

Notice to Members

JUNE 2002

SUGGESTED ROUTING

Legal and Compliance
Market Making
Operations
Senior Management
Trading

KEY TOPICS

Order Audit Trail System

REQUEST FOR COMMENT

ACTION REQUESTED BY JULY 10, 2002

Order Audit Trail System

NASD Seeks Comment on Proposed Changes to the OATS Rules

Executive Summary

NASD is issuing this *Notice to Members* to solicit comments from members and other interested parties on proposed changes to the OATS Rules (Rules 6950 through 6957). Specifically, NASD staff is seeking comment on four proposals, which would require that members:

- + record and report execution price, capacity, Automated Confirmation Transaction Service (ACT) control number, and a special circumstances indicator as part of their OATS Execution Reports, but would rescind the requirement that members record and report an identical order identifier (referred to as the branch/sequence number) on the OATS Execution Report and the related ACT trade report;
- + report the execution time rather than prior reference price (".PRP") time or allocation time in OATS Execution Reports;
- + record and report for OATS purposes the route of a proprietary order if they comply with the SEC Limit Order Display Rule by routing that proprietary order in place of a customer order to another market, electronic communications networks (ECN), or market maker; and
- + provide the trading desk receipt time via a Desk Report in addition to the electronic system receipt time reported as their order receipt time on New Order Reports, in those instances when those times differ by more than one second.

Questions concerning this *Notice* should be directed to: the Market Regulation Department at 240-386-5126 or the Office of General Counsel at (202) 728-8071.

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Request for Comment

NASD requests comment on the proposed changes relating to the OATS Rules. Comments must be received by July 10, 2002. Members and interested persons can submit their comments using the following methods:

- + mailing in Attachment A – Request for Comment Form – along with written comments
- + mailing in written comments
- + e-mailing written comments to pubcom@nasd.com
- + submitting written comments online on our Web Site (www.nasdr.com)

Written comments submitted via hard copy should be mailed to:

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1500

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

Before becoming effective, any rule change developed as a result of responses received to this *Notice* must be approved by the NASD Regulation Board of Directors and Securities and Exchange Commission.

Background and Discussion

NASD staff is considering several amendments to the OATS Rules that are intended to enhance the data provided by OATS, without imposing significant new burdens on reporting members.

The staff seeks comment from members and other interested parties on any or all of the proposals described below. In particular, the staff seeks comment regarding the burdens and/or technological benefits to members of the proposals.

Proposed Changes to OATS Execution Reports

Members currently are not required to record and report execution price or firm capacity on OATS Execution Reports. When the OATS Rules initially were adopted, it was determined that NASD would obtain price and capacity information from ACT trade reports that have been matched with corresponding OATS reports (known as the "ACT matching process"). Members have raised concerns about the time and effort necessary to enter an identical branch/sequence number in the ACT trade report and the OATS Execution Report, both of which are necessary for the ACT matching process. In addition, the ACT matching process can be limited because members are not able to enter order identifier information into ACT when, for example, market makers' quotes are accessed via a Nasdaq Execution System, when odd lot orders are executed, or where transactions are not reported through ACT.

To address these issues and concerns, NASD is soliciting comment on a proposal that would require members to record and report the execution price, firm capacity and the ACT control number, if applicable, on OATS Execution Reports. With these additional data elements, OATS would no longer need to systematically match the OATS Execution Report to the related ACT trade report.¹ In the event any additional information that was not provided in the OATS

Execution Report was needed, such as contra party, NASD would have the ability to access this information from the ACT trade report through the use of the ACT control number. In addition to reducing the data processing necessary to conduct the ACT matching process, NASD staff believes that the proposed changes would reduce OATS compliance burdens on members, given that they no longer would be required to input an identical branch/sequence number on both the OATS Execution Report and the related ACT trade report.

The staff also is proposing an additional field for OATS Execution Reports, which would indicate whether there were any "special circumstances" related to a transaction, such as .PRP trades, capacity reallocations trades, etc. Trades may be executed and reported to ACT under a variety of special circumstances, and certain information may be provided on the ACT trade report that is not otherwise reported to OATS, such as the .PRP time or the allocation time. By having a "special circumstances" indicator in the OATS Execution Report, the staff would be able to identify those trades for which the staff may need to obtain additional information directly from ACT.

Proposed Change Relating to .PRP Time and Capacity Reallocation Trades

The staff also is soliciting comment on the time that is reported to OATS for .PRP trades and capacity reallocation trades. Currently, under an interpretation to the OATS Rules, members are required to report the .PRP time or allocation time, as applicable, in Execution Reports. Instead, the proposal would require

members to provide the actual execution time, rather than the .PRP time or allocation time, in OATS Execution Reports. Because members currently report the .PRP time and the allocation time in ACT reports, reporting the actual execution time in OATS will provide NASD with more complete information and would eliminate the need for NASD inquiries to members to obtain execution times on these types of trades.

Proposed Change Relating to Routes of Proprietary Orders for Limit Order Display Purposes

Rule 11Ac1-4 under the Securities Exchange Act of 1934 (the "Limit Order Display Rule") generally requires market makers immediately to display in their bid or offer both the price and the full size of each customer limit order that would improve their quoted price in a particular security. In addition, market makers that have a bid or offer that is equal to the national best bid or offer are obligated to reflect in their quote the size of a customer limit order that is priced equal to that bid or offer and represents more than a de minimis change in the size of their quotation. Rules 11Ac1-4(c)(5) and (6) permit, under specified conditions, a market maker to fulfill its obligations under the rule by delivering a customer limit order to another market, an ECN or another market maker, rather than display the order in its own quote. In an interpretation of these exceptions, the SEC stated that a member also may fulfill its display obligation for a customer limit order by routing an order for its own account, rather than the customer's order, to another market, an ECN or another market maker. Once the displayed proprietary order is executed,

in whole or in part, the customer order must be executed accordingly.

Currently, the term "order," as defined in the OATS Rules, does not include a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities. Therefore, market makers that comply with the Limit Order Display Rule in the manner described above are not required to record and report for OATS purposes the route of the proprietary order to another market, ECN, or market maker in place of the customer order. As a result, the Market Regulation Department exception report system produces a number of "false positives" regarding violations of the Limit Order Display Rule because it appears to the system that the customer limit order was not routed for display purposes.

NASD staff, therefore, is soliciting comment on a proposal that would require members to record and report to OATS proprietary orders sent by a market maker to another market, ECN or, market maker where the proprietary orders represent customer orders for the purposes of complying with the Limit Order Display Rule. This would be accomplished by requiring firms to record and report to OATS a Route Report for the customer order, as if the customer order, instead of the proprietary order, was routed. The member would be required to populate an additional field on the Route Report indicating that the route was proprietary. The member also would continue to submit an Execution Report to OATS representing the customer order executed by the member. Under the proposal, members would be required to match this OATS Execution Report to any ACT report submitted for the execution of the customer order (e.g., riskless principal, regulatory report,

etc.) by including an identical branch/sequence number on the member's OATS Execution Report and the member's related ACT report (or under the proposed changes to the Execution Report described above, the ACT Control Number on the OATS Execution Report).

OATS Order Receipt Time for New Order Reports

Members are required to record and report on their New Order Reports the time an order was originated or received by the member ("Order Receipt Time"). With respect to electronic orders, NASD staff has interpreted the Order Receipt Time to be the time the member entered the order into the member's electronic order routing or trading system ("electronic system time"), as applicable. The staff concluded that this definition of Order Receipt Time is a close substitute for the time an order is received by the trading desk because routing through the electronic system to the trading desk is usually nearly instantaneous.

Through several recent reviews for member compliance with the Limit Order Display Rule, it has come to the staff's attention that there have been instances in which the time an order is captured by an electronic system is significantly different than the time the order is received by the trading desk.² Specifically, in response to NASD staff inquiries, members have provided evidence that the time the order reached a place at the member where it could be displayed or executed was different than the time the order was entered into the member's electronic order routing system, which was the Order Receipt Time reported to OATS. In many of these instances, members were able to evidence their compliance with the Limit Order Display Rule, but only after an alert for a

potential Display Rule violation had been generated and the NASD staff had initiated a formal inquiry.

Accordingly, NASD staff is soliciting comment on a proposed amendment that would require members to record and report a Desk Report that would provide the time the order was received by the trading desk, in those instances where the difference between the electronic system time and the trading desk time was one second or greater. Members also would be required to populate a new field as part of the Desk Report, which would indicate that the Desk Report represented trading desk information. Members would continue to provide the electronic system time as the Order Receipt Time on their New Order Reports. The staff requests input from members and other interested parties on the technological implications and burdens of this proposal, including the one-second standard for the need to generate a Desk Report to denote the time of receipt at the trading desk.

2 It is important to note that such delays in the handling of orders may raise significant concerns regarding a member's compliance with its best execution obligations for those orders.

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ENDNOTES

1 This electronic "linking" requires members to input the identical execution time to the second and branch/sequence number, among other things, in both the OATS Execution Report and the related ACT trade report. If these data elements do not match exactly, NASD is unable to link systematically the two reports. The resulting unmatched OATS Execution Report is then flagged by NASD as a potential violation of the OATS Rules and the member may be subject to disciplinary action.

ATTACHMENT A

Request for Comment Form

We have provided below a form that members and other interested parties may use in addition to written comments. This form 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 July 10, 2002. Members and interested parties can submit their comments using the following methods:

- + mailing in this form with attached comments
- + mailing in written comments
- + e-mailing written comments to pubcom@nasd.com
- + submitting comments online at our Web Site (www.nasdr.com)

This form and/or written comments should be mailed to:

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1500

Proposed Changes to OATS Rules

The staff requests input from members and other interested parties on any or all of the four proposed changes to the OATS Rules described in this *Notice*. In particular, the staff seeks comment on the technological implications and burdens of each of the proposals.

1. Do you support the proposal that would require that members record and report execution price, capacity, Automated Confirmation Transaction Service (ACT) control number, and a special circumstances indicator as part of their OATS Execution Reports?

Yes No See my attached written comments

2. Do you support the proposal that would require that members report the execution time rather than .PRP time or allocation time in OATS Execution Reports?

Yes No See my attached written comments

3. Do you support the proposal that would require members that comply with the SEC Limit Order Display Rule by routing a proprietary order in place of a customer order to another market, ECN or market maker, record and report for OATS purposes the route of the proprietary order?

Yes No See my attached written comments

4. Do you support the proposal that would require that members provide the trading desk time via a Desk Report in addition to the electronic system time as their order receipt time on New Order Reports in those instances when those times differ by more than one second?

Yes No See my attached written comments

Contact Information

Name: _____

Firm: _____

Address: _____

City/State/Zip: _____

Phone: _____

E-Mail: _____

Are you:

An NASD Member

An Investor

A Registered Representative

Other: _____

Notice to Members

JUNE 2002

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Operations
Senior Management

KEY TOPICS

Appendix D to the Net Capital Rule
Net Capital
Operations
SEC Rule 15c3-1
Subordination Agreements
Subordinated Loans

INFORMATIONAL

Subordinated Loan Agreements

SEC Approves NASD Rule Requiring Members to Require Investors to Sign a Disclosure Document as Part of a Subordinated Loan Agreement; **Effective Date: July 15, 2002**

Executive Summary

On May 17, 2002, the Securities and Exchange Commission (SEC) approved a rule change requiring members to obtain a signed Subordination Agreement Investor Disclosure Document (Disclosure Document) from each investor before entering into a subordination agreement with that investor.

The Disclosure Document requirement, the text of which is provided in Attachment A, becomes effective on July 15, 2002.

Questions/Further Information

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

Discussion

At times, broker/dealers borrow funds or securities from investors or customers for the purpose of enhancing the firm's net capital position. To receive benefit under the SEC's net capital rule (Rule 15c3-1), funds or securities loaned by an investor to a broker/dealer, including a loan to a broker/dealer made by a customer of the broker/dealer, must be the subject of a satisfactory subordination agreement. The subordination agreement sets forth the rights and obligations of the lender (*i.e.*, the investor) and the borrower (*i.e.*, the broker/dealer), and it provides that any claims by the lender must be subordinate to claims by other parties, including customers and employees of the firm.

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This rule requires members to deliver a Disclosure Document to each investor and receive a signed copy of the Disclosure Document affirming that the investor has read it before entering into any subordination agreement.¹ The purpose of the Disclosure Document is to help investors understand what a subordination agreement is and what risks they assume when they enter into a subordination agreement. NASD staff will require a copy of the signed Disclosure Document as part of its review of all subordination agreements and, in its discretion, may contact investors regarding subordination agreements. The Disclosure Document provides information that NASD believes is essential for an investor to understand prior to entering into a subordination agreement. In addition to understanding what a subordination agreement is and how it operates, retail brokerage customers especially need to understand the risks associated with subordination agreements. Investors who enter into subordination agreements will be able to obtain the following basic information from the Disclosure Document.

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

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

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

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

There Are No Restrictions on the Broker/Dealer's Use of a Lender's Funds or Securities. A lender cannot place additional restrictions on the use of proceeds of a subordination agreement beyond those contained in Appendix D of the SEC's Net Capital Rule. In other words, funds or securities lent to a broker/dealer under a subordination agreement can be used by the broker/dealer almost entirely without restriction, including paying salaries to the broker/dealer's personnel.

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

Effective Date

As of July 15, 2002, each subordinated loan agreement submitted to NASD staff for approval must contain a Disclosure Document signed by the investor.

ENDNOTES

- 1 Pending adoption of this requirement, NASD in *Notice to Members 02-04* strongly urged all members entering into subordination agreements to adopt immediately, as a "best practice," procedures to deliver a Disclosure Document to, and obtain a signed copy from, each investor as part of the subordinated loan process.

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ATTACHMENT A

SUBORDINATION AGREEMENT

INVESTOR DISCLOSURE DOCUMENT

Please read this document carefully before deciding to enter into a subordination agreement with a broker/dealer. Subordination agreements are an investment. These investments can be risky and are not suitable for all investors. An investor should never enter into a subordination agreement with a broker/dealer unless he/she can bear the losses of the total investment.

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

Key Risks

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

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

- ✦ The funds or securities lent to a broker/dealer under a subordination agreement can be used by the broker/dealer almost entirely without restriction.
- ✦ Subordination agreements cause the lender to be subordinate to other parties if the broker/dealer goes out of business. In other words, you, as an investor, would be paid after the other parties are paid, assuming the broker/dealer has any assets remaining.
- ✦ NASD approval of subordination agreements is a regulatory function. It does **not** include an opinion regarding the viability or suitability of the investment. Therefore, NASD approval of a subordination agreement does not mean that NASD has passed judgment on the soundness of the investment or its suitability as an investment for a particular investor.

SIPC Coverage

Q. In general, what is SIPC coverage?

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

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

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

Other Insurance Coverage

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

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

General Information About Subordination Agreements

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

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

- Q. What are the advantages and disadvantages for an investor to enter into a subordination agreement with a broker/dealer?**
- A. An investor may be able to obtain a higher interest rate than from other investments. There are, however, key disadvantages. If the broker/dealer goes out of business, the investor's claims are subordinated to the claims of other parties, *i.e.*, customer and creditor claims will be paid before investors' claims. Thus, the subordinated investor may or may not get his/her funds or securities back, depending on the financial condition of the broker/dealer. **Finally, money or securities loaned under subordination agreements are not customer assets and are not covered by SIPC, or in general, any other private insurance.**
- Q. Per the Lender's Attestation, the broker/dealer is required to give the prospective lender copies of various financial documents, including a certified audit. Why is this necessary?**
- A. A subordination agreement is an investment in the broker/dealer. Therefore, the investor, as a prospective lender, should assess the firm's financial condition to determine whether the loan makes good business sense. Financial documents can be complicated and the investor should consider consulting with an attorney or accountant.
- Q. Outside counsel can be expensive. What if my broker/dealer provides an attorney for me at its expense?**
- A. It may not be desirable to use a broker/dealer's attorney to assist you in the transaction. To ensure independent, objective representation, an investor should retain his/her own attorney.
- Q. How many types of subordination agreements are there?**
- A. In general, there are only two, the Subordinated Loan Agreement and the Secured Demand Note Agreement.

Subordinated Loan Agreements (SLA)

- Q. What is an SLA?**
- A. If an investor lends cash to a broker/dealer, the investor will usually do this as part of an SLA. The SLA discloses the terms of the loan, including the identities of the broker/dealer and investor, the amount of the loan, the interest rate, and the date on which the loan is to be repaid.
- Q. Can the lender restrict the broker/dealer's use of the loan?**
- A. No. Language in the SLA precludes the lender from placing restrictions on how the broker/dealer may use the funds. Therefore, lenders should not rely on side agreements with a broker/dealer that purport to limit the use of the loan proceeds. These agreements are inconsistent with the SLA and may not be enforceable.

Secured Demand Note Agreements (SDN)

Q. What is an SDN?

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

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

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

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

- ✦ All securities pledged as collateral for the SDN, including excess collateral, are subordinated to the claims of the broker/dealer's customers and creditors. Thus, if the firm becomes insolvent, the investor's ability to retrieve his/her collateral may be at risk.

