD #3050586, Registered Representative, Indianapolis, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, ordered to pay \$1,443.57, plus interest, in restitution to a member firm, and suspended from association with any NASD member in any capacity for two years. The fine and restitution must be paid before Carrico reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carrico consented to the described sanctions and to the entry of findings that he placed trades appearing on his member firm's daily uncomparated trades report in his personal account rather than in the firm's error account. The NASD also found that, after the trade was placed in his account, he then sold the underlying equity at a profit.

Carrico's suspension began April 1, 2002, and will conclude at the close of business March 31, 2004. **(NASD Case #C8A020011)**

**James John Cavaliere, Jr. (CRD #1528967, Registered Principal, Staten Island, New York)** submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any principal capacity for six months, and required to requalify as a general securities principal prior to his reassociation with any NASD member in any principal capacity. The fine must be paid before Cavaliere reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cavaliere consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce effective supervisory systems pertaining to his member firm's underwriting and retail brokerage activities that were reasonably designed to achieve compliance with federal securities laws, regulations, and NASD Rules. The findings also stated that Cavaliere knew, or should have known, of numerous "red flags" indicating that sales practice violations were occurring or had occurred at his member firm. The NASD found that Cavaliere knew, or should have known, of his firm's receipt of numerous written customer complaints against associated persons with the firm alleging sales practice abuses in connection with the purchase or sale of securities. In addition, the findings stated that Cavaliere failed to take sufficient supervisory steps in response to the "red flags" generated by the complaints.

Cavaliere's suspension began March 18, 2002, and will conclude at the close of business September 17, 2002. **(NASD Case #C10010004)**

**Randolph Jerome Corbitt (CRD #4080159, Registered Representative, Houston, Texas)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Corbitt consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U-4. The findings also stated that Corbitt failed to respond to NASD requests for information. **(NASD Case #C06010046)**

**Henry Howard DeCora (CRD #1193275, Registered Representative, Woodbury, 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 60 days. Without admitting or denying the allegations, DeCora consented to the described sanctions and to the entry of findings that he participated in a securities transaction away from his member firm and failed to provide written notification to his firm.

DeCora's suspension began March 18, 2002, and will conclude at the close of business May 6, 2002. **(NASD Case #C10020011)**

**Jeffrey Charles Dunham (CRD #2087534, Registered Representative, Indianapolis, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dunham consented to the described sanction and to the entry of findings that he participated in private securities transactions without prior written

notice to, or approval from, his member firm. **(NASD Case #C8A020008)**

**Robert Allen Eastham, II (CRD #2019403, Registered Representative, Beaverton, Oregon)** 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, Eastham consented to the described sanction and to the entry of findings that he recommended to a public customer that she sell variable annuity policies and apply the proceeds to purchase fixed annuity policies without having reasonable grounds for believing that his recommendation was suitable for the customer upon the basis of facts disclosed by the customer as to her other security holdings, financial situation, and needs.

Eastham's suspension began March 18, 2002, and will conclude at the close of business June 17, 2002. **(NASD Case #C3B020003)**

**Verna Lynn Eller (CRD #2085566, Registered Representative, Chillicothe, Missouri)** submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eller consented to the described sanction and to the entry of findings that, without the knowledge or consent of public customers, she forged the endorsement signatures of the customers on checks payable to the customers totaling \$40,000. The findings also stated that Eller forged signatures on applications to open accounts in her maiden name and in the names of public customer for accounts to be controlled by Eller. The NASD

found that Eller caused checks totaling \$40,000 to be issued from the accounts of public customers and affixed the customers' signatures on the checks and on account applications without the customers' knowledge or consent, and deposited the funds into a money fund joint account she controlled and subsequently transferred the funds to a separate account in her name. The findings also stated that Eller received \$340 from a public customer with instructions from the customer to purchase shares of stock, presented the customer a handwritten document as a putative receipt on firm letterhead, failed to open the account for the customer or purchase stock as intended, and instead retained and converted cash for her own use and benefit. In addition, Eller failed to respond to NASD requests for information. **(NASD Case #C04010043)**

**Guy Anthony Fritts (CRD #1260129, Registered Representative, Huntington, 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 25 business days. The fine must be paid before Fritts reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fritts consented to the described sanctions and to the entry of findings that, while registered with the NASD through a member firm, he settled a public customer's complaint by paying the customer \$4,750 without informing and obtaining authorization from his firm.

