

Notice to Members

JULY 2002

SUGGESTED ROUTING

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

KEY TOPICS

Holiday Trade Date—
Settlement Date Schedule

INFORMATIONAL

Trade Date—Settlement Date

Independence Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Thursday, July 4, 2002, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
June 28	July 3	July 8
July 1	5	9
2	8	10
3	9	11
4	Markets Closed	—
5	10	12

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

© 2002. NASD. All rights reserved.

02-38

Notice to Members

JULY 2002

SUGGESTED ROUTING

Executive Representative
Legal & Compliance
Operations
Senior Management

Research Analysts and Research Reports

SEC Approves Rule Governing Research Analysts' Conflicts of Interest

KEY TOPICS

Advertising
Investment Banking
Research Reports

Executive Summary

On May 10, 2002, the SEC approved new NASD Rule 2711, Research Analysts and Research Reports. The rule is intended to improve the objectivity of research and provide investors with more useful and reliable information when making investment decisions. The SEC also approved on that day similar proposed amendments to New York Stock Exchange (NYSE) Rule 472. The rules will be implemented in phases during the period from July 9, 2002, to November 6, 2002.

This *Notice* includes as Attachment A the text of the new rule and the implementation schedule of the rule's effective dates. This *Notice* also includes as Attachment B a Joint Memorandum of NASD and the NYSE that provides interpretive guidance for the NASD and NYSE rules governing research reports and analysts.

Research Reports Must Reflect an Analyst's Actual Opinion

Rule 2711 is intended to restore investor confidence in a process that is critical to the equities markets. The rule reflects a self-policing approach consistent with strong self-regulation. Members and research analysts must take all measures that are necessary to ensure that all research reports reflect an analyst's honest views and that any opinion or recommendation is not influenced by conflicts of interest. If a member issues a report or a research analyst renders an opinion that is inconsistent with the analyst's actual views regarding a subject company, NASD considers such action to constitute a fraudulent act and conduct inconsistent with just and equitable principles of trade.

02-39

Disclosure Required by NASD Rule 2210

The Joint Memorandum discusses interpretive issues that are common to NASD Rule 2711 and NYSE Rule 472 with regard to research reports and research analysts. Members should refer to the Joint Memorandum for a discussion of most of these interpretive issues.

One issue is unique to NASD members, however, and thus covered in this *Notice*. In addition to the disclosures required by Rule 2711, NASD members and research analysts must provide disclosure in research reports that is required by NASD Rule 2210. In two cases, Rule 2711's disclosure requirements operate differently than those under Rule 2210.

First, Rule 2210(d)(2)(B)(i)(a) requires disclosure if the member *"usually makes a market* in the securities being recommended," while Rule 2711(h)(8) requires disclosure if the member *"was making a market in the subject company's securities at the time that the research report was published."* Second, Rule 2210(d)(2)(B)(i)(c) requires disclosure if the member was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years, while Rule 2711(h)(2)(A)(ii)(a) only requires disclosure of this information for the past *12 months*.

In these two situations, a member's compliance with the requirements of Rule 2711(h) will override the disclosure requirements of Rule 2210(d)(2)(B)(i). Members still must comply with all other disclosure requirements of Rule 2210, such as those regarding buying or selling securities on a principal basis and ownership of options, rights, or warrants. Additionally, member communications other than research reports remain subject to all applicable provisions of Rule 2210, including those regarding recommendations.

Questions/Further Information

Questions or comments concerning NASD Rule 2711 or this *Notice* may be directed to the NASD Corporate Financing Department at (240) 386-4623.

ATTACHMENT A: RULE TEXT

Rule 2711. Research Analysts and Research Reports

(a) Definitions

For purposes of this rule, the following terms shall be defined as provided.

- (1) "Investment banking department" means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.
- (2) "Investment banking services" include, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs or similar investments; or serving as placement agent for the issuer.
- (3) "Member of a research analyst's household" means any individual whose principal residence is the same as the research analyst's principal residence.
- (4) "Public appearance" means any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security.
- (5) "Research analyst" means the associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of "research analyst."
- (6) "Research analyst account" means any account in which a research analyst or member of the research analyst's household has a financial interest, or over which such analyst has discretion or control, other than an investment company registered under the Investment Company Act of 1940.
- (7) "Research department" means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a research report on behalf of a member.

(8) "Research report" means a written or electronic communication which includes an analysis of equity securities of individual companies or industries, and which provides information reasonably sufficient upon which to base an investment decision and includes a recommendation.

(9) "Subject company" means the company whose equity securities are the subject of a research report or recommendation in a public appearance.

(b) Restrictions on Investment Banking Department Relationship with Research Department

(1) No research analyst may be subject to the supervision or control of any employee of the member's investment banking department.

(2) Except as provided in paragraph (b)(3), no employee of the investment banking department may review or approve a research report of the member before its publication.

(3) Investment banking personnel may review a research report before its publication as necessary only to verify the factual accuracy of information in the research report or to review the research report for any potential conflict of interest, provided that:

(A) any written communication between investment banking and research department personnel concerning such a research report must be made either through an authorized legal or compliance official of the member or in a transmission copied to such an official; and

(B) any oral communication between investment banking and research department personnel concerning such a research report must be documented and made either through an authorized legal or compliance official acting as intermediary or in a conversation conducted in the presence of such an official.