NASD Approval Process

Q. What is involved in the NASD approval process?

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

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

Investor Name

Investor Signature

Date

FOR NASD USE ONLY

Effective Date:

LOAN Number:

NASD ID Number:

Date Filed:

Notice to Members

JUNE 2002

SUGGESTED ROUTING

Executive Representative
Legal & Compliance
Operations

KEY TOPICS

Rule 2260
IM 2260
Debt Securities
Operations
Forwarding of Communications

INFORMATIONAL

Debt Securities

SEC Approves Amendments to NASD Rule 2260
Requiring Broker/Dealers to Forward Information
Regarding Debt Securities to Beneficial Owners

Executive Summary

On April 11, 2002, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 2260¹ that require a broker/dealer to make reasonable efforts to forward promptly communications regarding a debt security to the beneficial owner of such security.

The text of the amendments as provided in Attachment A become effective on July 9, 2002.

Questions/Further Information

Questions concerning this *Notice* may be directed to Sharon K. Zackula, Assistant General Counsel, at (202) 728-8985.

Background and Discussion

The SEC, other financial services regulators, broker/dealers, and other major participants in the securities markets have been engaged in efforts to eliminate "paper" or physically "certificated" securities and to encourage all investors to transition from physical securities certificates to electronic record of ownership. A central and guiding principle in these efforts has been that the beneficial owners of securities held in "street name" would be entitled to the same rights and privileges as an owner holding paper certificates. The Depository Trust and Clearing Corporation's (DTCC) book-entry system establishes a chain of record, documenting securities ownership in positions above the beneficial owner. Through this chain of record, certain communications from issuers, trustees, and others regarding securities, are passed through from nominee to nominee until the communication reaches the broker/dealer that holds the securities in street name for its customers.

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Rule 2260 currently provides that a member has an inherent duty to forward certain information regarding a security to the beneficial owner of such security (or the beneficial owner's designated investment adviser) if the security is held by the member for the beneficial owner, is in the member's possession and control, and is registered in a name other than the name of the beneficial owner. However, the Rule does not specifically require broker/dealers to forward information to customers who are beneficial owners of debt securities. Under the amendments to Rule 2260 approved by the SEC, members that carry customer accounts and that can identify the beneficial holders of the accounts are required to make "reasonable efforts" to forward promptly information to such beneficial holders. In those cases where an introducing broker/dealer does not disclose the identities of its customers to its clearing broker/dealer, but instead establishes an omnibus account at the clearing broker/dealer, the introducing broker/dealer is viewed as carrying such customer accounts and is responsible for complying with the requirements of Rule 2260.

Types of Information that Must Be Forwarded

For a debt security (other than a municipal security),² members must make reasonable efforts to forward any communication, document, or collection of documents pertinent to the issue that (1) was prepared by, or on behalf of, the issuer or the trustee of the issue; and (2) contains material information about the issue. Material information includes, but is not limited to, notices concerning monetary or technical defaults, financial

reports, information statements, and material event notices. In addition, a member is required to forward such information to beneficial owners only if the member is furnished with sufficient copies of the material by the issuer or trustee and is requested by the issuer or trustee to forward the material to the beneficial owners.

Satisfactory Assurance of Reimbursement of Expenses

A member is required to forward information to a beneficial holder only after the member "receives satisfactory assurance" that it will be reimbursed by the issuer or trustee for all out-of-pocket expenses, including reasonable clerical expenses. This is consistent with the provisions currently in effect under Rule 2260 regarding the forwarding of proxy statements, annual reports and other information to the beneficial owners of stock.

Use of "Reasonable Efforts" to Forward Information

A member must use "reasonable efforts" to forward information to the beneficial owners of debt securities, based on the type and quality of information that is currently made available by an issuer or a trustee, and the current lack of standardization in transmitting information of interest to investors. When a broker/dealer receives a notice or other information from the issuer or trustee, NASD believes, as provided in the revisions to Rule 2260, that the member has an obligation to forward promptly the information.

However, a member may be unable to do so if the information forwarded contains statements about one or more debt securities and fails to provide crucial identifying information, such as the CUSIP number, on the notification. In such instances, the broker/dealer must make reasonable efforts to identify the relevant CUSIP numbers, and to forward the information, but the broker/dealer is not in violation of the rule if after reasonable efforts, the member is unable to forward the information to all holders of that security. NASD generally will not characterize or interpret broker/dealer conduct as "reasonable efforts" if CUSIP numbers are provided in the notice or other information and the broker/dealer does not promptly forward the information to beneficial owners holding such securities on the broker/dealer's books and records. Similarly, if the broker/dealer makes no effort to determine from the issuer or the trustee if it may obtain reimbursement of its reasonable costs for forwarding the information, the NASD will not characterize such conduct as "reasonable efforts."

Additional Amendments

NASD has also made other minor changes to Rule 2260 and IM-2260. For example, NASD amended IM-2260, regarding reimbursement of costs, to clarify that, in forwarding proxies and other materials, members may not charge for envelopes that are provided by the issuer or the trustee, as well as by persons soliciting proxies.

Effective Date of Amendments

These amendments will become effective on July 9, 2002.

ENDNOTES

- 1 See Securities Exchange Act Release No. 45736 (April 11, 2002), 67 FR 19291 (April 18, 2002).
2. The Municipal Securities Rulemaking Board (MSRB) recently amended MSRB Rule G-15 to impose similar forwarding requirements with respect to information regarding municipal securities. See MSRB Rule G-15(g).

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ATTACHMENT A

Text of Rule

New language is underlined; deletions are in brackets.

2260. Forwarding of Proxy and Other Materials

(a) A member has an inherent duty [in carrying out high standards of commercial honor and just and equitable principles of trade] to forward promptly certain information regarding a security to the beneficial owner (or the beneficial owner's designated investment adviser) if the member carries the account in which the security is held for the beneficial owner and the security is registered in a name other than the name of the beneficial owner.

(1) Equity Securities

For an equity security, the member must forward:

(A)[(1)]all proxy material [which] that is properly furnished to the member [it] by the issuer of the securities or a stockholder of such issuer; [to each beneficial owner of shares of that issue (or the beneficial owner's designated investment adviser) which are held by the member for the beneficial owner thereof] and

(B)[(2)]all annual reports, information statements and other materials sent to stockholders[, which] that are properly furnished to the member [it] by the issuer of the securities, [to each beneficial owner of shares of that issue (or the beneficial owner's designated investment adviser) which are held by the member for the beneficial owner thereof.]

(2) Debt Securities

For a debt security other than a municipal security, the member must make reasonable efforts to forward any communication, document, or collection of documents pertaining to the issue that: (A) was prepared by or on behalf of, the issuer, or was prepared by or on behalf of, the trustee of the specific issue of the security; and (B) contains material information about such issue including, but not limited to, notices concerning monetary or technical defaults, financial reports, information statements, and material event notices.

(b) No member shall give a proxy to vote stock [which] that is registered in its name, except as required or permitted under the provisions of paragraphs (c) or (d) hereof, unless such member is the beneficial owner of such stock.

(c) (1) No change.

(A) sufficient copies of all soliciting material [which] that such person is sending to registered holders, and

(B) satisfactory assurance that he or she will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses incurred by such member in connection with such solicitation,

such member shall transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) [which] that is in its possession or control and registered in a name other than the name of the beneficial owner, all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of SEC Rule 17a-4 [under the Act].

(c) (2) through (3) No change.

(d) (1) No change.

(2) A member [which] that has in its possession or within its control stock registered in the name of another member and [which] that desires to transmit signed proxies pursuant to the provisions of paragraph (c), shall obtain the requisite number of signed proxies from such holder of record.

(3) No change.

(A) No change.

(B) any designated investment adviser [person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner to vote the proxies for stock which is in the possession or control of the member,] may vote such proxies.

(e) (1) As required in paragraph (a), a[A] member[when so requested by an issuer and upon being furnished with:] must forward promptly the material set forth in (a)(1), in connection with an equity security, or must make reasonable efforts to forward promptly the material set forth in (a)(2), in connection with a debt security, provided that the member:

(A) is furnished with sufficient copies of the material (e.g., annual reports, information statements or other material sent to [stockholders, and] security holders) by the issuer, stockholder, or trustee;

(B) is requested by the issuer, stockholder, or trustee to forward the material to security holders; and,

(C) receives [(B)]satisfactory assurance that it will be reimbursed by such issuer, stockholder, or trustee for all out-of-pocket expenses, including reasonable clerical expenses[.], [shall transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) which is in its possession and control and registered in a name other than the name of the beneficial owner of all such material furnished.]

(2) No change.

(f) For purposes of this Rule, the term "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to [stockholders] security holders.

(1) No change.

(2) Members [who] that receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the Commission pursuant to the Investment Advisers Act [or] of 1940 and that the investment adviser is exercising investment discretion over the customer's account

pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. Members must keep records substantiating this information.

(3) No change.

(g) No change.

- For purposes of this Rule, the term "ERISA" is an acronym for the Employee Retirement Income Security Act of 1974.

IM-2260. Suggested Rates of Reimbursement

(a) No change.

(1) Charges for Initial Proxy and/or Annual Report Mailings

(A) No change.

(B) 20 cents for each copy, plus postage, for annual reports[, which] that are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies.

(2) No Change.

(3) No Change.

(4) No Change.

(5) No Change.

(b) Members may charge for envelopes, provided that they are not furnished by the issuer, the trustee, or a [the] person soliciting proxies.

(c) No change.

Notice to Members

JUNE 2002

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Operations
Senior Management

KEY TOPICS

Rule 3070
Reporting Requirements

Reporting of Criminal Offenses

SEC Approves Proposed Changes to Rule 3070
Concerning the Reporting of Criminal Offenses by
Members and Persons Associated with Members;
Effective Date: July 15, 2002

Executive Summary

On May 15, 2002, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 3070, concerning the reporting of criminal offenses by members and persons associated with members. Effective July 15, 2002, these amendments will require the reporting of the following criminal offenses under Rule 3070(a)(5): any felony; misdemeanors involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds or securities; a conspiracy to commit any of these offenses; or substantially equivalent activity in a domestic, military, or foreign court.

The text of the amendment to Rule 3070 as provided in Attachment A becomes effective on July 15, 2002.

Questions/Further Information

Questions concerning this *Notice* may be directed to Emily Gordy, Director, Regulation Policy, at (202) 728-8070, or Shirley H. Weiss, Associate General Counsel, at (202) 728-8844.

Discussion

Rule 3070, adopted in 1995, assists NASD in the timely identification and investigation of problem members, branch offices, and registered representatives that may pose heightened risks to public investors. Rule 3070 requires members promptly to report to NASD the occurrence of 10 specified events and to file quarterly statistical information concerning customer complaints.¹ The reporting requirements under Rule 3070 significantly parallel comparable provisions of NYSE Rule 351 as well as the disclosure requirements

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of the Uniform Application for Securities Industry Registration or Transfer (Form U-4). Rule 3070 exempts from its provisions any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member.

To bring about greater consistency with NYSE Rule 351,² as well as Questions 14A(1)³ and 14B(1)⁴ of the Form U-4, NASD has amended NASD Rule 3070 to require the reporting of the following criminal offenses under Rule 3070(a)(5): any felony; misdemeanors involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, misappropriation of funds or securities; a conspiracy to commit any of these offenses; or substantially equivalent activity in a domestic, military, or foreign court. Previously, Rule 3070(a)(5) required members promptly to report to NASD indictments, convictions, guilty pleas, and no contest pleas with respect to "any criminal offense other than traffic violations."

the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion or misappropriation of funds or securities, or substantially equivalent activity in a domestic, military, or foreign court.

- 3 Question 14A(1) of Form U-4 requires members and associated persons to report "any felony."
- 4 Question 14B(1) of Form U-4 limits the scope of reportable misdemeanor criminal events to misdemeanors involving investments or an investment-related business, fraud, false statements or omissions, wrongful taking of property, bribery, forgery, counterfeiting or extortion, or a conspiracy to commit any of these offenses.

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Effective Date of Amendments

These amendments become effective on July 15, 2002.

ENDNOTES

- 1 For a complete list of the 10 reporting requirements, members should review Rule 3070.
- 2 Amended Rule 3070(a)(5) is consistent with recent amendments to NYSE Rule 351(a)(5) that require the reporting of criminal offenses to: any felony; or any misdemeanor that involves

ATTACHMENT A

Text of Rule

New language is underlined; deletions are in brackets.

3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS, EMPLOYEES, AND OTHERS' EMPLOYEES

* * *

Rule 3070. Reporting Requirements

(a) Each member shall promptly report to the Association whenever such member or person associated with the member:

(1) through (4) No change.

(5) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, [any criminal offense (other than traffic violations)] any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to commit any of these offenses, or substantially equivalent activity in a domestic, military, or foreign court.

Notice to Members

JUNE 2002

SUGGESTED ROUTING

Legal & Compliance
Operations
Registration
Senior Management

KEY TOPICS

Day-Trading Risk Disclosure
Statements
Margin Disclosure
Statements

INFORMATIONAL

Margin Disclosure and Day-Trading Risk Disclosure Statements

NASD Adopts Amendments Regarding the Posting
of Margin Disclosure and Day-Trading Risk Disclosure
Statements on Web Sites—Effective Date: July 1, 2002

Executive Summary

NASD has adopted amendments to require the posting of certain investor disclosure statements on members' Web sites. Specifically, NASD has amended (1) NASD Rule 2341 (Margin Disclosure Statement) to require members that permit customers to open accounts online or to engage in transactions in securities online to post the margin disclosure statement on their Web sites and (2) NASD Rule 2361 (Day-Trading Risk Disclosure Statement) to require members that promote a day-trading strategy to post the day-trading risk disclosure statement on their Web sites. The rule change became effective immediately upon filing with the Securities and Exchange Commission (SEC) on May 29, 2002 and will become operative on July 1, 2002. Attachment A contains the text of the amendments.

Questions/Further Information

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

Discussion

Background

NASD Rules 2341 and 2361 were developed to provide investors with additional and specific risk disclosures concerning margin and day trading, respectively. Rule 2341, which was adopted in April 2001, is designed to provide investors with information concerning the operation and risks associated with margin trading. NASD believed that investors' misconceptions about margin requirements, particularly with respect to maintenance margin, could cause investors to underestimate the risks of margin trading and to misunderstand the operation of and reasons for margin calls. Accordingly, NASD adopted Rule 2341 requiring members to deliver

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to non-institutional customers a specified disclosure statement that discusses the operation of margin accounts and the risks associated with trading on margin. Each member is required to deliver the margin disclosure statement to the customer prior to or at the opening of a margin account. Rule 2341 also requires that the margin disclosure statement, or an abbreviated version of the statement as set forth in the Rule, be provided to margin customers annually.

Rule 2361, which was adopted in July 2000,² is designed to provide investors with information concerning unique risks arising from day-trading activities. Rule 2361 requires firms promoting a day-trading strategy to provide their non-institutional customers with a day-trading risk disclosure statement prior to opening an account. The day-trading risk disclosure statement discusses several factors that a customer should consider before engaging in day trading, including that the customer should be prepared to lose all of the funds that he or she uses for day trading and that day trading on margin may result in losses beyond the initial investment.

Both Rules further permit member firms to develop an alternative disclosure statement substantially similar to the ones provided in the Rules. In the case of Rule 2361, the alternate day-trading risk disclosure statement must be filed with, and approved by, the NASD Advertising Regulation Department.

Posting of Disclosure Statements on Web Sites

While Rules 2341 and 2361 required that the disclosure statements be delivered individually to each covered customer, either in writing or electronically, the Rules did not require firms to post the

statements on their Web sites. Rather, in developing Rules 2341 and 2361, NASD focused on ensuring that each individual investor received the required risk disclosure statements. NASD believed that mandating individual delivery of the risk disclosure statements would be the most effective means of ensuring that customers received the required disclosures.

In 2001, following the adoption of Rule 2341 and Rule 2361, the General Accounting Office (GAO) issued a report that discusses, among other things, actions taken by securities industry regulators to address online trading issues.³ The 2001 GAO Report recognized that Rules 2341 and 2361 require broker/dealers to furnish investors with certain key investor protection disclosures. It also noted that the margin disclosure statement required under Rule 2341 provides substantial information that is very helpful to investors to understand the risks of trading on margin. The GAO expressed concern, however, that while customers covered by Rules 2341 and 2361 were receiving the margin and day-trading risk disclosure statements, additional benefits could be achieved if the disclosures also were provided online, noting that many investors who trade online may prefer to review information in that medium and that a Web site posting also would make the information available to other online investors who are thinking about engaging in the activities covered by the disclosure statements. In this regard, the 2001 GAO Report recommended that the SEC take steps to ensure broker/dealers disclose additional information on their Web sites regarding, among other things, margin requirements and trading risks.⁴

While many firms posted the margin and day-trading risk disclosure statements

on their Web sites on a voluntary basis, NASD believed that the investing public could further benefit from the information contained in the statements if additional online and day-trading firms were to post them on their Web sites. Accordingly, NASD has amended Rules 2341 and 2361 to address the GAO's recommendations and enable a broader array of persons to review the information regarding margin requirements and day-trading risks contained in the mandated disclosure statements.