Fritts' suspension began March 18, 2002, and will conclude at the

close of business April 22, 2002. **(NASD Case #C10020023)**

**Edward John Fritz (CRD #1932151, Registered Representative, Waterloo, Iowa)** 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 Fritz reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed to properly disclose this activity to his member firm.

Fritz's suspension began April 1, 2002, and concluded at the close of business April 12, 2002, **(NASD Case #C04020009)**

**Frank Peter Fucilo (CRD #1300170, Registered Representative, Kingston, 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, Fucilo consented to the described sanction and to the entry of findings that he engaged in private securities transactions, in that he recommended and sold promissory notes to public customers, without prior written notice to, or approval from, his member firm. **(NASD Case #C11020009)**

**Bobby Joe Garrison, Jr. (CRD #1449625, Registered Representative, Studio City, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings

that Garrison made a material misrepresentation to a customer in connection with the purchase and sale of securities. **(NASD Case #C02010045)**

**John Gentile (CRD #2298008, Registered Representative, Paulsboro, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 18 months, and ordered to disgorge commissions of \$41,600 in partial restitution to public customers. The fine and restitution amounts must be paid before Gentile reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gentile 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.

Gentile's suspension began March 18, 2002, and will conclude at the close of business September 17, 2003. **(NASD Case #C9A020009)**

**Richard Arthur Hennig (CRD #243151, Registered Representative, Granite Bay, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for 90 days, and barred from association with any NASD member as an equity trader, or in any similar capacity requiring the successful completion of the Series 55 equity trader examination. Without admitting or denying the allegations Hennig consented to the described sanctions and to the entry of findings that, while

employed as a securities trader at a member firm and while acting as a market maker in securities, he effected principal transactions with retail customer accounts that resulted in excessive and unfair markups to customers of 37.56 and 42.86 percent based on the firm's contemporaneous cost of purchase.

Hennig's suspension began February 19, 2002, and will conclude May 19, 2002. **(NASD Case #CMS020027)**

**Roy Monroe Henry (CRD #243400, Registered Principal, Chesterfield, Missouri)** 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 90 days. In addition, Henry was fined \$5,000, jointly and severally, with another respondent. The fines must be paid before Henry reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Henry consented to the described sanctions and to the entry of findings that, as an inducement for customers to purchase an interest in a limited partnership, Henry executed a document that guaranteed the customers against loss. The findings also stated that Henry shared in losses sustained by customers and made misrepresentations or material omissions of fact to customers. The NASD found that a member firm, acting through Henry, failed to establish and maintain an adequate supervisory control system to ensure all transactions by the principals of its Offices of Supervisory Jurisdiction were being properly received by another supervisory principal.

Henry's suspension began March 4, 2002, and will conclude June 1, 2002. **(NASD Case #C04020008)**

**Ira Mark Hermann (CRD #1485932, Registered Representative, Laguna Niguel, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Hermann consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to his member firms.

Hermann's suspension began March 18, 2002, and will conclude at the close of business April 16, 2002. **(NASD Case #C02020004)**

**Katarzyna Joanna Jeglinska (CRD #2475845, Registered Representative, Brooklyn, 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, Jeglinska consented to the described sanction and to the entry of findings that she converted cash in excess of \$50,000 from the account of public customers maintained at her member firm for her own use and benefit without the customers' prior knowledge, authorization, or consent. **(NASD Case #C10020022)**

**Kevin Rodney Kasselder (CRD #1807137, Registered Representative, Kansas City, Missouri)** 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 two years, and required to disgorge \$38,536.68, plus interest,



in commissions to investors. The disgorgement amounts must be paid before Kasselder reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kasselder consented to the described sanctions and to the entry of findings that he referred customers to a registered representative for the purpose of the customers investing in private placement notes without providing prior written notice to, and receiving approval from, his member firm.

Kasselder's suspension began March 4, 2002, and will conclude at the close of business March 3, 2004. **(NASD Case #C04020004)**

**Timothy Michael Kelly (CRD #1105037, Registered Representative, North Providence, Rhode Island)**

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 \$75,000, plus interest, in restitution to public customers. The restitution must be paid before Kelly reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kelly consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, without prior written notice to, or approval from, his member firm. **(NASD Case #C11020012)**

**Peter Michael Landay (CRD #1209354, Registered Representative, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$146,800,

which will be reduced by amounts that he demonstrates he has paid to the trustee in the bankruptcy for a company, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Landay reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Landay consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, without prior written notice to, or approval from, his member firm.

Landay's suspension began April 1, 2002, and will conclude at the close of business March 31, 2003. **(NASD Case #C3A020012)**

**Allen Holman Lenzini (CRD #2779230, Registered Representative, Macon, Missouri)** 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, Lenzini consented to the described sanction and to the entry of finding that he deposited a personal money order from a public customer into a checking account in his name over which he had control. The findings also stated that Lenzini willfully failed to disclose a material fact on his Form U-4 and failed to respond completely to NASD requests for information. **(NASD Case #C04020007)**

**Keith Gay Lewis (CRD #1568459, Registered Principal, Baton Rouge, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with

any NASD member in any capacity for four months. In light of the financial status of Lewis, no fine has been imposed. Without admitting or denying the allegations, Lewis consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm.

Lewis' suspension began March 18, 2002, and will conclude at the close of business July 17, 2002. **(NASD Case #C05020005)**

**Ben Jeffrey Lichtenberg (CRD #1367642, Registered Principal, Deerfield Beach, Florida)**

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 principal or supervisory capacity for two years. Without admitting or denying the allegations, Lichtenberg consented to the described sanctions and to the entry of findings that he engaged in activities requiring registration as a general securities principal for his member firm while he was not registered in that capacity or in any other principal capacity. The findings also stated that a member firm, acting through Lichtenberg, effected sales in contravention of the Free-Riding and Withholding Interpretation, including sales to an account owned by Lichtenberg and sales to restricted accounts for which he was the registered representative. In addition, the NASD found that the firm, acting through Lichtenberg, retained securities in one or more firm accounts. The NASD also found that Lichtenberg submitted materially false or inaccurate Free-Riding and Withholding Questionnaires to the NASD. Moreover, the findings stated that the firm, acting through Lichtenberg, failed to comply with

SEC Rule 15c2-4 in connection with a contingent offering of units in which the firm acted as sole placement agent and failed to transmit funds received from investors to whom the firm sold units to a bank escrow account or to deposit funds received from investors into a separate bank account as agent or trustee.

Lichtenberg's suspension began March 18, 2002, and will conclude at the close of business March 17, 2004. **(NASD Case #C9A020005)**

**Harry Walter Linindoll, III (CRD #1227307, Registered Representative, East Greenbush, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$18,000, of which \$13,000 represents disgorgement of commissions, and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Linindoll consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, without prior written notice to, or approval from, his member firm.

Linindoll's suspension began April 1, 2002, and will conclude at the close of business May 31, 2002. **(NASD Case #C11020010)**

**Christopher McCafferty (CRD #4194611, Registered Representative, Hollywood, Florida)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before McCafferty reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting

or denying the allegations, McCafferty consented to the described sanctions and to the entry of findings that he completed a Form U-4 and failed to disclose material information.

McCafferty's suspension began March 18, 2002, and will conclude at the close of business June 17, 2002. **(NASD Case #C07010104)**

**Basilio Mercado, Jr. (CRD #2864911, Associated Person, Miami Beach, Florida)** was fined \$5,000 and suspended from association with any NASD member in any capacity for six months for failure to disclose information on a Form U-4 and barred from association with any NASD member in any capacity for failure to respond. The fine must be paid before Mercado's reentry into the securities industry. The sanctions are based on findings that Mercado willfully failed to disclose material information on his Form U-4 and failed to respond to NASD requests for information.