Consistent with the general recommendations raised in the GAO Reports, NASD has amended (1) Rule 2341 to require member firms that permit customers to open accounts online or to engage in transactions in securities online to post the margin disclosure statement on their Web sites and (2) Rule 2361 to require member firms that promote a day-trading strategy, directly or indirectly, to post the day-trading risk disclosure statement on their Web sites. The firms will be required to post the statements specified in Rules 2341 or 2361, as applicable, or the alternate statements permitted by the Rules. The disclosure statements must be displayed on the Web site in a "clear and conspicuous manner," or in a clearly identified location that is readily accessible to investors. While compliance with the "clear and conspicuous" standard will be based on the facts and circumstances surrounding each member's Web site, NASD's primary concern is that firms not post the disclosure statements in a remote place on their Web sites, where investors or potential investors will be unlikely to locate them.

Importantly, the amendments do not affect a member firm's existing requirements under Rules 2341 and 2361 to deliver individually to each customer

covered by the Rules, either in writing or electronically, the disclosure statements mandated under the Rules. In addition, while NASD is not at this time requiring online firms that do not promote a day-trading strategy as defined in Rule 2361 to post the day-trading risk disclosure statement in addition to the margin disclosure statement on their Web sites, NASD encourages all online firms to do so. NASD believes that online traders may benefit from the information provided in the day-trading risk disclosure statement regardless of whether the online firm whose Web site the trader is visiting or using promotes a day-trading strategy.

ENDNOTES

- 1 See Exchange Act Release No. 44223 (April 26, 2001).
- 2 See Exchange Act Release No. 43021 (July 10, 2000).
- 3 See *OnLine Trading, Investor Protections Have Improved but Continued Attention is Needed*, Report to Congressional Requesters, GAO, 01-858 (July 2001) (the "2001 GAO Report"). The 2001 GAO Report is a follow-up to a GAO report issued in 2000 (*On-Line Trading, Better Investor Protection Information Needed on Brokers' Web Sites*, Report to Congressional Requesters, GAO, General Government Division, 00-43 (May 2000) (the "2000 GAO Report")) that examined how online broker/dealers addressed investor protection issues.
- 4 Similarly, noting that the SEC has determined from customer complaints it has received that many investors who traded online did not understand margin requirements and may not understand the risks they are taking or the rules and procedures for trading, the 2000 GAO Report also recommended that the SEC ensure that broker/dealers with online trading systems include certain investor protection information on their Web sites.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

2341. Margin Disclosure Statement

(a) No member shall open a margin account, as specified in Regulation T of the Board of Governors of the Federal Reserve System, for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in writing or electronically, and in a separate document, the [following] margin disclosure statement[:] specified in this paragraph (a). In addition, any member that permits non-institutional customers either to open accounts on-line or to engage in transactions in securities on-line must post such margin disclosure statement on the member's Web site in a clear and conspicuous manner.

Margin Disclosure Statement

Your brokerage firm is furnishing this document to you to provide some basic facts about purchasing securities on margin, and to alert you to the risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by your firm. Consult your firm regarding any questions or concerns you may have with your margin accounts.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from your brokerage firm. If you choose to borrow funds from your firm, you will open a margin account with the firm. The securities purchased are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account.

It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- *You can lose more funds than you deposit in the margin account.*

A decline in the value of securities that are purchased on margin may require you to provide additional funds to the firm that has made the loan to avoid the forced sale of those securities or other securities or assets in your account(s).

- ***The firm can force the sale of securities or other assets in your account(s).*** If the equity in your account falls below the maintenance margin requirements, or the firm's higher "house" requirements, the firm can sell the securities or other assets in any of your account held at the firm to cover the margin deficiency. You also will be responsible for any short fall in the account after such a sale.

- ***The firm can sell your securities or other assets without contacting you.*** Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities or other assets in their accounts to meet the call unless the firm has contacted them first. This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if a firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without notice to the customer.

- ***You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.*** Because the securities are collateral for the margin loan, the firm has the right to decide which security to sell in order to protect its interests.

- ***The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.*** These changes in firm policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause the member to liquidate or sell securities in your account(s).

- ***You are not entitled to an extension of time on a margin call.*** While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.

(b) No Change.

(c) In lieu of providing the disclosures specified in paragraphs (a) and (b), a member may provide to the customer and, to the extent required under paragraph (a) post on its Web site, an alternative disclosure statement, provided that the alternative disclosures shall be substantially similar to the disclosures specified in paragraphs (a) and (b).

(d) No Change

2361. Day-Trading Risk Disclosure Statement

(a) Except as provided in paragraph (b), no member that is promoting a day-trading strategy, directly or indirectly, shall open an account for or on behalf of a non-institutional customer unless, prior to opening the account, the member has furnished to each customer, individually, in writing or electronically, the [following] disclosure statement[:] specified in this paragraph (a). In addition, any member that is promoting a day-trading strategy, directly or indirectly, must post such disclosure statement on the member's Web site in a clear and conspicuous manner.

Day-Trading Risk Disclosure Statement

You should consider the following points before engaging in a day-trading strategy. For purposes of this notice, a "day-trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of intra-day orders to effect both purchase and sale transactions in the same security or securities.

Day trading can be extremely risky. Day trading generally is not appropriate for someone of limited resources and limited investment or trading experience and low risk tolerance. You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day-trading activities with retirement savings, student loans, second mortgages, emergency funds, funds set aside for purposes such as education or home ownership, or funds required to meet your living expenses. Further, certain evidence indicates that an investment of less than \$50,000 will significantly impair the ability of a day trader to make a profit. Of course, an investment of \$50,000 or more will in no way guarantee success.

Be cautious of claims of large profits from day trading. You should be wary of advertisements or other statements that emphasize the potential for large profits in day trading. Day trading can also lead to large and immediate financial losses.

Day trading requires knowledge of securities markets. Day trading requires in-depth knowledge of the securities markets and trading techniques and strategies. In attempting to profit through day trading, you must compete with professional, licensed traders employed by securities firms. You should have appropriate experience before engaging in day trading.

Day trading requires knowledge of a firm's operations. You should be familiar with a securities firm's business practices, including the operation of the firm's order execution systems and procedures. Under certain market conditions, you may find it difficult or impossible to liquidate a position quickly at a reasonable price. This can occur, for example, when the market for a stock suddenly drops, or if trading is halted due to recent news events or unusual trading activity. The more volatile a stock is, the greater the likelihood that problems may be encountered in executing a transaction. In addition to normal market risks, you may experience losses due to system failures.

Day trading will generate substantial commissions, even if the per trade cost is low. Day trading involves aggressive trading, and generally you will pay commissions on each trade. The total daily commissions that you pay on your trades will add to your losses or significantly reduce your earnings. For instance, assuming that a trade costs \$16 and an average of 29 transactions are conducted per day, an investor would need to generate an annual profit of \$111,360 just to cover commission expenses.

Day trading on margin or short selling may result in losses beyond your initial investment. When you day trade with funds borrowed from a firm or someone else, you can lose more than the funds you originally placed at risk. A decline in the value of the securities that are purchased may require you to provide additional funds to the firm to avoid the forced sale of those securities or other securities in your account. Short selling as part of your day-trading strategy also may lead to extraordinary losses, because you may have to purchase a stock at a very high price in order to cover a short position.

Potential Registration Requirements. Persons providing investment advice for others or managing securities accounts for others may need to register as either an "Investment Advisor" under the Investment Advisors Act of 1940 or as a "Broker" or "Dealer" under the Securities Exchange Act of 1934. Such activities may also trigger state registration requirements.

(b) In lieu of providing the disclosure statement specified in paragraph (a), a member that is promoting a day-trading strategy may provide to the customer, individually, in writing or electronically, prior to opening the account, and post on its Web site, an alternative disclosure statement, provided that:

(1) The alternative disclosure statement shall be substantially similar to the disclosure statement specified in paragraph (a); and

(2) The alternative disclosure statement shall be filed with the Association's Advertising Department (Department) for review at least 10 days prior to use (or such

shorter period as the Department may allow in particular circumstances) for approval and, if changes are recommended by the Association, shall be withheld from use until any changes specified by the Association have been made or, if expressly disapproved, until the alternative disclosure statement has been refiled for, and has received, Association approval. The member must provide with each filing the anticipated date of first use.

(c) No Change.

(d) No Change.

Notice to Members

JUNE 2002

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Operations
Senior Management
Trading

KEY TOPICS

FIPS

INFORMATIONAL

Fixed Income Pricing SystemSM

Additions, Changes, and Deletions as of April 23, 2002

As of April 23, 2002, the following bonds were added to the Fixed Income Pricing System (FIPSSM).

| Symbol | Name | Coupon | Maturity |
|---------|------------------------------|--------|----------|
| ACGH.GA | American Color Graphics Inc. | 12.750 | 08/01/05 |
| AMWA.GB | America West Airlines Inc. | 0.000 | 10/02/05 |
| BGFO.GB | B&G Foods Inc. | 9.625 | 08/01/07 |
| DAL.GK | Delta Air Lines Inc. | 7.779 | 01/02/12 |
| DAL.GL | Delta Air Lines Inc. | 6.417 | 07/02/12 |
| DAL.GM | Delta Air Lines Inc. | 6.718 | 01/02/23 |
| DG.GA | Dollar General Corp. | 8.625 | 06/15/10 |
| GRNA.GA | Greenwich Air Services | 10.500 | 06/01/06 |
| HRTF.GA | Hartford Electric Light | 7.500 | 05/01/03 |
| LSCR.GA | Luscar Coal Ltd | 9.750 | 10/15/11 |
| MBG.GD | Mandalay Resort Group | 9.375 | 02/15/10 |
| NEVP.GA | Nevada Power Co. | 8.500 | 01/01/23 |
| NEVP.GB | Nevada Power Co. | 7.625 | 11/01/02 |
| NEVP.GC | Nevada Power Co. | 8.250 | 06/01/11 |
| PTMK.GA | Pathmark Stores Inc. | 8.750 | 02/01/12 |
| PXD.GD | Pioneer Natural Resource | 7.500 | 04/15/12 |
| RCII.GA | Rent-a-Center Inc. | 11.000 | 08/15/08 |
| RSPR.GA | Resolution Performance/RPP | 13.500 | 11/15/10 |
| SOI.GA | Solutia Inc. | 6.500 | 10/15/02 |
| SOI.GB | Solutia Inc. | 7.375 | 10/15/27 |
| SPPW.GA | Sierra Pacific Power Co. | 8.000 | 06/01/08 |
| WCOM.GA | MCI WorldCom Inc. | 7.875 | 05/15/03 |
| WCOM.GB | MCI WorldCom Inc. | 8.000 | 05/15/06 |

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| Symbol | Name | Coupon | Maturity |
|---------------|----------------------------|---------------|-----------------|
| WCOM.GC | MCI WorldCom Inc. | 8.250 | 05/15/10 |
| WCOM.GD | MCI WorldCom Inc. | 0.000 | 06/11/02 |
| WCOM.GE | MCI WorldCom Inc. | 6.500 | 05/15/04 |
| WCOM.GF | MCI WorldCom Inc. | 7.500 | 05/15/04 |
| WCOM.GG | MCI WorldCom Inc. | 8.250 | 05/15/31 |
| WMCI.GA | MCI WorldCom Inc. | 7.500 | 08/20/04 |
| WMCI.GB | MCI WorldCom Inc. | 8.250 | 01/20/23 |
| WMCI.GC | MCI WorldCom Inc. | 7.750 | 08/20/23 |
| WMCI.GD | MCI WorldCom Inc. | 7.125 | 06/15/27 |
| WMCI.GE | MCI WorldCom Inc. | 6.950 | 08/15/06 |
| WMCI.GF | MCI WorldCom Inc. | 6.500 | 04/15/10 |
| WMCI.GG | MCI WorldCom Inc. | 7.550 | 04/01/04 |
| WMCI.GH | MCI WorldCom Inc. | 7.750 | 04/01/07 |
| WMCI.GI | MCI WorldCom Inc. | 7.750 | 04/01/27 |
| WMCI.GJ | MCI WorldCom Inc. | 6.250 | 08/15/03 |
| WMCI.GK | MCI WorldCom Inc. | 6.400 | 08/15/05 |
| WMCI.GL | MCI WorldCom Inc. | 6.950 | 08/15/28 |
| WSFL.GB | Western Financial Bank FSB | 9.625 | 05/15/12 |
| XRX.GC | Xerox Corp. | 7.150 | 08/01/04 |

As of April 23, 2002, the following bonds were deleted from the Fixed Income Pricing System.

| Symbol | Name | Coupon | Maturity |
|---------------|--------------------------------|---------------|-----------------|
| ADM.GA | Archer-Daniels-Midland | 0.000 | 05/01/02 |
| AEII.GA | AEI Resources Inc. | 10.500 | 12/15/05 |
| AGNL.GA | American General Corp. | 12.875 | 05/01/02 |
| AMG.GA | AMF Bowling Worldwide | 12.250 | 03/15/06 |
| AMG.GB | AMF Bowling Worldwide | 10.875 | 03/15/06 |
| CINU.GA | Communications Instrument Inc. | 10.000 | 09/15/04 |
| CMS.GC | CMS Energy Corp. | 8.125 | 05/15/02 |
| CONA.GB | Container Corp. of America | 10.750 | 05/01/02 |
| CPVC.GA | CCPR Services Inc. | 10.000 | 02/01/07 |
| CQB.GF | Chiquita Brands Intl Inc. | 9.625 | 01/15/04 |
| CQB.GG | Chiquita Brands Intl Inc. | 9.125 | 03/01/04 |
| CQB.GH | Chiquita Brands Intl Inc. | 10.250 | 11/01/06 |
| CQB.GI | Chiquita Brands Intl Inc. | 10.000 | 06/15/09 |
| GHLA.GA | Grove Hldgs LLC/Cap Corp. | 11.625 | 05/01/09 |

| | | | |
|---------|-------------------------------|--------|----------|
| GLXT.GA | Galaxy Telecom LP/Cap Corp. | 12.375 | 10/01/05 |
| GTS.GA | Global Telesystems Group Inc. | 9.875 | 02/15/05 |
| JOYG.GA | Joy Global Inc. | 10.750 | 04/30/06 |
| LNHP.GA | Leiner Health Products | 9.625 | 07/01/07 |
| MORT.GG | Marriott Corp. | 9.500 | 05/01/02 |
| NSC.GA | Norfolk Southern Corp. | 6.950 | 05/01/02 |
| NWRK.GA | Nortel Networks Ltd | 6.125 | 02/15/06 |
| SCEP.GL | S California Edison Co. | 0.000 | 05/01/02 |
| SHG.GA | Sun Healthcare Group Inc. | 9.500 | 07/01/07 |
| ZNT.GA | Zenith National Ins | 9.000 | 05/01/02 |

As of April 23, 2002, changes were made to the symbols of the following FIPS bonds:

| Date | Old Symbol/ Name | Coupon | Maturity | New Symbol/ Name | Coupon | Maturity |
|---------|------------------------------|--------|----------|------------------------------------|--------|----------|
| 5/15/02 | WMCI.GG/MCI WorldCom Inc. | 7.550 | 04/01/04 | WRLM.GA/MCI WorldCom Inc. | 7.550 | 04/01/04 |
| 5/15/02 | WMCI.GH/MCI WorldCom Inc. | 7.750 | 04/01/07 | WRLM.GB/MCI WorldCom Inc. | 7.750 | 04/01/07 |
| 5/15/02 | WMCI.GI/MCI WorldCom Inc. | 7.750 | 04/01/27 | WRLM.GC/MCI WorldCom Inc. | 7.750 | 04/01/27 |
| 5/15/02 | WMCI.GJ/MCI WorldCom Inc. | 6.250 | 08/15/03 | WRLM.GD/MCI WorldCom Inc. | 6.250 | 08/15/03 |
| 5/15/02 | WMCI.GK/MCI WorldCom Inc. | 6.400 | 08/15/05 | WRLM.GE/MCI WorldCom Inc. | 6.400 | 08/15/05 |
| 5/15/02 | WMCI.GL/MCI WorldCom Inc. | 6.950 | 08/15/28 | WRLM.GF/MCI WorldCom Inc. | 6.950 | 08/15/28 |
| 5/06/02 | WS.GC/Weirton Steel Corp. | 10.750 | 06/01/05 | WRTL.GC/ Weirton Steel Corp. | 10.750 | 06/01/05 |
| 5/06/02 | WS.GD/Weirton Steel Corp. | 11.375 | 07/01/04 | WRTL.GD/ Weirton Steel Corp. | 11.375 | 07/01/04 |

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, NASD 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.

Disciplinary Actions

REPORTED FOR JUNE

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of May 2002.