Mercado's bar became effective March 1, 2002. **(NASD Case #C07010070)**

**Louis Robert Mercaldo (CRD #2304338, Registered Representative, Magnolia, New Jersey)** 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 two months. The fine must be paid before Mercaldo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mercaldo consented to the described sanctions and to the entry of findings that he was involved in offering securities to public customers for which he received compensation and failed

to provide his member firm prior written notice describing the transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation.

Mercaldo's suspension began March 18, 2002, and will conclude at the close of business May 17, 2002. **(NASD Case #C9A020010)**

**Matthew Alan Mikesch (CRD #2356741, Registered Representative, St. Joseph, Missouri)** 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 disgorge \$18,056.53, plus interest, to public customers. Satisfactory proof of payment of disgorgement shall be a prerequisite before reassociating with any NASD member or prior to any request for relief from any statutory disqualification. Without admitting or denying the allegations, Mikesch consented to the described sanctions and to the entry of findings that he engaged in the sale of private securities transactions in connection with the sale or renewal of notes to customers without providing prior written notice to, and receiving approval from, his member firms. **(NASD Case #C04020005)**

**Valerie Jean Miles (CRD #2457012, Registered Representative, Furlong, Pennsylvania)** submitted an Offer of Settlement in which she was fined \$30,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Miles consented to the described sanctions and to the entry of findings that she failed to maintain a record of gifts given to a client, submitted a falsified employee

travel and entertainment report to her member firm, and wrongfully diverted and misused funds from her firm to pay for a personal trip. The findings also stated that Miles failed to report gifts she gave to her client and provided false testimony during an NASD on-the-record interview.

Miles' suspension began March 18, 2002, and will conclude at the close of business May 17, 2002. **(NASD Case #CAF010019)**

**Jason Everett Morey (CRD #2791128, Registered Representative, Trumbull, Connecticut)** 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 \$132,349.86, plus interest, in restitution to public customers. Proof of payment of the restitution amounts, plus interest, must be provided before Morey reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Morey consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C10020020)**

**Raymond Lee Morton (CRD #1611046, Registered Principal, Everett, Washington)** 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 principal or supervisory capacity for 15 business days. Without admitting or denying the allegations, Morton consented to the described sanc-

tions and to the entry of findings that he failed to supervise the activities of a registered representative who made unsuitable recommendations to public customers and effected transactions in a manner that was reasonably designed to achieve compliance with applicable securities laws and regulations.

Morton's suspension began March 18, 2002, and concluded at the close of business April 5, 2002. **(NASD Case #C3B020005)**

**Arthur Michael Pagnotta (CRD #2431827, Registered Principal, Redmond, Washington)** 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 15 business days. Without admitting or denying the allegations, Pagnotta consented to the described sanctions and to the entry of findings that he recommended the purchase of high-yield corporate bonds to public customers without reasonable grounds for believing the recommendations were suitable for the customers upon the basis of facts disclosed by the customers as to their other security holdings, financial situation, and needs.

Pagnotta's suspension will begin April 15, 2002, and will conclude at the close of business May 3, 2002. **(NASD Case #C3B020004)**

**Christopher Perry (CRD #3243580, Associated Person, New York, New York)** was barred from association with any NASD member in any capacity. The sanction is based on findings that Perry willfully failed to disclose material information on Forms U-4 submitted to the NASD through several firms. **(NASD Case #C10010094)**

**Edward Scott Peterson (CRD #2260436, Registered Representative, South Amboy, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, suspended from association with any NASD member in a registered capacity for 12 months, and required to requalify as a general securities representative if he attempts to associate with any NASD member in a registered capacity following his suspension. Without admitting or denying the allegations, Peterson consented to the described sanctions and to the entry of findings that he failed to file an amendment to his Form U-4 to disclose material information.

Peterson's suspension began March 18, 2002, and will conclude at the close of business March 17, 2003. **(NASD Case #C10020012)**

**John Edward Prokop (CRD #1472658, Registered Representative, Youngstown, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Prokop consented to the described sanction and to the entry of findings that he engaged in outside business activities, for compensation, and failed to provide his member firm with prompt written notice of his activities. **(NASD Case #C8B020004)**

**Jack Steven Randazzo (CRD #2606716, Registered Principal, Syosset, New York)** 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. In light of the financial status of Randazzo, no monetary sanctions have been

imposed. Without admitting or denying the allegations, Randazzo consented to the described sanction and to the entry of findings that a member firm, acting through Randazzo, calculated markups on customer retail purchases of warrants based upon the inside ask price when the proper basis was the firm's contemporaneous cost. The findings also stated that the firm, acting through Randazzo, executed trades in warrants in which excessive markups were charged that exceeded 10 percent of the firm's contemporaneous cost and were, therefore, fraudulent. In addition, the NASD found that Randazzo failed to monitor the firm's market presence in the warrants and failed to take into consideration anything other than the inside quotes in determining the propriety of the firm's markups, nor did he consider using the firm's contemporaneous cost as a basis for the markups. Moreover, Randazzo failed to monitor the firm's holdings and activity for domination and control and should have ensured that the markups the firm charged were not excessive.

Randazzo's suspension began March 18, 2002, and will conclude at the close of business June 17, 2002. **(NASD Case #CAF020006)**

**Yi Feng Reid (CRD #4073295, Registered Representative, Closter, New Jersey)** 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, Reid consented to the described sanction and to the entry of findings that she applied for a credit card in the name of an insurance customer, using personal information the customer had provided on a life insurance application processed by Reid, without the customer's consent or

authority. **(NASD Case #C9B020017)**

**James Anthony Sammartano (CRD #2687661, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sammartano willfully failed to amend, and failed to disclose, a material fact on his Form U-4. Sammartano also failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C9B000040)**

**William Raymond Schantz, III (CRD #1641847, Registered Representative, Cherry Hill, New Jersey)** 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. The fine must be paid before Schantz reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schantz consented to the described sanctions and to the entry of findings that he was involved in offering securities to public customers for which he received compensation, and failed to provide his member firm prior written notice describing the transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation.

Schantz' suspension began March 4, 2002, and will conclude at the close of business June 3, 2002. **(NASD Case #C9A020006)**

**Gerard Vincent Sherlock, Sr. (CRD #2629144, Registered Representative, Cherry Hill, New Jersey)** 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. The fine must be paid before Sherlock reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sherlock consented to the described sanctions and to the entry of findings that he was involved in offering securities to public customers for which he received compensation and failed to provide his member firm prior written notice describing the transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation.

Sherlock's suspension began March 18, 2002, and will conclude at the close of business June 17, 2002. **(NASD Case #C9A020008)**

**William Levio Vecchione (CRD #2837113, Registered Principal, 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, Vecchione consented to the described sanction and to the entry of findings that he failed to supervise a registered representative under heightened supervision as a result of a prior customer complaint who made misrepresentations of material facts or failed to state material facts in connection with sales to public customers while under heightened supervision. The findings also stated that Vecchione failed to take appropriate steps to implement the terms of the heightened supervision, including monitoring the sales practices of the representative and reviewing and approving certain transactions. In

addition, the NASD found that Vecchione made a baseless price and performance prediction to a public customer in connection with the sale of a security. The NASD also found that Vecchione failed to respond to an NASD request to appear and give testimony. **(NASD Case #C10020019)**

**Robert Joseph Waltos, Jr. (CRD #1627085, Registered Representative, Newport Beach, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Waltos consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction without prior written notice to his member firm. The findings also stated that Waltos had knowledge that a registered person under his supervision and control was engaged in private securities transactions and, despite this knowledge, failed to take timely or adequate supervisory action, under the attendant circumstances known to him, that were reasonably designed to either ensure that the individual complied with the requirements of NASD Conduct Rule 3040 or ensure that the individual cease to be connected with the unsupervised sale of unapproved products away from his member firms.

Waltos' suspension will begin April 15, 2002, and will conclude at the close of business April 26, 2002. **(NASD Case #C02020005)**

**Richard John Warren (CRD #1813475, Registered Representative, East Islip, New York)** submitted an Offer of Settlement in which he was suspended from association with

any NASD member in any capacity for nine months. In light of the financial status of Warren, no monetary sanction has been imposed. Without admitting or denying the allegations, Warren consented to the described sanction and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, or receiving written permission from, his member firm. The findings also stated that Warren engaged in outside business activities without providing prior written notice to his member firm.