Firms Expelled, Individuals Sanctioned

Northridge Capital Corporation (CRD #16467, Melville, New York) and Michael Scott Weiner (CRD #2214982, Registered Principal, Centereach, New York). The firm was expelled from NASD membership and Weiner was barred from association with any NASD member in any capacity. The sanctions were based on findings that the respondents failed to respond to NASD requests for documents and Weiner failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #CLI010002)

Stonebriar Securities, Inc. (CRD #19193, North Palm Beach, Florida) and Matthew James Fitzgibbon (CRD #4112304, Registered Principal, Columbus, Indiana). The firm was expelled from NASD membership and Fitzgibbon was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Fitzgibbon and other individuals, made material misrepresentations and omissions of fact when soliciting public customers to purchase a common stock including baseless price predictions, false statements, and inadequate risk disclosure. The findings also stated that the firm, acting through Fitzgibbon and others, recommended and sold shares of penny stocks to public customers without approving their accounts for trading in penny stocks. NASD also found that the firm executed transactions in the stock without obtaining information from the customers concerning their investment objectives and investment experience, without having the customers verify their investment objectives and investment experience, and obtaining written agreements from the customers prior to the transactions setting forth the identity and quantity of the stock to be purchased. In addition, NASD found that Fitzgibbon guaranteed public customers against loss, made unsuitable recommendations to public customers, and failed to follow the instructions of public customers. (NASD Case #C07010072)

Firms and Individuals Fined

Americal Securities, Inc., (CRD #28096, San Francisco, California) and Michael Kit Yong Yap (CRD #2124707, Registered Principal, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$55,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the

entry of findings that the firm, acting through Yap, permitted individuals to act as representatives of the firm without being registered as representatives with NASD. (NASD Case #C01020007)

E.A. Moos & Co., L.P. (CRD #7606, Summit, New Jersey) and Edward Arnold Moos (CRD #339448, Registered Principal, Short Hills, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Moos, permitted individuals to maintain their securities licenses with the firm although they were not actively involved in the firm's investment banking or securities business. (NASD Case #C9B020033)

New England Securities Corporation (CRD #615, Boston, Massachusetts) and Stephen Francis McKinnon (CRD #2238383, Registered Principal, Hanson, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$50,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through McKinnon, permitted registered individuals to continue to perform duties as registered individuals at a time their registration status with NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Rule. (NASD Case #C11020020)

Schoff & Baxter, Inc., (CRD #3290, Burlington, Iowa) and Harry Wickham Baxter (CRD #1194108, Registered Principal, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$150,505.90, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Baxter, failed to establish and maintain a system reasonably designed to supervise the activities of an individual to achieve his compliance with certain NASD rules. The findings also stated that the firm, acting through Baxter, failed to adopt and implement adequate written procedures reasonably designed to carry out the supervision of the firm's business; in particular, to detect and prevent private securities transactions and unsuitable transactions. (NASD Case #C02020020)

Firms Fined

ABN Amro Securities, LLC (CRD #6540, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$23,500, and ordered to pay \$183.75, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of

findings that it failed to timely report its short interest positions to NASD and submitted to NASD its short interest position report, which included an inaccurate short position. The findings also stated that the firm was a registered market maker in securities and failed to execute orders upon presentment 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. In addition, NASD found that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions, and failed to execute orders fully and promptly. Furthermore, the findings stated that the firm executed customer transactions in Over The Counter Bulletin Board (OTCBB) and/or Over The Counter (OTC) equity securities and failed to document quotations from broker/dealers, executed short sale orders in Nasdaq securities, and failed to maintain a written record of the affirmative determination made for such orders.

NASD also found that the firm incorrectly designated as "PRP" through the Automated Confirmation Transaction ServiceSM (ACTSM) last sale reports of transactions in Nasdaq National Market[®] (NNM[®]) securities; failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities; and failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity. The findings also determined that the firm failed to display immediately customer limit orders in Nasdaq securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. (NASD Case #CMS020062)

ABN Amro Incorporated (CRD #15776, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$76,000, and required to pay \$784.38, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such a market so that the resultant price to its customers was as favorable as possible under prevailing market conditions and failed to execute orders fully and promptly. NASD also found that the firm executed short sale orders in certain securities, failed to maintain a written record of the affirmative determination made for such orders, and executed short sale transactions and failed to report these transactions to ACT with a short sale modifier. The findings

stated that the firm failed to contact and obtain quotations from dealers to determine the best inter-dealer market in non-Nasdaq securities transactions. The firm also failed to display immediately customer limit orders in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security.

Furthermore, NASD found that the firm, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or ask quotations in the Nasdaq Stock Market, Inc., which caused a locked or crossed market condition to occur in each instance. In addition, the findings stated that the firm failed to preserve for a period of not less than three years, the first two in a readily accessible place, the memorandum of brokerage orders and failed to show the time of entry, time of execution, and correct price of execution on the memorandum of brokerage orders. Moreover, NASD found that the firm failed to execute orders upon presentment and thereby failed to honor its published quotation. The findings also stated that the firm, as a market maker in the securities, 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(s) whose quote(s) it locked or crossed, a Trade-or-Move Message(s) that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. NASD also determined 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 through SelectNet, and within 30 seconds of the receiving message, 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.

In addition, NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning best execution, the Order Audit Trail SystemSM (OATSSM), the One Percent Rule, SEC Rule 10A-1, and 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 #CMS020058)

Aegis Capital Corporation (CRD #15007, Valley Stream, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market participants whose quotations would be locked or crossed, it entered a bid or ask quotation in the Nasdaq Stock Market, Inc., which caused a locked or crossed market condition to occur in each instance. NASD also found that the firm, as a market maker in securities, was a party to a locked or crossed market condition prior to the market opening; received a Trade-or-Move message in each instance through SelectNet; and 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 #CMS020085)

Bear, Stearns & Company, Inc. (CRD #79, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it 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, in each instance to the market maker(s) whose quote(s) 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 #CMS020068)

Broadway Trading, LLC (CRD #42429, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions in a security at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. NASD also found that the firm executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. In addition, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning short sales. (NASD Case #CMS020054)

Credit Suisse First Boston Corporation (CRD #816, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that as a registered market maker in securities, it failed to execute orders

presented to the firm at its published bid or published offer in an amount up to its published quotation size and thereby failed to honor its published quotation. (NASD Case #CMS020083)

Crowell, Weedon & Co. (CRD #193, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately public customer limit orders in Nasdaq securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer 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. (NASD Case #CMS020071)

Deutsche Banc Alex. Brown, Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it 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(s) whose quote(s) 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 #CMS020072)

Fahnestock & Co., Inc. (CRD#249, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$5,000 and required to pay \$5,906.25, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. (NASD Case #CMS020059)

Franklin Ross, Inc. (CRD #43610, Coral Springs, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,500, and fined \$4,000, jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that representatives of the firm engaged in prohibited general solicitation in connection with private placement offerings. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with Section 5 of the Securities Act of 1933. (NASD Case #C07020022)

Josephthal & Co., Inc. (CRD #3227, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$21,500, and required to pay \$62.50, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, an order was presented to the firm at its published bid or published offer in an amount up to its published quotation size, and failed to execute the orders upon presentment and thereby failed to honor its published quotation. NASD found that the firm failed to execute orders fully and promptly. NASD also found that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings also stated that the firm incorrectly designated as "PRP" through ACT last sale reports of transactions in Nasdaq National Market securities, and failed to show the correct time of entry on the memorandum of brokerage orders. In addition, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning short sales and Securities and Exchange Commission (SEC) and NASD firm quote rules. (NASD Case #CMS020084)

Major League Securities, LLC (CRD #32211, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$225,000, and required to revise its written supervisory procedures concerning Small Order Execution System (SOES). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, through an executive officer of the firm, it personally loaned \$19.35 million to persons and entities for the express purpose of opening securities accounts at the firm. NASD found that the executive officer funded these loans with officer loans from an affiliated member firm, of which he was also an executive officer. NASD also found that each loan recipient was required to use the complete proceeds of the loan to open a firm securities account, to execute a promissory note promising to repay the loan from the officer, to pledge the assets in its securities account as collateral for the loan, and to agree to pay monthly interest for the loan through monthly withdrawals from such account. The officer's designee monitored the equity in such accounts to ensure that the loan recipients properly handled the funds therein.

While the loan recipients made their own trading decisions as to which stocks to buy and sell, they were expected to adhere to the firm's proprietary trading strategies. The findings also included that, after the loan recipients received the loan proceeds, they immediately opened securities accounts at the firm. The loan recipients executed transactions in their firm securities account through, among other systems, the Nasdaq Stock Market's SOES. During the review period, SOES was only available to member firms to execute agency or riskless principal

orders on behalf of public customers. By virtue of the loan arrangements and controls, none of the loan recipients was a public customer for the purpose of SOES and, therefore, the use of SOES by the loan recipients during the review period violated the SOES rules. In addition, the NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the use of SOES. (NASD Case #CMS020086)

National Financial Services LLC (CRD #13041, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$70,000, and instructed to revise its written supervisory procedures with respect to the applicable securities laws and regulations concerning OATS reporting rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it transmitted new order reports to OATS on behalf of other member firms that omitted Account Type Codes. NASD also found that the firm transmitted cancelled order reports to OATS on its own behalf and on behalf of other member firms that contained inaccurate times. In addition, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the OATS reporting rules. (NASD Case #CMS020075)

Quick & Reilly, Inc., (CRD #11217, New York, New York) 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 it failed to have and maintain adequate supervisory procedures with respect to the detection and prevention of mutual fund sales practice abuses despite the fact that the firm was issued a Letter of Caution by NASD for failing to have such procedures. (NASD Case #C02020018)

Spear, Leeds & Kellogg, L.P. (CRD #3466, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$70,000, and instructed to revise its written supervisory procedures concerning OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to transmit to OATS reports containing each applicable item of order information identified in NASD Marketplace Rule 6954. NASD also found that the firm transmitted to OATS New Order Reports containing inaccurate data as to method or receipt and account type. In addition, the findings stated that the firm failed to transmit to OATS Route Reports for orders routed to other members. Furthermore, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS. (NASD Case #CMS020074)

Sutro & Co., Incorporated (CRD #801, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to pay \$857.75, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. NASD also found that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. (NASD Case #CMS020064)

Utendahl Capital Partners, L.P. (CRD #30115, New York, New York) 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 failed, prior to the execution of transactions with two hot issues, to obtain proper documentation as to the beneficial owners for corporate accounts or investment partnership accounts. The findings also stated that the firm failed to comply with the Firm Element of NASD's Continuing Education Requirements, in that the firm did not have any documentation evidencing that it implemented its training plan. NASD also found that the firm failed to accurately time-stamp order tickets, failed to indicate whether the order was "long" or "short" on order tickets, failed to record the contra party to transactions, and failed to record a time of order entry or of order execution with respect to "programmed" transactions. (NASD Case #C10020039)

WMA Securities, Inc. (CRD #32625, Duluth, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$200,000, and required to pre-file with NASD's Advertising Regulation Department all advertisements and sales literature (ASL) 15 days prior to their use for six months from the date of acceptance of this AWC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in widespread breaches of NASD's Advertising Regulations that included failures to evidence supervisory review and approval of ASL; failures to file ASL with the NASD; the use of ASL omitting material facts; and the use of ASL containing exaggerations, unwarranted, and misleading statements. The findings also stated that the firm's Web site was not reviewed or approved by a registered principal, and that the firm did not file timely, as required, portions of the Web site that pertained to investment company products with NASD. In addition, the Web site failed to make the relationship between a non-member entity and

the firm clear, and created confusion as to which entity offered the securities products discussed in the Web site. Furthermore, NASD found that the firm failed to develop systems and procedures, including written supervisory procedures, reasonably designed to achieve compliance with NASD rules regarding review of ASL and electronic communications by a registered principal. Moreover, NASD found that the firm failed to establish procedures reasonably designed to prevent unlicensed persons from making recommendations or discussing products with potential customers. (NASD Case #CAF020014)

Individuals Barred or Suspended

Anthony Philip Accardo (CRD #643, Registered Representative, Chalmette, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$80,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Accardo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Accardo consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm.

Accardo's suspension began May 20, 2002, and will conclude at the close of business May 19, 2004. (NASD Case #C05020016)

Savas Zafer Alkoc (CRD #2019226, Registered Representative, Lakewood, New Jersey) was fined \$15,000 and suspended from association with any NASD member in any capacity for six months for settling a customer complaint away from his member firm, and barred from association with any NASD member in any capacity for misusing customer funds. The fine shall be due and payable when and if Alkoc seeks to reenter the securities industry. The sanctions are based on findings that Alkoc settled the complaint of a public customer away from his member firm without the firm's knowledge. The findings also stated that Alkoc received \$65,261.98 from public customers to invest in stocks and bonds, deposited some of the funds in his personal securities account at his member firm, and used some of the funds to settle a customer complaint without the authorization of the customers.

Alkoc's bar became effective April 29, 2002. (NASD Case #C9A010043)

Edward Don Angrisani (CRD #1463251, Registered Principal, Dayton, New Jersey) submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Angrisani consented to the described sanctions and to the entry of findings that he engaged in private securities transactions

without giving prior written notification to, or receiving written acknowledgement and/or permission from, his member firm to participate in the transactions.

Angrisani's suspension began May 20, 2002, and will conclude at the close of business May 19, 2004. (NASD Case #CAF010026)

Carl John Barone, Sr. (CRD #1078295, Registered Representative, Clementon, 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 three months. In light of the financial status of Barone, no monetary sanctions have been imposed. Without admitting or denying the allegations, Barone consented to the described sanction and to the entry of findings that he engaged in private securities transactions outside the normal course or scope of his association with his member firm and failed to provide prior written notification of the transactions to his member firm.

Barone's suspension began May 6, 2002, and will conclude at the close of business August 7, 2002. (NASD Case #C9A020016)

Mario Michael Bilotti (CRD #2834416, Registered Representative, Kenosha, Wisconsin) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bilotti forged public customers' signatures on documents and failed to respond to NASD requests for information. (NASD Case #C8A010092)

Ronald Alan Brodis (CRD #31232, Registered Principal, Merrick, 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 two years. In light of the financial status of Brodis, no monetary sanctions have been imposed. Without admitting or denying the allegations, Brodis consented to the described sanction and to the entry of findings that he made material and false representations and price predictions to public customers regarding the purchase of warrants without any reasonable basis. The findings also stated that Brodis settled, and attempted to settle, customer complaints without informing and obtaining authorization from his member firm. NASD also found that Brodis signed and provided a public customer with a document that he knew, or should have known, contained inaccurate information concerning the cash and securities positions in the customer's account. In addition, NASD found that Brodis effected purchases of warrants in the account of a public customer based upon orders from a third party—which were based on the customer's verbal authorization—without having received any written authorization from the customer for the third party to act on his behalf.

Brodis' suspension began May 20, 2002, and will conclude at the close of business May 19, 2004. (NASD Case #C10020040)

Raquel Brookins (CRD #4242793, Associated Person, Miami, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Brookins submitted a materially false Form U-4 to a member firm. (NASD Case #C07010085)

Marsha Lynn Brown (CRD #3029559, Registered Representative, Huntington, West Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brown consented to the described sanction and to the entry of findings that she caused \$800 to be borrowed against a home equity line of credit that public customers maintained with the bank at which she was employed and used the funds for her own benefit. The findings also stated that Brown made withdrawals totaling approximately \$1,845 from a public customer's account at the bank, causing \$800 to be applied to repay the funds withdrawn from the home equity line of credit of other customers and using the balance for her own benefit. Brown also caused the customer's account address to be changed so she would not receive statements reflecting the unauthorized withdrawals. In addition, NASD found that Brown withdrew \$1,050 from lines of credit from the accounts of public customers and used the funds for her own benefit. (NASD Case #C9A020020)

William Pang Chien (CRD #2251029, Registered Principal, Plantation, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, jointly and severally, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Chien consented to the described sanctions and to the entry of findings that a member firm, acting through Chien, failed to respond timely to NASD requests for information.

Chien's suspension began June 3, 2002, and concluded at the close of business June 14, 2002. (NASD Case #C07020027)

Kevin Berry Dermody (CRD #2274661, Registered Representative, Naperville, Illinois) 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, Dermody consented to the described sanction and to the entry of findings that he engaged in a scheme to defraud, made untrue statements of material fact, omitted to state material facts, and engaged in a course of business that operated as a fraud or deceit in connection with the purchase and sale of securities. The findings stated that Dermody participated in private securities transactions without prior written notice to, or approval from, his member firm, and made guarantees against losses to public customers. The findings also stated that Dermody failed to respond to an NASD request for information. (NASD Case #C05020001)

Joseph Edward Devlin (CRD #2889976, Registered Representative, Westfield, 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, Devlin consented to the described sanction and to the entry of finding that he failed to respond to NASD requests for information. (NASD Case #C8A020018)

Damien Robert Douglas (CRD #2255355, Registered Representative, Queens, New York) was barred from association with any NASD member in any capacity and ordered to pay \$29,886 in restitution to public customers. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Douglas engaged in unauthorized transactions in the accounts of public customers. The findings also stated that Douglas provided false, misleading, or inaccurate information to a public customer by failing to inform the customer that his purchase of initial public offering units was canceled without his authorization. (NASD Case #C10000026)

Theodore Thomas Eastwick (CRD #1571559, Registered Principal, New York, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eastwick consented to the described sanction and the entry of findings that he prepared a letter purportedly from a public customer that directed the liquidation of all shares in the customer's account held at Eastwick's member firm, and effected, or caused to be effected, the forgery of the deceased customer's signature on the document. The findings also stated that Eastwick effected, or caused to be effected, the forgery of the customer's signature on a check-writing authorization form and specimen signature card for the account. In addition, the findings stated that Eastwick forged the customer's signature on checks totaling approximately \$7,000 drawn against the customer's account, and converted approximately \$7,000 to his own use and benefit without the knowledge, authorization, or consent of the customer. (NASD Case #C10010090)

Jason Todd Ewing (CRD #4024596, Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ewing consented to the described sanction and to the entry of finding that he misappropriated public customers' funds by depositing \$4,000 belonging to the customers into his personal securities account at his member firm to cover a debit balance in his account. (NASD Case #C3A020018)

Tony Lee Fessler (CRD #2196008, Registered Representative, Pleasant Hill, Ohio) submitted a Letter of Acceptance, Waiver,

and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Fessler reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fessler consented to the described sanctions and to the entry of findings that he engaged in private securities transactions away from his member firm for compensation, failed to provide his firm with detailed written notice of the transactions and his role therein, and failed to receive permission from the firm to engage in the transactions.