Warren's suspension began March 18, 2002, and will conclude at the close of business December 17, 2002. **(NASD Case #C10010115)**

#### **Individuals Fined**

**Matthew James Gardiner (CRD #1777289, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$11,250. Without admitting or denying the allegations, Gardiner consented to the described sanctions and to the entry of findings that he inaccurately reported to ACT that his member firm had acted in a principal capacity when it had actually acted as an agent in transactions and failed to report short sale transactions to ACT with a short sale modifier. The NASD found that Gardiner failed to show the time, or correct time of execution on brokerage order memoranda, and failed to show the time, or correct time of execution, or entry, on brokerage order memoranda. The findings also stated that Gardiner executed short sale orders in securities and failed to make an affirmative determination prior to executing the transactions and failed to indicate whether a transaction

was a market or limit order on brokerage order memoranda. **(NASD Case #C10020016)**

**Gary David Winter (CRD #1533705, Registered Principal, Fresno, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Winter consented to the described sanctions and to the entry of findings that he submitted to his member firm and filed with the NASD a Form U-4 relating to the proposed registration of an individual that failed to disclose material facts. **(NASD Case #C01020001)**

#### **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 adjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**Arthur Kenny Bryant (CRD #1827620, Registered Representative, Edmonds, Washington)** was named as a respondent in an NASD complaint alleging that he obtained a \$4,000 check drawn on the account of a public customer, altered the check to show himself as the payee, cashed the check, and deposited \$3,900 in his personal credit union savings account. The complaint also alleges that Bryant subsequently withdrew the funds from the account, thereby converting \$4,000 to his own use and benefit

without the customer's prior knowledge, authorization, or consent. **(NASD Case #C3B020002)**

**Fanglun Michael Chai (CRD #3093902, Registered Representative, Bronx, New York)** was named as a respondent in an NASD complaint alleging that he exercised discretion in the account of a public customer without the customer's prior written authorization or prior written acceptance of the account as discretionary by his member firm. The complaint also alleges that Chai recommended and executed transactions in the account of a public customer without reasonable grounds for believing that the level of activity represented by such transactions was suitable for the customer on the basis of her financial situation, investment objectives, and needs. **(NASD Case #C10020010)**

**D.L. Cromwell Investments, Inc. (CRD #37730, Boca Raton, Florida), David Stewart Davidson (CRD #1212799, Registered Principal, Boca Raton, Florida), Lloyd Sylvester Martin Beirne (CRD #1982417, Registered Principal, Boca Raton, Florida), Eric Scott Thomes (CRD #2233456, Registered Principal, Boca Raton, Florida), and Matthew Greenwald (CRD #229262, Registered Principal, Boca Raton, Florida)** were named as respondents in an NASD complaint alleging that the firm, Beirne, Davidson, and Thomes, directly or indirectly employed devices, schemes, or artifices to defraud and/or engaged in acts, practices, or courses of business that operated as a fraud or deceit upon public investors in connection with the purchase and sale of warrants. The firm, acting through Beirne, Davidson, and Thomes,

allegedly engaged in a series of activities designed to arbitrarily and artificially increase the price of the warrants, and Thomes set the firm's quotes and executed the firm's trades in the warrants while knowing that his role was part of an overall activity that was improper. The complaint also alleges that Beirne and Davidson intentionally or recklessly caused the firm to act as a market maker in, and enter bids for, warrants and stock on the OTC Bulletin Board (OTCBB) when they recklessly disregarded the fact that the firm was engaged in a distribution of the units and stocks. The complaint alleges that Beirne and Davidson caused the firm to bid for and reacquire warrants and shares of stock from public customers for the firm's proprietary account and directed the firm's sales force to solicit retail customers to purchase stock while the distribution was still in progress, and that Thomes rendered substantial assistance by setting the firm's quotes and executing the firm's trades in the stocks while knowing that his role was part of an overall activity that was improper. In addition, the complaint alleges that Beirne and Davidson failed to respond to NASD requests for documents and to appear for on-the-record interviews. Furthermore, the complaint alleges that the firm and Greenwald failed to adequately set forth written supervisory procedures and systems reasonably designed to achieve compliance with federal securities laws and NASD rules relating to investment banking and trading. **(NASD Case #CAF020007)**

**Carla Joy Halverson (CRD #859074, Registered Representative, Littleton, Colorado)** was named as a respondent in an NASD complaint alleging that she engaged in unauthorized trading in that she

accepted mini tender offers for her customers without their prior authorization. **(NASD Case #C3A020007)**

**Investors Advocate, LLC (CRD #45801, Houston, Texas) and Jason Conrad Watkins (CRD #2242396, Associated Person, Flint, Michigan)** were named as respondents in an NASD complaint alleging that the firm, acting through Watkins, provided or caused to be provided, false and misleading information and documentation to the NASD during a financial and operational exam. The NASD complaint also alleges that the firm, acting through Watkins, mishandled and misused customer funds and the firm failed to comply with SEC Rules, in that it used the mails or other means or instrumentalities of interstate commerce to effect transactions in securities when it failed to maintain the minimum required net capital. Furthermore, the complaint alleges that the firm failed to maintain complete, current, and accurate books and records as required by SEC Rules in that it prepared inaccurate trial balances and net capital computations, filed false and inaccurate quarterly FOCUS Reports that materially overstated the firm's net capital, and failed to file an audited annual financial statement. In addition, the complaint alleges that the firm failed to adequately and completely respond to NASD requests for information and documents. **(NASD Case #C8A020007)**

**John Allen Jones, IV (CRD #2351720, Registered Representative, Montgomery, Alabama)** was named as a respondent in an NASD complaint alleging that he recommended purchase and sale transactions in various securities for public customers without having

reasonable grounds for believing that they were suitable for customers in view of the frequency and nature of the recommended transactions and the customer's financial situation, objectives, circumstances and needs. (NASD Case #C05020006)

**Daniel Steven Kippert (CRD #2327018, Registered Representative, Ogden, Utah)** was named as a respondent in an NASD complaint alleging that he instructed a sales assistant to transfer \$1,700 from a public customer's account maintained at his member firm to his personal bank account without the prior knowledge, authorization, or consent of the customer. (NASD Case #C3A020011)

**Victor Kozirovsky (CRD #2841043, Registered Representative, Woodmere, New York) and Reynolds Michael Verdiner (CRD #2858516, Registered Representative, Brooklyn, New York)** were named as respondents in an NASD complaint alleging that they opened accounts and made unauthorized purchases of stock during an IPO for persons who had not agreed to purchase the stock or even to open accounts with their member firm. The complaint also alleges that Kozirovsky opened an account and made an unauthorized purchase of stock for another individual. (NASD Case #CAF020004)

**Phung M. Le (CRD #3274440, Registered Representative, Springfield, Massachusetts)** was named as a respondent in an NASD complaint alleging that he forged public customers' signatures on traditional life insurance death benefit checks and deposited the checks into a bank account for his own use and benefit. The complaint also alleges

that Le failed to respond to NASD requests for information. (NASD Case #C11020011)

**Michael Robert Marcus (CRD #2291751, Registered Principal, Brooklyn, New York) and Louis Michael Montaino (CRD #2570300, Registered Representative, Middle Village, New York)** were named as respondents in an NASD complaint alleging that they, directly or indirectly, by the use of any means or instrumentality of interstate commerce of the mails or of any facility of any national securities exchange, knowingly or recklessly employed manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities; knowingly or recklessly effected transactions in, or induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances; or made untrue statements of material fact and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading. The complaint alleges that Marcus and Montaino engaged in a "pump and dump" manipulative scheme using a thinly traded, low-priced stock listed on the OTCBB. The complaint further alleges that Montaino aggressively solicited retail customers to purchase the security through a campaign of omissions and misrepresentations and Marcus placed day limit purchase orders for shares of the security with a market maker nearly every day at increasingly higher prices to create the appearance of interest and activity even though he had no customer purchase orders. In addition, the complaint alleges that Marcus aided and abetted the manipulative trading of others. (NASD Case #CAF010025)