Fessler's suspension began June 3, 2002, and will conclude at the close of business December 2, 2002. (NASD Case #C8B020007)

Kenneth Albert Friedman, Jr. (CRD #2123609, Registered Representative, Jacksonville, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Friedman consented to the described sanctions and to the entry of findings that he signed a client's name to an IRA brokerage account application and custodial transfer forms for mutual fund positions without the authorization of the client.

Friedman's suspension began May 20, 2002, and concluded at the close of business June 3, 2002. (NASD Case #C07020024)

Dennis Michael Fye (CRD #1016532, Registered Representative, Oswego, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Fye consented to the described sanction and to the entry of findings that he participated in the sale of debenture notes to a public customer without providing prior written notice to his member firm detailing the transactions and his role therein.

Fye's suspension began June 3, 2002, and will conclude at the close of business September 2, 2002. (NASD Case #C11980008)

Joseph Gantcharevitch (CRD #858617, Registered Representative, Whittier, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$3,614, suspended from association with any NASD member in any capacity for 10 days, and required to pay \$19,554 in restitution to a public customer. Without admitting or denying the allegations, Gantcharevitch consented to the described sanctions and to the entry of findings that he recommended unsuitable mutual fund transactions to a public customer without a reasonable basis to believe that the transactions were suitable for the customer in light of the nature of the transactions and the facts disclosed by the customer regarding her other securities holdings, financial situation, and needs.

Gantcharevitch's suspension began June 3, 2002, and concluded at the close of business June 12, 2002. (NASD Case #C02020017)

Richard Scott Gregory (CRD #2837455, Registered Representative, Dallas, Texas) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Gregory consented to the described sanctions and to the entry of findings that he executed a purchase transaction in the account of a public customer without the customer's prior knowledge or authorization.

Gregory's suspension began June 3, 2002, and will conclude at the close of business July 15, 2002. (NASD Case #C06010045)

John Peter Guarnieri (CRD #1147886, Registered Representative, Warren, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to disgorge \$2,300, plus interest, in commissions received to public customers. Without admitting or denying the allegations, Guarnieri consented to the described sanctions and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his firm with detailed written notice of the transactions and his role therein, and failed to receive permission from the firm to engage in the transactions.

Guarnieri's suspension began May 20, 2002, and will conclude at the close of business June 18, 2002. (NASD Case #C8B020008)

Carla Joy Halverson (CRD #859074, Registered Representative, Littleton, Colorado) 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, Halverson consented to the described sanction and to the entry of findings that she engaged in unauthorized transactions in the accounts of public customers without their prior authorization. (NASD Case #C3A020007)

Lewis Douglas Hanchell (CRD #3025649, Registered Representative, Miami, Florida) was fined \$10,000 and suspended from association with any NASD member in any capacity for six months for unauthorized trading, and barred from association with any NASD member in any capacity for failure to appear. The fine shall be due and payable upon Hanchell's reentry into the securities business. The sanctions are based on findings that Hanchell effected unauthorized trades in the account of a public customer and failed to respond to NASD requests to appear for an on-the-record interview.

Hanchell's bar became effective April 23, 2002. (NASD Case #C07010078)

Roger Allen Hanson (CRD #236512, Registered Representative, Milwaukee, Wisconsin) was fined \$27,050 and suspended from association with any NASD member in any capacity for 180 days. The NAC imposed the sanctions following review of an OHO decision. The sanctions were based on findings that Hanson engaged in private securities transactions, for compensation, without providing prior written notice to, and receiving approval from, his member firm.

Hanson's suspension began May 20, 2002, and will conclude on November 16, 2002. (NASD Case #C8A000059)

Andrew Nicholas Hennen (CRD #2554862, Registered Representative, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for 40 days. The fine must be paid before Hennen reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hennen consented to the described sanctions and to the entry of findings that he exercised discretionary power in the accounts of public customers without obtaining prior written authorization from the customers and without the acceptance in writing by his member firm of the accounts as discretionary. The findings also stated that Hennen delivered a letter to public customers stating that the value of their account at his member firm would be equal to a certain amount, and that he would personally compensate them for any deficiency in that value.

Hennen's suspension began June 3, 2002, and will conclude at the close of business July 12, 2002. (NASD Case #C3B020010)

Jeffrey Booth Hodde (CRD #247308, Registered Principal, Cedar Grove, New Jersey) was barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an OHO decision. The sanction was based on findings that Hodde effected an unauthorized transaction in the account of a public customer and failed to respond to NASD requests for information. (NASD Case #C10010005)

Lucian Deforest Hodgman (CRD #1546902, Registered Representative, Kensington, New Hampshire) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Hodgman consented to the described sanctions and to the entry of findings that he effected transactions in a public customer's account without the customer's prior knowledge, authorization, or consent.

Hodgman's suspension began June 3, 2002, and concluded at the close of business June 12, 2002. (NASD Case #C11020019)

Flexman Henry Johnson (CRD #2763639, Registered Representative, Philadelphia, Pennsylvania) 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, Johnson consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C9A010040)

Stephen Michael Johnson (CRD #721408, Registered Representative, Mesa, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 18 months. In light of the financial status of Johnson, no monetary sanction has been imposed. Without admitting or denying the allegations, Johnson consented to the described sanction and to the entry of findings that he participated in private securities transactions without giving prior written notice to his member firm. NASD also found that Johnson engaged in outside business activities that were outside the scope of his employment relationship with his member firm without giving prompt written notice to his member firm.

Johnson's suspension began June 3, 2002, and will conclude at the close of business December 2, 2003. (NASD Case #C3A020021)

Edward A. Kaminski (CRD #3011212, Registered Representative, Blue Springs, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Kaminski reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kaminski consented to the described sanctions and to the entry of findings that he affixed customers' signatures to letters of intent to expedite a prior request for transfer of variable annuity accounts, without their knowledge and consent.

Kaminski's suspension began May 20, 2002, and will conclude at the close of business November 19, 2002. (NASD Case #C04020011)

Norman Michael Lindo (CRD #2287832, Registered Representative, Springfield, Massachusetts) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lindo misused a credit card provided to him by a member firm, and that he failed to respond to NASD requests for information. (NASD Case #C11010041)

Cameron D. Littmon (CRD #4242790, Registered Representative, Hartford, Connecticut) was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 business days for willfully failing to disclose a material fact, and barred from association with any NASD member in any capacity for failing to respond. The fine must

be paid before Littmon reassociates with any NASD member or before requesting relief from any statutory disqualification. The sanctions were based on findings that Littmon willfully failed to disclose required information on his Form U-4 and failed to respond to NASD requests for information.

Littmon's bar became effective April 1, 2002. (NASD Case #C11020003)

Timothy Doyle Lucas (CRD #1476874, Registered Principal, Valrico, Florida) was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lucas failed to perform net capital calculations for his member firm, performed net capital computations that materially overstated his firm's net capital, and failed to timely file an annual audited financial report for the firm. The findings also stated that Lucas failed to give the SEC and NASD notice of his firm's net capital deficiency. (NASD Case #C07010080)

Carl Bernard Mahoney (CRD #2963667, Registered Representative, Northfield, Ohio) was barred from association with any NASD member in any capacity and ordered to pay \$10,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Mahoney received \$10,000 from a public customer to invest in an annuity, but failed to use the funds to purchase the annuity, failed to notify the customer that the funds were invested in any manner, and failed to repay any of the funds he received for investment. The findings also stated that Mahoney failed to respond to NASD requests for information. (NASD Case #C8B010024)

Robert Joseph Martinez, Jr. (CRD #4150756, Registered Representative, Albuquerque, New Mexico) submitted an Offer of Settlement in which he was fined \$7,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Martinez consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U-4.

Martinez's suspension began June 3, 2002, and will conclude at the close of business June 2, 2003. (NASD Case #C3A020001)

Andrew Thomas McNamara (CRD #2768804, Registered Representative, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McNamara consented to the described sanction and to the entry of findings that he converted funds to his own use from family members' accounts at his member firm without the authorization of the account holders. The findings also stated that McNamara obtained the funds by preparing fictitious letters of authorization to transfer funds from the target accounts to accounts under his ownership or control, and forged the account holder's signature

on those false letters of authorization. (NASD Case #C07020023)

Philip William Merrill (CRD #2436444, Registered Representative, Goodyear, Arizona) submitted an Offer of Settlement in which he was fined \$5,363, including disgorgement of commissions received of \$363, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Merrill consented to the described sanctions and to the entry of findings that he entered unauthorized transactions in a public customer's accounts.

Merrill's suspension began June 3, 2002, and concluded at the close of business June 14, 2002. (NASD Case #C3A020002)

Alfred Arthur Napolitano (CRD #1125072, Registered Principal, St. James, New York) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Napolitano reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Napolitano consented to the described sanctions and to the entry of findings that he failed to respond timely to an NASD request to appear for an on-the-record interview.

Napolitano's suspension began May 20, 2002, and will conclude at the close of business May 19, 2003. (NASD Case #C10010149)

Todd Allen Nye (CRD #1891536, Registered Principal, Chesterfield, Missouri) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to disgorge \$106,516 in commissions earned. Without admitting or denying the allegations, Nye consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to, and receiving approval and/or acknowledgement from, his member firm.

Nye's suspension began May 6, 2002, and will conclude at the close of business November 5, 2002. (NASD Case #C04010031)

Timothy Joseph O'Hare (CRD #2350627, Registered Representative, Long Beach, New York) submitted an Offer of Settlement in which he was fined \$7,500, including disgorgement of \$1,500 in commissions, and suspended from association with any NASD member in any capacity for 12 months. The fine must be paid before O'Hare reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, O'Hare consented to the

described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without the prior knowledge, authorization, or consent of the customers.

O'Hare's suspension began May 20, 2002, and will conclude at the close of business May 19, 2003. (NASD Case #C10020004)

George William Perkins, II (CRD #360247, Registered Representative, Lynnfield, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Perkins consented to the described sanctions and to the entry of finding that he participated in private securities transactions, for compensation, without providing prior written notice to, or obtaining approval from, his member firm.

Perkins' suspension began June 3, 2002, and will conclude at the close of business July 2, 2002. (NASD Case #C8A020021)

Anthony Joe Radicone (CRD #2461173, Registered Representative, Staten Island, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay \$8,210.52, plus interest, in restitution to public customers. Satisfactory proof of payment of restitution, with interest, is required before Radicone reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Radicone consented to the described sanctions and to the entry of findings that, acting intentionally or recklessly, he made material, misleading, and false representations to a public customer that were without a reasonable basis regarding an initial public offering (IPO), and failed to disclose to public customers any material information regarding the IPO issuer's financial condition, operating history, investment risks, or the speculative nature of an investment in the company. The findings also stated that, in regard to the IPO, Radicone made baseless price predictions, required a public customer to commit to purchase an equal amount of units in the secondary market in order to receive an allocation of units being offered in the IPO, and failed to execute customer transactions. NASD also found that Radicone effected transactions in the accounts of public customers without the customers' prior knowledge, authorization, or consent. In addition, the findings stated that Radicone performed duties as a registered person while his registration status was inactive due to his failure to timely complete the Regulatory Element of NASD's Continuing Education Rule. (NASD Case #C10010004)

Joseph Gerard Riley (CRD #714478, Registered Representative, Federal Way, Washington) 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, Riley consented to the described sanction and to the entry of findings that he

engaged in private securities transactions by participating in the sale of promissory notes and failed to provide written notice to his member firms describing in detail the proposed transactions, his proposed role therein, and failed to state whether he had received, or might receive, selling compensation in connection with the transactions. (NASD Case #C3B020007)

Jack Rutledge (CRD #2783403, Registered Representative, West Monroe, Louisiana) 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 four months, and required to requalify as a general securities representative by taking and passing the Series 7 exam prior to acting again in that capacity. If Rutledge fails to complete and pass the appropriate examination, he shall be suspended from acting in the capacity of general securities representative until he completes and passes such exam. The fine must be paid before Rutledge reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rutledge consented to the described sanctions and to the entry of findings that he settled a customer complaint without informing and obtaining authorization from his member firm. The findings also stated that Rutledge, without the knowledge or consent of a public customer, signed the customer's name to a letter of authorization to effect a transfer to Rutledge's account of funds previously advanced by him to the customer.

Rutledge's suspension began May 20, 2002, and will conclude at the close of business September 19, 2002. (NASD Case #C05020014)

Thomas Marion Scotton (CRD #1160247, Registered Representative, Willingboro, New Jersey) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 18 months. In light of the financial status of Scotton, no monetary sanctions have been imposed. Without admitting or denying the allegations, Scotton consented to the described sanction and to the entry of findings that he effected the opening of an individual account at his member firm for a public customer and later opened a joint account at his member firm, with the customer and himself serving as joint account holders with rights of survivorship, without discussing the opening of the joint account with anyone other than the customer. The findings also stated that Scotton effected the transfer of holdings valued at \$49,086.77 from the individual account to the joint account, acquiring a direct financial interest in the holdings. The findings also stated that Scotton facilitated his designation as the beneficiary of an annuity contract, for which the public customer was the owner and annuitant, by completing a change of beneficiary form without discussing his designation as beneficiary with anyone other than the customer. In addition, the findings stated that Scotton shared directly or indirectly in the profits or losses of the joint account without contributing any money to the account or being liable for any losses in the account.

Scotton's suspension began May 20, 2002, and will conclude at the close of business November 19, 2003. (NASD Case #C10010156)

James Michael Spaulding (CRD #1277538, Registered Representative, Huntland, Tennessee) and **Donald Carl Dickson (CRD #67486, Registered Principal, Huntsville, Alabama)** submitted a Letter of Acceptance, Waiver, and Consent in which Spaulding was fined \$15,000 and suspended from association with any NASD member in any capacity for 10 days. Dickson was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 10 days. The fine must be paid before Dickson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Spaulding recommended and effected sales of class B mutual fund shares in the aggregate amount of \$3,000,000 to a public customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation and needs. The findings also stated that Dickson, in connection with Spaulding's unsuitable transactions, failed and neglected to adequately supervise Spaulding in that he neglected to follow his member firm's written procedure requiring branch managers to obtain written approval from a customer when aggregate investments in mutual funds of more than \$1 million are not invested in class A shares.

Spaulding's suspension began May 20, 2002, and concluded at the close of business May 29, 2002. Dickson's suspension began May 20, 2002, and concluded at the close of business May 30, 2002. (NASD Case #C05020015)

Dennis Jay Sturm (CRD #1407180, Registered Principal, Coral Springs, Florida) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Sturm failed to respond to NASD requests for documents.

Sturm has appealed this action to the SEC. Sturm's bar became effective March 21, 2002. (NASD Case #CAF000033)

Walter John Taylor (CRD #1429146, Registered Representative, Syracuse, 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, Taylor consented to the described sanction and to the entry of findings that he withdrew \$14,591.94 from an account using a debit card, and converted those funds for his own use and benefit without proper authorization. (NASD Case #C11020021)

Peter Brian Voldness (CRD #872727, Registered Principal, Bloomington, Minnesota) submitted a Letter of Acceptance,

Waiver, and Consent in which he was fined \$2,500, jointly and severally, and suspended from association with any NASD member in any principal capacity for 10 business days. Without admitting or denying the allegations, Voldness consented to the described sanctions and to the entry of findings that, in connection with a private placement contingent offering, a member firm acting through Voldness failed to establish an independent escrow account into which customer funds would be deposited pending the achievement of the contingency.

Voldness' suspension began June 3, 2002, and concluded at the close of business June 14, 2002. (NASD Case #C04020012)

Tamer Lutfi Youssef (CRD #2906790, Registered Representative, Placentia, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 90 days. In light of the financial status of Youssef, no monetary sanction has been imposed. Without admitting or denying the allegations, Youssef consented to the described sanction and to the entry of findings that he recommended purchase and sale transactions in various securities for the securities account of a public customer without having a reasonable basis to believe that the transactions were suitable for the customer in view of the size, frequency, and nature of the recommended transactions, and the facts disclosed by the customer regarding his financial situation, objectives, circumstances, and needs.

Youssef's suspension began June 3, 2002, and will conclude on August 31, 2002. (NASD Case #C02020021)

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and has been appealed to or called for review by the NAC as of May 3, 2002. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

James Stephen Davenport (CRD #1726592, Registered Representative, Glasgow, Kentucky) was fined \$10,000, and suspended from association with any NASD member in any capacity for nine months. However, because he has not been working in the industry, the time away has been "credited" to him and thus his suspension has been served. Nonetheless, he is barred from opening a leveraged trading account with any firm with which he associates until he has paid the fine and repaid all of the customer loans in full. The fine must be paid before Davenport reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Davenport made false representations to his member firm.