**Aaron Simon Morris (CRD #2691021, Registered Representative, Hollywood, Florida)** was named as a respondent in an NASD complaint alleging that by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, he employed a device, scheme, or artifice to defraud, omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or engaged in acts, practices, or a course of business which operated, or could operate, as a fraud or deceit upon persons in connection with the recommendations he made to public customers to purchase stock. (NASD Case #C3A020006)

**Curtis William Triggs, Jr. (CRD #3184470, Registered Representative, St. Louis, Missouri)** was named as a respondent in an NASD complaint alleging that a document entitled "Customer Account Check Request" was completed bearing a public customer's name and signature requesting a check for the customer in the amount of \$68,252.09 without the customer's knowledge or consent. The complaint further alleges that Triggs attempted to misuse the customer's funds in that he obtained a cashier's check without the knowledge or consent of the customer in the amount of \$68,249.09 and directed that the funds be applied to his defaulted mortgage. The complaint also alleges that Triggs failed to respond to NASD requests for information or to appear for an on-the-record interview. (NASD Case #C04020006)

**Firms Expelled For Failing To Pay Fines And/Or Costs In Accordance With NASD Rule 8320**

**Centex Securities Corp.,**

La Jolla, California  
(February 8, 2002)

**Logan Rock,**

Arlington, Virginia  
(February 8, 2002)

**NI Securities Corp.,**

Akron, Ohio  
(February 8, 2002)

**Protective Group Securities Corporation,**

Minneapolis, Minnesota  
(February 8, 2002)

**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 actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Hudson Sloane & Co., L.L.C.,**

New York, New York  
(February 19, 2002)

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

**American Pacific Securities, Inc.**

San Clemente, California  
(February 20, 2002)

**Grady and Hatch & Company, Inc.,**

Staten Island, New York  
(February 5, 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.)**

**Belski, Raymond J.**

St. Mary's, Georgia  
(February 14, 2002)

**Foster, Karl H.**

Toledo, Ohio  
(February 15, 2002)

**Garcia, Ruben**

Chappaqua, New York  
(February 5, 2002)

**Latson, Jr., David L.**

Miami, Florida  
(March 1, 2002)

**Levin, Stephanie S.**

New York, New York  
(January 24, 2002)

**McCall, Joseph**

Charlotte, North Carolina  
(February 22, 2002)

**Shiflett, Vernon W.**

Powell, Ohio  
(March 1, 2002)

**Syken, Elisa D.**

Hollywood, Florida  
(February 19, 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.)**

**Branstetter, Jr., Robert Lee**

Boca Raton, Florida  
(February 6, 2002)

**Branstetter, Todd Robert**

Boca Raton, Florida  
(February 6, 2002)

**Elmore, Dwann S.**

San Diego, California  
(February 6, 2002)

**Frain, Michael W.**

St. Charles, Missouri  
(February 6, 2002)

**Hentschel, III, Frederick J.**

Bayside, New York  
(February 4, 2002)

**Marcotte, Lori M.**

Jefferson, Louisiana  
(February 5, 2002)

**Russo, Thomas A.**

Staten Island, New York  
(February 6, 2002)

**Tirovolas, Dimos S.**

Lindenhurst, New York  
(February 4, 2002)

**Torres, Guido A.**

Miami, Florida  
(February 19, 2002)



**Individuals Revoked For  
Failing To Pay Fines And/Or  
Costs In Accordance With  
NASD Rule 8320**

**Biddick, Bruce**

Rancho Santa Fe, California  
(February 8, 2002)

**Chepak, John A.**

West Harrison, New York  
(February 8, 2002)

**Flynn, Scott D.**

Highlands, New Jersey  
(February 8, 2002)

**Gerace, Joseph G.**

S. Laguna, California  
(February 8, 2002)

**Ronk, Thomas C.**

Corona Del Mar, California  
(February 8, 2002)

**Sitomer, Richard A.**

New York, New York  
(February 8, 2002)

**Waddell, Charles K.**

Oklahoma City, Oklahoma  
(February 8, 2002)