Davenport has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C05010017)

Walsh Manning Securities, LLC (CRD #30826, New York, New York), Frank James Skelly, III (CRD #2160437, Registered Principal, Rockville Centre, New York), and Craig Howard Gross (CRD #2104270, Registered Principal, Kings Park, New York). The firm and Skelly were each fined \$75,000 and ordered to pay \$226,882.40, plus interest, jointly and severally, in restitution to public customers. The firm was suspended from NASD membership and Skelly was suspended from association with any NASD member in any capacity for two years. Skelly and Gross were barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm and Skelly charged public customers excessive and fraudulent markdowns, and that they failed to fairly price securities in relation to the prevailing market price. The findings also stated that Skelly and Gross failed to respond to NASD requests for information.

The respondents have appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #CAF000013)

Complaints Filed

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

Adrian Everardo Balboa (CRD #2941162, Registered Representative, Coral Springs, Florida) was named as a respondent in an NASD complaint alleging that he engaged in unauthorized transactions in the accounts of public customers. (NASD Case #C07020026)

Robert Joseph Borson (CRD #2828890, Registered Representative, Walnut, California) was named as a respondent in an NASD complaint alleging that he received a \$2,000 check from a public customer for the purpose of investing the proceeds; failed to apply the funds as instructed by the customer; and without the customer's authorization or consent, altered the payee line of the check to read "Robert Borson" instead of the firm name, and inserted the customer's initials to make it appear as though the customer had authorized the alteration. In addition, the complaint alleges that, without the customer's authorization or consent, Borson added the notation "given to Rob Borson" next to the customer's

notation "2001 Roth IRA Contribution" to make it appear as though Borson was the authorized payee on the customer check. The complaint also alleges that, after altering the customer check, Borson endorsed the check and deposited it into his personal checking account and held the funds for a period of time, without the customer's authorization or consent. (NASD Case #C02020022)

William Gerard Brown (CRD #33153, Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that, in connection with the purchase, sale, offer, and/or inducement to purchase securities in the accounts of public customers, Brown, directly or indirectly, by use of the means or instrumentalities of interstate commerce, the mails, or any facility of any national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated, or could operate, as a fraud or deceit, and induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The complaint also alleges that Brown purchased, or caused to be purchased, securities in the accounts of public customers without their prior knowledge, authorization, or consent. In addition, the complaint alleges that Brown failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C10020041)

David Richard Carey (CRD #2077949, Registered Principal, Ogleby, Illinois) was named as a respondent in an NASD complaint alleging that he received \$5,700 from public customers to purchase shares of a fund for custodial securities accounts, failed to follow the customers' instructions, and used the funds for some purpose other than the benefit of the custodial customers. The complaint further alleges that Carey failed to fully respond to NASD requests for documents and information. (NASD Case #C8A020024)

Ted Frederick Cook (CRD #852995, Registered Representative, Buffalo, New York) was named as a respondent in an NASD complaint alleging that he received a \$7,000 check from a public customer for the purchase of a long-term care insurance policy, instructed the customer to make the check payable to him, failed to purchase the policy or apply the funds for the benefit of the customer, and instead used the funds for his own benefit. The complaint also alleges that Cook failed to respond to NASD requests for information. (NASD Case #C8B020010)

Edward Allan Fennell (CRD #3126627, Registered Representative, Dublin, Ohio) was named as a respondent in an NASD complaint alleging that he received \$3,901.53 from a public customer representing proceeds from a 401(k) rollover intended for the purchase of a variable annuity, failed to apply

the funds to the purchase of a variable annuity or in any other manner for the benefit of the customer, and instead used the funds for his own benefit. The complaint also alleges that Fennell received \$1,000 from a public customer for the purchase of a mutual fund, failed to apply the funds as directed, and instead used the funds for his own benefit. In addition, the complaint alleges that Fennell failed to respond to NASD requests for information and documents. (NASD Case #C8B020009)

Kevin Thomas Ferguson (CRD #4143905, Registered Representative, Boston, Massachusetts) was named as a respondent in an NASD complaint alleging that he issued annuitant checks totaling \$26,040 without the consent or authorization of the customer and converted the funds to his own use and benefit. The complaint also alleges that Ferguson failed to respond to NASD requests for information. (NASD Case #C11020017)

First Liberty Investment Group, Inc. (CRD #3536, Philadelphia, Pennsylvania) and **James William O'Connor (CRD #1655937, Registered Principal, Aston, Pennsylvania)** were named as respondents in an NASD complaint alleging that they failed to establish, maintain, and enforce written supervisory procedures reasonably designed to detect and prevent violations involving sales practices, registration, penny stocks, customer complaint reports, trading and market making rules, and annual inspections of Offices of Supervisory Jurisdiction and branch offices. The complaint also alleges that the firm, acting through O'Connor, contravened the penny stock transaction and disclosure rules by failing to obtain a signed and dated written statement from each purchaser relating to the purchaser's financial condition and investment experience, and failed to obtain a signed and dated written statement from each purchaser acknowledging receipt of the required penny stock transaction risk document. In addition, the complaint alleges that the firm and O'Connor failed to disclose to the purchasers the inside and bid quotations and the number of shares to which the bid and offer quotations applied, the aggregate amount of compensation received by the firm with each transaction, and the compensation received by the associated persons with each transaction. Furthermore, the complaint alleges the firm, acting through O'Connor, failed to report to NASD statistical and summary information relating to customer complaints received by the firm and failed to make, keep current, and/or maintain books and records. (NASD Case #C9A020019)

Howard Michael Johnson (CRD #1353976, Registered Representative, Philomath, Oregon) was named as a respondent in an NASD complaint alleging that he affixed the signature of a public customer to Letters of Authorization purported to authorize his member firm to transfer funds from the customer's account to the account of another individual without the customer's knowledge or consent and submitted

them to his member firm. The complaint also alleges that the firm transferred \$153,500 from one customer's account to the account of another who then wrote checks drawn on the account to third parties designated by Johnson in amounts totaling at least \$134,610.62, constituting conversion by Johnson of \$134,610.62 of the customer's funds for his own use and benefit. In addition, the complaint alleges that Johnson failed to respond to NASD requests for information. (NASD Case #C3B020008)

John Joseph Katsock, Jr. (CRD #2497641, Registered Principal, New York, New York) was named as a respondent in an NASD complaint alleging that, in connection with the purchase, sale, or offer of securities, Katsock, by the use of any means or instrumentalities of interstate commerce or of the mails, employed devices to defraud these customers by making untrue statements of material fact or omitting to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading. The complaint alleges that Katsock failed to disclose to public customers that he had a self-interest with a securities issuer. In addition, the complaint alleges that Katsock exercised discretionary authority in the accounts of a public customer and purchased securities for the accounts without reasonable grounds for believing the recommendations and resulting transactions were suitable for the customer based on her financial situation, investment objectives, and needs. Furthermore, the complaint alleges that Katsock failed to execute the instructions of public customers and made improper price predictions to public customers. Moreover, the complaint alleges that Katsock exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. The complaint also alleges that Katsock failed to respond to NASD requests to appear for an on-the-record interview, and interfered with an NASD investigation of his sales practices by offering to pay a public customer for a convertible note that the customer had purchased if he did not cooperate with the NASD. (NASD Case #C9A020018)

Jeffrey Lavert Montgomery (CRD #2701770, Registered Representative, Milwaukee, Wisconsin) was named as a respondent in an NASD complaint alleging that he received \$9,310.22 from public customers as insurance premium payments, failed to apply the funds towards insurance premiums as the customers directed, and instead, without the customers' knowledge or authorization, used the funds for his own benefit or for some purpose other than the customers' benefit. The complaint also alleges that Montgomery failed to respond to NASD requests for information. (NASD Case #C8A020023)

Michael Christopher Palmieri (CRD #2744741, Registered Representative, Staten Island, New York) was named as a

respondent in an NASD complaint alleging that, in connection with the purchase, sale, or offer of securities, Palmieri, directly or indirectly, by use of the means or instrumentalities of interstate commerce, the mails, or any facility of any national securities exchange, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated, or could operate, as a fraud or deceit, and induced the purchase of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The complaint also alleges that Palmieri misrepresented and omitted facts that were designed to induce his customers to purchase highly speculative securities. In addition, the complaint alleges that Palmieri made baseless price predictions in connection with an offer to sell securities without having a reasonable basis. Furthermore, the complaint alleges that Palmieri engaged in transactions in the accounts of public customers without the knowledge, authorization, or consent of the customers. (NASD Case #C10020045)

Patterson Travis, Inc. (CRD #16540, Englewood, Colorado), David Thomas Travis (CRD #448950, Registered Principal, Aurora, Colorado), Eric Harold Dieffenbach (CRD #1833420, Registered Representative, Littleton, Colorado), and Michael Antoine Rooms (CRD #2187994, Registered Representative, Littleton, Colorado) were named as respondents in an NASD complaint alleging that the firm, acting through Travis, Dieffenbach, and Rooms, contravened SEC Rules 15g-2, 15g-3, 15g-5, and 15g-9, in that prior to effecting transactions in a penny stock for the accounts of public customers, the firm did not furnish to customers a penny stock transactions risk disclosure statement, and did not obtain from the customers a manually signed and dated written acknowledgement of receipt of the document. The complaint also alleges that the firm, acting through Travis, Dieffenbach, and Rooms, prior to effecting transactions in a penny stock for customers accounts or in writing at the time of confirmation, did not disclose to customers the inside bid quotation and the inside offer quotation for the penny stock, and did not disclose to customers the aggregate amount of cash compensation to its associated persons in connection with these transactions.

In addition, the complaint alleges that the firm did not obtain a written agreement setting forth the identity and quantity of a penny stock to be purchased and a signed and dated written statement from each purchaser relating to the purchaser's financial condition, investment experience, and investment objectives. The complaint alleges that the firm, acting by and through Travis, failed to supervise properly the sale of a penny stock by Dieffenbach and Rooms to achieve compliance with applicable securities laws, regulations, and NASD rules. The complaint also alleges that the respondents attempted to conceal their violation of the penny stock rules and

attempted to obstruct an NASD investigation. The complaint further alleges that respondents failed to comply with the terms of an Order of Settlement that involved, among other things, violations of the Penny Stock Rules. (NASD Case #C06020003)

Peter Faris Peck Jr., (CRD #1019018, Registered Representative, Heyworth, Illinois) was named as a respondent in an NASD complaint alleging that he engaged in outside business activities and participated in private securities transactions without providing prompt and prior written notice to, and obtaining written authorization from, his member firm. The complaint also alleges that Peck, by the use of instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud customers, engaged in a course of business that operated as a fraud or deceit upon customers, and converted \$68,100 of investors' funds for his own use and benefit. In addition, the complaint alleges that Peck agreed to purchase shares of stocks on behalf of public customers and, without prior notice to his member firm, accepted \$14,349 in funds from customers and used such funds to purchase shares of stock for his own personal securities account maintained at his member firm. The complaint alleges that Peck converted the securities for his own use and benefit by failing to deliver to the customers the shares that he purchased on their behalf, thereby depriving them of the use and benefit of their securities, funds, or assets. Furthermore, the complaint alleges that Peck failed to respond to NASD requests for information. (NASD Case #C04020010)

Christopher George Romani (CRD #2590681, Registered Representative, Savage, Minnesota) was named as a respondent in an NASD complaint alleging that he converted for his own use and benefit public customer funds totaling \$38,140.97, in that on several occasions, without the knowledge or consent of his customers, he obtained loans against the whole and variable appreciable life insurance policies held by customers, and used the funds obtained from these loans for his own personal use. The complaint alleges that Romani obtained loans from the insurance policies held by customers and applied the funds as a credit to another customer's policy. The complaint also alleges that Romani failed to respond to NASD requests for information. (NASD Case #C04020013)

Rooney Arun Sahai (CRD #1551326, Registered Representative, Ridgewood, New Jersey) was named as a respondent in an NASD complaint alleging that he forged, or caused to be forged, the signatures of public customers on mutual fund applications, a variable annuity application, an IRS Form W-9, and a handwritten memorandum authorizing an investment without the customers' knowledge or consent. The complaint also alleges that Sahai purchased a variable annuity on behalf of a public customer without the customer's prior knowledge, authorization, or consent. Additionally, the complaint alleges that Sahai engaged in outside business

activities without prompt written notification to his member firm, and that he failed to respond to NASD requests for information. (NASD Case #C9B020032)

Dave Hung Trinh (CRD #2916910, Registered Representative, Renton, Washington) was named as a respondent in an NASD complaint alleging that he affixed the signature of a public customer to an account application to open a securities account at a broker/dealer other than his member firm without the customer's knowledge or consent, and provided his telephone number and e-mail address, falsely representing that they were the customer's. The complaint also alleges that Trinh affixed the signature of a public customer to a margin agreement and a memorandum at a broker/dealer that changed the customer's address to his own, without the customer's knowledge or consent. In addition, the complaint alleges that Trinh received a \$24,916.50 check from a public customer to purchase shares of stock, deposited the funds in a money market account, failed to purchase the stock, affixed the customer's signature to a \$24,000 check drawn on the account without the customer's knowledge or consent, and converted the \$24,000 to his own use and benefit. The complaint further alleges that Trinh received a \$423 check payable to the employer of a public customer to refund an excess contribution to the customer's qualified variable annuity contract, endorsed the check, and deposited the check in his own checking account thereby converting \$423 to his own use and benefit. Moreover, the complaint alleges that Trinh submitted false responses to an NASD request for information, and delivered a false document to the NASD to impede an NASD investigation and to conceal his conversion. (NASD Case #C3B020009)

Firms Suspended for Failure to Supply Financial Information

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

Adolph Komorsky Investments
Tarrytown, New York
(April 9, 2002 – April 29, 2002)

Amervest Capital, Inc.
Monterey Park, California
(April 9, 2002 – April 22, 2002)

BNB Capital, Inc.
Houston, Texas
(April 24, 2002)

C&N Trading, L.L.C.
Miami, Florida
(April 9, 2002)

Cybervest Securities, Inc.
Brooklyn, New York
(April 9, 2002)

Ebond Securities, Inc.
Brooklyn, New York
(May 7, 2002)

Elephant Express LLC
New York, New York
(April 9, 2002)

Elephantx Online Securities, LLC
New York, New York
(April 9, 2002)

Fieldstone Services Corp.
New York, New York
(May 6, 2002)

First Geneva Securities
San Diego, California
(April 9, 2002 – April 26, 2002)

GFN.Com Securities, Inc.
New York, New York
(April 9, 2002)

Incync Capital Corporation
New York, New York
(April 9, 2002)

Legacy Trading Co., LLC
Edmond, Oklahoma
(April 15, 2002 – April 17, 2002)

One Financial Center Brokerage, Inc.
Chicago, Illinois
(April 9, 2002)

Rushmore Securities Corporation
Dallas, Texas
(April 15, 2002 – April 16, 2002)

Whitestone Capital Markets, L.P.
New York, New York
(May 7, 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.)

Baylor, Ky Nigel
Columbus, Ohio
(April 11, 2002)

Berlin, Gregg Arnold
Lake Almanor, California
(April 22, 2002)

Cole, Jr., John M.
Stafford, Virginia
(April 12, 2002)

Deane, Robert
Middleburg, New York
(April 4, 2002)

Depergola, Joseph
Middle Village, New York
(April 23, 2002)

Ferguson, Phillip L.
Fowlerton, Indiana
(April 10, 2002)

Fox, Gary A.,
Clendenin, West Virginia
(April 15, 2002)
Fox has appealed this action to the SEC and the bar has not been stayed pending consideration of the appeal. (NASD Case #8210-9A010006)

Juravel, Samuel
Savannah, Georgia
(April 30, 2002)

Kelley, Michael Allen
Seattle, Washington
(April 22, 2002)

Staltare, Steven C.
Boca Raton, Florida
(April 29, 2002)

Thau, Jonathan T.
Sunrise, Florida
(May 2, 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.)

Albers, Joseph R.
Gig Harbor, Washington
(April 19, 2002)

Anonuevo, Noel Mendoza
Hercules, California
(April 19, 2002)

Boockmeier, James T.
Marble Falls, Texas
(May 2, 2002)

Fishbein, Michael B.
Bronx, New York
(April 15, 2002)

Frankovich, Jason
Staten Island, New York
(May 2, 2002)

Noor, Danoo
Rego Park, New York
(April 29, 2002)

Paulsen, Curtis C.
Ballwin, Missouri
(April 12, 2002)

Sweidan, Kamil H.
Naples, Florida
(April 16, 2002)

NASD Regulation Fines Hornblower & Weeks, Inc. \$100,000 and Suspends Firm From All Research Activities for 6 Months; Firm President Also Fined and Suspended

As part of its ongoing focus on research analyst activities, NASD Regulation reached a settlement with Hornblower & Weeks, Inc. of New York, NY, and its President, John Rooney. NASD Regulation found that the firm and Rooney issued a research report recommending the common stock of MyTurn.com as a "strong buy" when, in fact, the report contained baseless projections and misleading and exaggerated statements, and that it omitted important facts in violation of NASD antifraud and advertising rules, as well as the antifraud provisions of the federal securities laws.

As part of its settlement with NASD, Hornblower was censured and fined \$100,000. Hornblower also agreed to suspend its research activities for six months and, before resuming research reports, to retain an outside consultant to review and make

recommendations concerning the firm's procedures relating to research reports.

Rooney was fined \$85,000, along with the firm, and was suspended from associating with any NASD member firm for three months in all capacities, and for an additional four months in a supervisory or principal capacity. Rooney is required to requalify through examination as a principal before again serving in that capacity.

"Investors are entitled to research that is balanced, complete and not tainted by conflicts of interest," said Mary L. Schapiro, President, NASD Regulation, Inc. "While our new research analyst rules will greatly strengthen our hand in bringing cases in this important area, today's enforcement action again demonstrates that we will aggressively use our existing rules to discipline both firms and individuals that issue research that contains misleading or exaggerated statements."

The research report, issued on Aug. 30, 2000, recommended MyTurn.com as a "strong buy" and set a target price of the stock at \$55 per share. At the time of the issuance of the report, the common stock of MyTurn was trading on the Nasdaq National Market for approximately \$9 per share. In November, the firm issued a press release reiterating the buy recommendation and the \$55 target price.

MyTurn was a provider of Internet-related computing products and services. Its only product, the Global PC, was a low-cost personal computer system that was targeted toward the first-time user market. In Jan. 2001, several months after the research report was issued, MYTN filed for bankruptcy protection under Chapter 11.

Approximately eleven months before the research report was issued, Hornblower received 400,000 shares of restricted MyTurn.com stock for its role in conducting two private placements for the company. 150,000 of those shares were subsequently provided to John Rooney; 80,000 to another officer of Hornblower; 70,000 to members of the officer's family; and Hornblower retained 70,500 of the shares. Hornblower, Rooney and the officer sold these shares several months following the release of the research report; however, they did not profit from it. The price of MyTurn.com shares rose slightly the day after the issuance of the research report and steadily declined thereafter.

NASD Regulation found that the research report contained misleading, exaggerated, and baseless statements about MyTurn.com and its business prospects, including the following:

- ✦ "We project revenues to reach \$17.6 million for the combined third and fourth-quarters of 2000. As the product becomes increasingly available on a global basis, we expect revenues to significantly increase to \$265 million for 2001."

- ✦ "It is our belief that MyTurn.com's first-mover advantages will quickly penetrate a significant portion of this market and build brand recognition."

- ✦ "MyTurn.com is quickly expanding as a household name as an Internet service provider."

- ✦ "A 12-month price target of \$55..."

Despite the research report's revenue projection of \$265 million for 2001, the company reported revenue for the year ended Dec. 31, 1999 of only slightly more than \$233,000, and for the two quarters preceding the issuance of the research report, combined revenue of under \$85,000. MyTurn also reported a net loss for 1999 of over \$13 million and losses of over \$65 million and \$45 million for the two quarters preceding issuance of the report.

Significantly, MyTurn's public filings, contrary to the research report, emphasized the company's need to secure additional funding and stated that if the company was unable to secure additional financing it might be unable to continue its current business plan. The company disclosed that its Chairman of the Board was personally funding MyTurn's working capital deficits of up to \$500,000 per month. NASD Regulation found that none of these important facts was disclosed in the research report.

NASD Regulation also found that Hornblower failed to establish, maintain, or enforce supervisory procedures or systems reasonably designed to ensure that research reports issued by the firm complied with NASD rules and federal securities laws and regulations.

In the past, NASD Regulation has successfully used its existing rules to investigate and discipline firms and analysts whose behavior violates NASD rules and the federal securities laws. In addition to a number of other pending investigations involving research analysts, NASD is conducting a joint inquiry with the Securities and Exchange Commission, the New York Stock Exchange, and state securities regulators into market practices concerning research analysts and potential conflicts that can arise from the relationship between research and investment banking.

As a part of the settlement with NASD Regulation, Hornblower and Rooney neither admitted nor denied NASD Regulation's findings. NASD Regulation's Department of Market Regulation referred this matter to the Enforcement Department.



For Your Information

Submission of PAIB Computation in FOCUS Filings

Beginning with the June 2002 FOCUS Report, members that hold assets of other member firms and compute a PAIB Reserve with respect to such assets will need to include the PAIB Reserve computation with their regular FOCUS filing. The PAIB Reserve computation will be included as page 9B in the Part II FOCUS filing.

The PAIB Reserve computation is very similar to the Customer Reserve computation required under Securities and Exchange Commission (SEC) Rule 15c3-3; the primary difference being that the PAIB computation deals solely with the assets of other broker/dealers held at your firm. Generally, this situation arises when a clearing and carrying firm holds proprietary and deposit accounts of an introducing broker/dealer.

Notices to Members 98-99 presents the SEC's reasons for formalizing an arrangement to protect the assets of introducing brokers held at a clearing firm, and a discussion of the PAIB agreement and calculation requirements. *Notices to Members 99-44* provides SEC interpretations to its earlier guidelines regarding the applicability of a PAIB arrangement and an allocation chart to assist a firm in determining whether and/or where a particular position might be included in the computation.

The form, in conjunction with the two *Notices to Members* mentioned above, should provide the guidance needed to construct a satisfactory PAIB agreement and complete the computation correctly. If you have any questions regarding PAIB arrangements or the computation, please do not hesitate to contact Susan DeMando at (202) 728-8411 or Andrew Labadie at (202) 728-8397, in NASD Financial Operations.

Reporting INSITE Data

In order to comply with Rule 3150, each member firm (clearing and self-clearing) needs to transmit the required INSITE data pertaining to itself and any correspondent member firm for which it clears to NASD. The INSITE Web Page has been updated with the implementation schedule, http://www.nasdr.com/insite_schedules.asp. If you do not receive a letter and your firm is required to file, please contact us. Prior to authorization and certification to submit data in



For Your Information

the Production Environment of INSITE Firm Data Filing (IFDF), firms must demonstrate success in the IFDF Testing Environment. Please note that each firm must begin certification testing at least one month prior to the firm's scheduled implementation date.

Certification Testing Requirements can be found at <http://www.nasdr.com/insite.asp>. Please direct your questions regarding INSITE to 1-800-321-NASD or send an e-mail to the INSITE e-mailbox at insite.ifdf@nasd.com.

Special Notice to Members

JUNE 2002

SUGGESTED ROUTING

Legal & Compliance
Operations
Registration
Senior Management

INFORMATIONAL

District Elections

NASD Informs Members of Upcoming District Committee and District Nominating Committee Elections

KEY TOPICS

District Elections

Executive Summary

The purpose of this *Special Notice to Members* is to inform members of the upcoming nomination and election process to fill forthcoming vacancies on the District Committees and the District Nominating Committees.

Information on District Committee and District Nominating Committee members serving through 2003, 2004, and 2005 is included in Attachment A. Information on District Election Procedures is included in Attachment B. A candidate profile sheet is included in Attachment C.

Nomination Process

Individuals from member firms of all sizes and segments of the industry are encouraged to submit names for consideration for membership on the 11 District Committees and District Nominating Committees. Members are requested to submit candidates' names to the appropriate District Nominating Committee Chairman or to the District Director by submitting a cover letter and the candidate profile sheet (Attachment C) by **August 5**.

Completed forms will be provided to all District Nominating Committee members for review. It is anticipated that the District Nominating Committees will certify their nominees to the District Committees on or about **September 23**.

Members are reminded of the importance to accurately maintain their Executive Representative name and e-mail address information, as well as their firm's main postal address. This will ensure that member mailings, such as election information, will be properly directed. Failure to keep this information accurate may jeopardize the member's ability to participate in District elections as well as other member votes. To update the Executive Representative

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name and e-mail address, firms should access their NASD Member Firm Contact Questionnaire (NMFCQ) located on the NASD Web Site (www.nasdr.com/disclaimer.asp).

To update postal address information, the firm must file a Form BD Amendment via the Web CRD system. For assistance updating either of these systems, you may contact our Call Center at (301) 590-6500.

Questions/Further Information

Questions concerning this *Special Notice* may be directed to the District Director noted or to Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, at (202) 728-8062 or via e-mail at barbara.sweeney@nasd.com.

ATTACHMENT A

District 1 Committee And District Nominating Committee Members

Elisabeth P. Owens, District Director

525 Market Street, Suite 300, San Francisco, CA 94105

(415) 882-1200

District 1 Committee — Chair: Sally G. Aelion

Members to be elected to terms expiring January 2006: 3

Member to be elected to term expiring January 2005: 1

Committee members to serve until January 2003

| | | |
|---------------------|----------------------------|-------------------|
| Sally G. Aelion | Emmett A. Larkin Co., Inc. | San Francisco, CA |
| David A. Baylor | Thomas Weisel Partners LLC | San Francisco, CA |
| Nicholas C. Cochran | American Investors Company | Dublin, CA |

Committee members to serve until January 2004

| | | |
|-----------------------|----------------------------------|-------------------|
| S. Katherine Campbell | Protected Investors of America | San Francisco, CA |
| William C. Pack | Salomon Smith Barney | Saratoga, CA |
| Carol Van Bruggen | Securities Service Network, Inc. | Sacramento, CA |

Committee members to serve until January 2005

| | | |
|-----------------|-----------------------------|-------------------|
| Allan L. Herzog | Prudential Securities, Inc. | San Francisco, CA |
| Robert A. Muh | Sutter Securities, Inc. | San Francisco, CA |
| Vacancy | | |

District 1 Nominating Committee — Chair: Stephen R. Adams

Committee members to be elected to terms expiring January 2004: 5

Committee members

| | | |
|--------------------|--------------------------------|-------------------|
| Stephen R. Adams | Wells Fargo Investments, LLC | San Francisco, CA |
| Janet W. Campbell | Protected Investors of America | Walnut Creek, CA |
| Glenn M. Colacurci | Salomon Smith Barney | San Francisco, CA |
| John C. Helmer | Caldwell Securities, Inc. | Danville, CA |
| Jerry D. Phillips | RBC Dain Rauscher, Inc. | San Francisco, CA |

District 2 Committee And District Nominating Committee Members

Lani M. Woltmann, District Director

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071

(213) 627-2122

District 2 Committee — Chair: James R. Kruger

Members to be elected to terms expiring January 2006: 3

Committee members to serve until January 2003

| | | |
|------------------------|----------------------------------|-------------------|
| Kellen M. Flanigan | Wells Fargo Securities, Inc. | Beverly Hills, CA |
| William H. Howard, Jr. | Seidler Companies | Irvine, CA |
| James R. Kruger | Dreyfus Brokerage Services, Inc. | Los Angeles, CA |

Committee members to serve until January 2004

| | | |
|--------------------|--|------------------|
| James E. Biddle | The Securities Center, Incorporated | Chula Vista, CA |
| Chris M. Kanoff | Jefferies and Company, Inc. | Los Angeles, CA |
| Steven K. McGinnis | National Planning Corporation | Santa Monica, CA |
| Neal E. Nakagiri | Associated Planners Securities Corporation | Los Angeles, CA |

Committee members to serve until January 2005

| | | |
|-----------------|---|-----------------|
| Joan A. Payden | Payden & Rygel | Los Angeles, CA |
| Joel H. Ravitz | Quincy Cass Associates | Los Angeles, CA |
| Guy W. Williams | Merrill Lynch Pierce Fenner & Smith, Inc. | Costa Mesa, CA |

District 2 Nominating Committee — Chair: George H. Casey

Committee members to be elected to terms expiring January 2004: 5

Committee members

| | | |
|-----------------------|-----------------------------------|------------------|
| George H. Casey | Crowell Weedon & Co. | Los Angeles, CA |
| Murray F. Finebaum | Trading Edge, Inc. | Santa Monica, CA |
| James B. Guillou, Sr. | RBS Dean Raucher, Inc. | La Jolla, CA |
| Dean A. Holmes | American General Financial Group | Anaheim, CA |
| Robert L. Winston | American Funds Distributors, Inc. | Los Angeles, CA |

District 3 Committee And District Nominating Committee Members

Frank J. Birgfeld, District Director

Republic Plaza Building, 370 17th Street, Suite 2900, Denver, CO 80202-5629

(303) 446-3100

James G. Dawson, District Director

Two Union Square, 601 Union, Suite 1616, Seattle, WA 98101-2327

(206) 624-0790

District 3 Committee — Chair: Kathryn A. Supko

Members to be elected to terms expiring January 2006: 3

Committee members to serve until January 2003

| | | |
|--------------------|----------------------------------|-----------------------|
| Steven M. Fishbein | United Securities Alliance, Inc. | Greenwood Village, CO |
|--------------------|----------------------------------|-----------------------|

| | | |
|-------------------|-----------------------|------------|
| J. David Griswold | Frank Russell Company | Tacoma, WA |
|-------------------|-----------------------|------------|

| | | |
|---------|--|--|
| Vacancy | | |
|---------|--|--|

Committee members to serve until January 2004

| | | |
|---------------------|---------------------------|-------------|
| Richard B. Bequette | CUE Financial Group, Inc. | Phoenix, AZ |
|---------------------|---------------------------|-------------|

| | | |
|-------------------|--|------------|
| George T. Diachok | | Denver, CO |
|-------------------|--|------------|

| | | |
|--------------|--|-------------|
| John M. Rose | Seattle-Northwest Securities Corporation | Seattle, WA |
|--------------|--|-------------|

| | | |
|------------------|--------------------------------------|-----------|
| Kathryn A. Supko | Northwest Mutual Investment Services | Boise, ID |
|------------------|--------------------------------------|-----------|

Committee members to serve until January 2005

| | | |
|---------------------|-----------|------------|
| Gregory R. Anderson | TIAA/CREF | Denver, CO |
|---------------------|-----------|------------|

| | | |
|---------------------|------------------------------|-------------|
| Robert E. Frey, Jr. | KMS Financial Services, Inc. | Seattle, WA |
|---------------------|------------------------------|-------------|

| | | |
|--------------|---|--------------|
| John F. York | Strand, Atkinson, Williams & York, Inc. | Portland, OR |
|--------------|---|--------------|

District 3 Nominating Committee — Chair: Thomas Petrie

Committee members to be elected to terms expiring January 2004: 5

Committee members

| | | |
|------------------|---------------------------------------|-------------|
| Thomas R. Hislop | Peacock, Hislop, Staley & Given, Inc. | Phoenix, AZ |
|------------------|---------------------------------------|-------------|

| | | |
|-------------|----------------------------------|-------------|
| John Morton | Morton Clarke Fu & Metcalf, Inc. | Seattle, WA |
|-------------|----------------------------------|-------------|

| | | |
|-------------------|----------------------------|-------------|
| William G. Papesh | WM Funds Distributor, Inc. | Seattle, WA |
|-------------------|----------------------------|-------------|

| | | |
|---------------|----------------------------|------------|
| Thomas Petrie | Petrie Parkman & Co., Inc. | Denver, CO |
|---------------|----------------------------|------------|

| | | |
|----------------|----------------------------|-------------|
| James E. Stark | Charles Schwab & Co., Inc. | Phoenix, AZ |
|----------------|----------------------------|-------------|

District 4 Committee And District Nominating Committee Member

Thomas D. Clough, District Director
120 W. 12th Street, Suite 900, Kansas City, MO 64105

(816) 421-5700

District 4 Committee — Chair: E. John Moloney

Members to be elected to terms expiring January 2006: **3**

Committee members to serve until January 2003

| | | |
|-----------------------|----------------------------------|-----------------|
| E. John Moloney | Moloney Securities Company, Inc. | St. Louis, MO |
| Rodger O. Riney | Scottrade, Inc. | St. Louis, MO |
| Jeffrey A. Schuh | Marquette Financial Group, Inc. | Minneapolis, MN |
| Gail Werner-Robertson | GWR Investments, Inc. | Omaha, NE |

Committee members to serve until January 2004

| | | |
|--------------------|-----------------------------------|-------------------|
| Gene M. Diedrich | A.G. Edwards & Sons, Inc. | Overland Park, KS |
| Timothy J. Lyle | Trusted Securities Advisors Corp. | Minneapolis, MN |
| Pamela K. Ziermann | Dougherty & Company | Minneapolis, MN |

Committee members to serve until January 2005

| | | |
|---------------------|---------------------------|-----------------|
| William R. Giovanni | Ameritas Investment Corp. | Lincoln, NE |
| Frank H. Kirk | First Union Securities | Kansas City, MO |
| James H. Warner | The Warner Group | Sioux City, IA |

District 4 Nominating Committee — Chair: Cheryl Cook-Schneider

Committee members to be elected to terms expiring January 2004: **5**

Committee Members

| | | |
|-----------------------|---|---------------------|
| Robert M. Chambers | Robert W. Baird & Co. Incorporated | West Des Moines, IA |
| Colleen Curran | American Express Financial Advisors, Inc. | Minneapolis, MN |
| Norman Frager | Flagstone Securities, LLC | Clayton, MO |
| John R. Lepley | Princor Financial Services Corp. | Des Moines, IA |
| Cheryl Cook-Schneider | Edward Jones | St. Louis, MO |

District 5 Committee And District Nominating Committee Members

Warren A. Butler, Jr., District Director

1100 Poydras Street, Energy Centre, Suite 850, New Orleans, LA 70163-0802

(504) 522-6527

District 5 Committee — Chair: James M. Rogers

Members to be elected to terms expiring January 2006: **3**

Committee members to serve until January 2003

| | | |
|---------------------------|---|-------------------|
| David A. Daugherty | James Baker & Associates, A Limited Partnership | Oklahoma City, OK |
| James M. Rogers | J.J.B. Hilliard, W.L. Lyons, Inc. | Louisville, KY |
| William Lucas Simons, Jr. | UBS PaineWebber Inc. | Nashville, TN |

Committee members to serve until January 2004

| | | |
|---------------------|-----------------------------------|-----------------|
| David A. Knight | Stephens Inc. | Little Rock, AR |
| Lawrence J. Sisung | Sisung Securities Corporation | New Orleans, LA |
| David W. Wiley, III | Wiley Bros., Aintree Capital, LLC | Nashville, TN |

Committee members to serve until January 2005

| | | |
|-----------------|--------------------------------|----------------|
| John J. Dardis | Jack Dardis & Associates, Ltd. | Metairie, LA |
| J. Timothy Rice | Rice, Voelker, LLC | Mandeville, LA |
| James T. Ritt | Morgan Keegan & Company, Inc. | Memphis, TN |

District 5 Nominating Committee — Chair: Dene R. Shipp

Committee members to be elected to terms expiring January 2004: **5**

Committee members

| | | |
|-------------------------|--|-------------------|
| Carl W. Busch | Prudential Securities Incorporated | Oklahoma City, OK |
| William T. Griggs, II | Dupree & Company, Inc. | Lexington, KY |
| V. Hugo Marx, III | Hugo Marx & Co., Inc. | Birmingham, AL |
| Dene R. Shipp | SunTrust Robinson Humphrey Capital Markets | Nashville, TN |
| William L. Tedford, Jr. | Stephens Inc. | Little Rock, AR |

District 6 Committee And District Nominating Committee Members

Bernerd E. Young, District Director

12801 N. Central Expressway, Suite 1050, Dallas, TX 75243

(972) 701-8554

District 6 Committee — Chair: Bryan T. Forman

Members to be elected to terms expiring January 2006: 3

Committee members to serve until January 2003

| | | |
|-----------------|---------------------------------|-------------|
| G. Clyde Buck | Sanders Morris Harris, Inc. | Houston, TX |
| Bryan T. Forman | First Avantus Securities, Inc. | Austin, TX |
| Daniel P. Son | Penson Financial Services, Inc. | Dallas, TX |

Committee members to serve until January 2004

| | | |
|------------------------|------------------------------|-----------------|
| Christopher R. Allison | M.E. Allison & Co., Inc. | San Antonio, TX |
| David W. Turner | First Union Securities, Inc. | Ft. Worth, TX |
| R. Dwayne Whitehead | Coastal Securities L.P. | Houston, TX |

Committee members to serve until January 2005

| | | |
|-----------------------|--------------------------------------|----------------|
| Donaldson D. Frizzell | First Command Securities Corporation | Fort Worth, TX |
| Sennett Kirk, III | Kirk Securities Corporation | Denton, TX |
| V. Keith Roberts | American General Distributors | Houston, TX |

District 6 Nominating Committee — Chair: Daniel C. Dooley

Committee members to be elected to terms expiring January 2004: 5

Committee members

| | | |
|----------------------|-------------------------------------|----------------|
| Daniel C. Dooley | Maplewood Investment Advisors, Inc. | Dallas, TX |
| Kenneth R. Hanks | SWS Securities, Inc. | Dallas, TX |
| William H. Lowell | Lowell & Company, Inc. | Lubbock, TX |
| Fredrick W. McGinnis | UBS PaineWebber Inc. | Houston, TX |
| Jim G. Rhodes | Rhodes Securities, Inc. | Fort Worth, TX |

District 7 Committee And District Nominating Committee Members

Alan M. Wolper, District Director

One Securities Centre, Suite 500, 3490 Piedmont Road, N.E., Atlanta, GA 30305

(404) 239-6100

District 7 Committee — Chair: **Michael D. Hearn, Esq.**

Members to be elected to terms expiring January 2006: **3**

Committee members to serve until January 2003

| | | |
|------------------------|---------------------------|--------------------|
| Michael D. Hearn, Esq. | | Charlotte, NC |
| Collie W. Lehn | A.G. Edwards & Sons, Inc. | Laurens, SC |
| John W. Waechter | William R. Hough & Co. | St. Petersburg, FL |

Committee members to serve until January 2004

| | | |
|-----------------------|------------------------------|--------------|
| Kenneth W. McGrath | Popular Securities, Inc. | Hato Rey, PR |
| C. John O'Bryant, III | Legg Mason Wood Walker, Inc. | Raleigh, NC |
| Charles R. Roberts | RBC Dain Rauscher, Inc. | Richmond, VA |

Committee members to serve until January 2005

| | | |
|-------------------------|---|----------------|
| Jeffrey P. Adams | Balentine & Company | Atlanta, GA |
| Richard G. Averitt, III | Raymond James Financial Services, Inc. | Atlanta, GA |
| Harold F. Corrigan | Merrill Lynch, Pierce, Fenner & Smith, Inc. | Palm Beach, FL |

District 7 Nominating Committee — Chair: **M. Anthony Greene**

Committee members to be elected to terms expiring January 2004: **5**

Committee members

| | | |
|------------------------|--|---------------------|
| M. Anthony Greene | Raymond James Financial Services, Inc. | Atlanta, GA |
| James W. Hamilton, Jr. | Morgan Keegan & Co. | Atlanta, GA |
| Edward R. Hipp, III | Legg Mason Wood Walker, Inc. | Williamsburg, VA |
| Raymond W. Snow | Merrill Lynch | West Palm Beach, FL |
| Roark A. Young | Young, Stovall and Company | Miami, FL |

District 8 Committee And District Nominating Committee Members

Carlotta A. Romano, District Director

55 West Monroe Street, Suite 2700, Chicago, IL 60603

(312) 899-4400

William H. Jackson, Jr., District Director

Renaissance on Playhouse Square, 1350 Euclid Avenue, Suite 650, Cleveland, OH 44115

(216) 592-2950

District 8 Committee — Chair: Gregory W. Goelzer

Members to be elected to terms expiring January 2006: 3

Committee members to serve until January 2003

| | | |
|---------------------|------------------------|---------------|
| Carol Podesta Foley | Podesta & Company | Chicago, IL |
| Renee M. Rombaut | Sage, Ruty & Co., Inc. | Rochester, NY |

Committee members to serve until January 2004

| | | |
|--------------------|-------------------------------------|------------------|
| George E. Bates | Bates Securities, Inc. | Rockford, IL |
| Gregory W. Goelzer | Goelzer Investment Management, Inc. | Indianapolis, IN |
| Jay B. Mackenzie | Prudential Securities Incorporated | Kalamazoo, MI |

Committee members to serve until January 2005

| | | |
|-------------------|--------------------------------|----------------|
| Bernard A. Breton | Carillon Investments, Inc. | Cincinnati, OH |
| Donald A. Carlson | B.C. Ziegler and Company | Chicago, IL |
| William K. Curtis | M & I Brokerage Services, Inc. | Milwaukee, WI |
| Gerald L. Oaks | Legg Mason Wood Walker, Inc. | Cincinnati, OH |
| Jill R. Powers | Oberlin Financial Corporation | Bryan, OH |

District 8 Nominating Committee — Chair: David Slavik

Committee members to be elected to terms expiring January 2004: 5

Committee members

| | | |
|---------------------|---|------------------|
| Wallen L. Crane | Salomon Smith Barney, Inc. | Toledo, OH |
| William F. Faulkner | Continental Capital Securities, Inc. | Sylvania, OH |
| Thomas Harenburg | Carl M. Hennig, Inc. | Oshkosh, WI |
| David Slavik | Pershing Division of Donaldson, Lufkin & Jenrette Securities Corp. | Oak Brook, IL |
| L. Gene Tanner | NatCity Investments, Inc. | Indianapolis, IN |

District 9 Committee And District Nominating Committee Members

John P. Nocella, District Director

Eleven Penn Center, 1835 Market Street, Suite 1900, Philadelphia, PA 19103

(215) 665-1180

Gary K. Liebowitz, District Director

581 Main Street, 7th Floor, Woodbridge, NJ 07905

(732) 596-2000

District 9 Committee — Chair: James D. Lamke

Members to be elected to terms expiring January 2006: 3

Committee members to serve until January 2003

| | | |
|---------------------|---------------------------------|-----------------|
| James D. Lamke | Spear, Leeds & Kellogg, L.P. | Jersey City, NJ |
| John P. Meegan | Parker/Hunter Incorporated | Pittsburgh, PA |
| Lance A. Reihl | 1717 Capital Management Company | Berwyn, PA |
| Lenda P. Washington | GRW Capital Corporation | Washington, DC |

Committee members to serve until January 2004

| | | |
|----------------------------|-----------------------------|------------------|
| Jerry V. Duhovic | Datek OnLine Holdings Corp. | Jersey City, NJ |
| Kimberly Tillotson Fleming | Hefren-Tillotson, Inc. | Pittsburgh, PA |
| Howard B. Scherer | Janney Montgomery Scott LLC | Philadelphia, PA |
| Mark Thomas Whaley | RBC Dain Rauscher Inc. | Florham Park, NJ |

Committee members to serve until January 2005

| | | |
|-------------------|---|-----------------|
| James E. Bickley | Cresap, Inc. | Radnor, PA |
| Michael B. Row | Donaldson, Lufkin & Jenrette Securities Corporation | Jersey City, NJ |
| Frank D. Ruscetti | Harvest Financial Corporation | Pittsburgh, PA |

District 9 Nominating Committee — Chair: Philip S. Cottone

Committee members to be elected to terms expiring January 2004: 5

Committee members

| | | |
|--------------------|--|------------------------|
| Philip S. Cottone | Rutherford, Brown & Catherwood, LLC | Philadelphia, PA |
| A. Louis Denton | Philadelphia Corporation for Investment Services | Philadelphia, PA |
| Jerome J. Murphy | Janney Montgomery Scott LLC | Philadelphia, PA |
| Joseph S. Rizzello | Pershing Trading Company, L.P. | Jersey City, NJ |
| Gregory R. Zappala | RRZ Public Markets, Inc. | Cranberry Township, PA |

District 10 Committee And District Nominating Committee Members

Cathleen F. Shine, District Director

One Liberty Plaza, 165 Broadway, New York, NY 10006 (212) 858-4180

District 10 Committee — Chair: Judith R. MacDonald

Members to be elected to terms expiring January 2006: 4

Committee members to serve until January 2003

| | | |
|-------------------------|----------------------------|--------------|
| Kevin J. Browne | Banc of America Securities | New York, NY |
| Judith R. MacDonald | Rothschild, Inc. | New York, NY |
| Stephen C. Strombelline | Barclays Capital Inc. | New York, NY |

Committee members to serve until January 2004

| | | |
|----------------------|--|--------------|
| Ruth S. Goodstein | PaineWebber Inc. | New York, NY |
| Patrick Remmert | Credit Suisse First Boston Corporation | New York, NY |
| Charles V. Senatore | Merrill Lynch Pierce Fenner & Smith Inc. | New York, NY |
| Jeffrey R. Zuckerman | Salomon Smith Barney Inc. | New York, NY |

Committee members to serve until January 2005

| | | |
|----------------------|-------------------------------|--------------|
| Jennifer A. Connors | ITG Inc. | New York, NY |
| Joan E. Hoffman | Deutsche Banc Alex Brown Inc. | New York, NY |
| Nathalie P. Maio | Bear, Stearns & Co., Inc. | New York, NY |
| Bertram J. Riley Sr. | Petersen Investments, Inc. | New York, NY |
| Mark W. Ronda | Fahnestock & Co. Inc. | New York, NY |

District 10 Nominating Committee — Chair: Eugene A. Schlanger

Committee members to be elected to terms expiring January 2004: 5

Committee members

| | | |
|-----------------------|--|--------------|
| William P. Behrens | Northeast Securities, Inc. | New York, NY |
| Laurence H. Bertan | Sanford C. Bernstein & Co., LLC | New York, NY |
| Philip V. Oppenheimer | Oppenheimer & Close, Inc. | New York, NY |
| Eugene A. Schlanger | Nomura Securities International, Inc. | New York, NY |
| Tom M. Wirtshafter | American Portfolios Financial Services, Inc. | Holbrook, NY |

District 11 Committee And District Nominating Committee Members

Fred McDonald, District Director

260 Franklin Street, 16th Floor, Boston, MA 02110 (617) 261-0800

District 11 Committee — Chair: John D. Lane

Members to be elected to terms expiring January 2006: 3

Committee members to serve until January 2003

| | | |
|-------------------|-------------------------------------|---------------|
| John D. Lane | Lane Capital Markets, LLC | Fairfield, CT |
| Deborah G. Ullman | Phoenix Equity Planning Corporation | Hartford, CT |
| Peter T. Wheeler | Commonwealth Financial Network | Waltham, MA |

Committee members to serve until January 2004

| | | |
|--------------------|---------------------------|----------------|
| John I. Fitzgerald | Leerink Swann & Company | Boston, MA |
| Robert V. Rodia | People's Securities, Inc. | Bridgeport, CT |
| Gregory D. Teese | Equity Services, Inc. | Montpelier, VT |

Committee members to serve until January 2005

| | | |
|--------------------|-------------------------------------|--------------|
| Michael C. Braun | Moors & Cabot, Inc. | Boston, MA |
| Andrew F. Detwiler | Vandham Securities Corp. | Plymouth, MA |
| Thomas J. Horack | John Hancock Life Insurance Company | Boston, MA |

District 11 Nominating Committee — Chair: Arthur F. Grant

Committee members to be elected to terms expiring January 2004: 5

Committee members

| | | |
|----------------------|-------------------------------|-----------------|
| Harry Branning | Linsco/Private Ledger Corp. | Glastonbury, CT |
| Stephen O. Buff | Fleet Securities, Inc. | Boston, MA |
| Sheldon Fechter | Fechter, Detwiler & Co., Inc. | Boston, MA |
| Arthur F. Grant | Cadaret, Grant & Co., Inc. | Syracuse, NY |
| Dennis R. Surprenant | Cantella & Co., Inc. | Boston, MA |

ATTACHMENT B

District Election Procedures for District Committees and District Nominating Committees

Regular Election

1. Each NASD District shall maintain a District Nominating Committee in the manner specified in Article VIII of the By-Laws of NASD Regulation, Inc.
2. The Secretary of NASD ("the Corporation") will notify in writing the Chairman of each District Committee and the Chairman of the District Nominating Committee of the upcoming vacancies on both the District Committee and the District Nominating Committee, and the procedures to follow to fill the vacancies. A copy of these letters will be provided to the District Directors.

The District Nominating Committee will be provided by NASD staff with information considered relevant to the nominating process, including statistical data pertaining to the District membership.
3. The Secretary of NASD will remind all members of their responsibility and obligation to keep current and accurate information on their Executive Representatives and branch office addresses. This reminder will contain a reference to the NASD Web Site (www.nasd.com) and detail the process for changing a firm's Executive Representative. Please note that failure to keep this information accurate may jeopardize the member's ability to participate in District elections as well as other member votes.
4. The Secretary of NASD on behalf of the District Committee Chairmen will send a *Notice to Members* announcing the forthcoming elections to the Executive Representative and each branch office of all members eligible to vote in that District. The *Notice to Members* will contain: a) the number of vacancies for each District; and b) the remaining members of each District Committee. Members interested in serving on the District Committee or District Nominating Committee will be requested to complete the candidate profile sheet and submit it to the District Nominating Committee Chairman or the District Director. The completed candidate profile sheet will be provided to all Nominating Committee members for review.
5. The District Nominating Committee will endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sizes and types of NASD members engaged in the investment banking or securities business within the District.
6. The District Nominating Committee will review the background and qualifications of the proposed candidates and the profile information provided by staff, and will determine its slate of candidates for the election.

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-
7. The District Nominating Committee will certify to the District Committee each candidate nominated by the District Nominating Committee.
 8. Within five (5) calendar days after this certification, a *Notice to Members* shall be sent to Executive Representatives, communicating the nominees for the vacancies on the District Committees and Nominating Committees.
 9. If an officer, director, or employee of an NASD member is interested in being considered as an additional candidate by contesting the election, he/she must indicate his/her interest to the District Director within fourteen (14) calendar days of the date of the *Notice to Members* referenced in #8 above. The District Director shall make a written record of the time and date of such notification and the process will continue as described in #10 - #12.

If an additional candidate does not come forward within 14 days, the election of committee members is complete.
 10. Additional candidate(s) may be nominated if a petition signed by the Executive Representative of at least 10 percent of the members eligible to vote in the District is filed with the District Nominating Committee within 30 calendar days from the mailing date of the *Notice to Members* referenced in #8, unless the Secretary of NASD grants additional time for good cause shown.
 11. If no additional candidate(s) are nominated within the 30-calendar day period, then the candidates nominated by the District Nominating Committee shall be considered duly elected, and the District Committee shall certify the election to the Board of Directors of NASD Regulation.
 12. If any additional candidate(s) are nominated, the procedures outlined in the Contested Election Procedures will apply.

Additional information pertaining to the District Election Procedures can be found in Article VIII of the By-Laws of NASD Regulation.

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