(c) Restrictions on Review of a Research Report by the Subject Company

(1) Except as provided in paragraphs (c)(2) and (c)(3), a member may not submit a research report to the subject company before its publication.

(2) A member may submit sections of such a research report to the subject company before its publication for review as necessary only to verify the factual accuracy of information in those sections, provided that:

(A) the sections of the research report submitted to the subject company do not contain the research summary, the research rating or the price target;

(B) a complete draft of the research report is provided to the legal or compliance department before sections of the report are submitted to the subject company; and

(C) if after submitting the sections of the research report to the subject company the research department intends to change the proposed rating or price target, it must first provide written justification to, and receive written authorization from, the legal or compliance department for the change. The member must retain copies of any draft and the final version of such a research report for three years following its publication.

(3) The member may notify a subject company that the member intends to change its rating of the subject company's securities, provided that the notification occurs on the business day before the member announces the rating change, after the close of trading in the principal market of the subject company's securities.

(d) Prohibition of Certain Forms of Research Analyst Compensation

No member may pay any bonus, salary or other form of compensation to a research analyst that is based upon a specific investment banking services transaction.

(e) Prohibition of Promise of Favorable Research

No member may directly or indirectly offer favorable research, a specific rating or a specific price target, or threaten to change research, a rating or a price target, to a company as consideration or inducement for the receipt of business or compensation.

(f) Imposition of Quiet Periods

No member may publish a research report regarding a subject company for which the member acted as manager or co-manager of:

(1) an initial public offering, for 40 calendar days following the date of the offering; or

(2) a secondary offering, for 10 calendar days following the date of the offering; provided that:

(A) paragraphs (f)(1) and (f)(2) will not prevent a member from publishing a research report concerning the effects of significant news or a significant event on the subject company within such 40- and 10-day periods, and provided further that the legal and compliance department authorizes publication of that research report before it is issued; and

(B) paragraph (f)(2) will not prevent a member from publishing a research report pursuant to SEC Rule 139 regarding a subject company with "actively-traded securities," as defined in Regulation M, 17 CFR 242.101(c)(1).

(g) Restrictions on Personal Trading by Research Analysts

(1) No research analyst account may purchase or receive any securities before the issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows.

(2) No research analyst account may purchase or sell any security issued by a company that the research analyst follows, or any option on or derivative of such security, for a period beginning 30 calendar days before and ending five calendar days after the publication of a research report concerning the company or a change in a rating or price target of the company's securities; provided that:

(A) a member may permit a research analyst account to sell securities held by the account that are issued by a company that the research analyst follows, within 30 calendar days after the research analyst began following the company for the member;

(B) a member may permit a research analyst account to purchase or sell any security issued by a subject company within 30 calendar days before the publication of a research report or change in the rating or price target of the subject company's securities due to significant news or a significant event concerning the subject company, provided that the member's legal or compliance department pre-approves the research report and any change in the rating or price target.

(3) No research analyst account may purchase or sell any security or any option on or derivative of such security in a manner inconsistent with the research analyst's

recommendation as reflected in the most recent research report published by the member.

(4) A member's legal or compliance department may authorize a transaction otherwise prohibited by paragraphs (g)(2) and (g)(3) based upon an unanticipated significant change in the personal financial circumstances of the beneficial owner of the research analyst account, provided that:

(A) the legal or compliance department authorizes the transaction before it is entered;

(B) each exception is granted in compliance with policies and procedures adopted by the member that are reasonably designed to ensure that these transactions do not create a conflict of interest between the professional responsibilities and the personal trading activities of a research analyst; and

(C) the member maintains written records concerning each transaction and the justification for permitting the transaction for three years following the date on which the transaction is approved.

(5) The prohibitions in paragraphs (g)(1) through (g)(3) do not apply to a purchase or sale of the securities of:

(A) any registered diversified investment company as defined under Section (5)(b)(1) of the Investment Company Act of 1940; or

(B) any other investment fund over which neither the research analyst nor a member of the research analyst's household has any investment discretion or control, provided that:

(i) the research analyst accounts collectively own interests representing no more than 1% of the assets of the fund;

(ii) the fund invests no more than 20% of its assets in securities of issuers principally engaged in the same types of business as companies that the research analyst follows; and

(iii) if the investment fund distributes securities in kind to the research analyst or household member before the issuer's initial public offering, the research analyst or household member must either divest

those securities immediately or the research analyst must refrain from participating in the preparation of research reports concerning that issuer.

(h) Disclosure Requirements

(1) *Ownership and Material Conflicts of Interest*

A member must disclose in research reports and a research analyst must disclose in public appearances:

- (A) if the research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position);
- (B) if, as of the end of the month immediately preceding the date of publication of the research report or the public appearance (or the end of the second most recent month if the publication date is less than 10 calendar days after the end of the most recent month), the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company. Computation of beneficial ownership of securities must be based upon the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Securities Exchange Act of 1934; and
- (C) any other actual, material conflict of interest of the research analyst or member of which the research analyst knows or has reason to know at the time of publication of the research report or at the time of the public appearance.

(2) *Receipt of Compensation*

- (A) A member must disclose in research reports if:
 - (i) the research analyst principally responsible for preparation of the report received compensation that is based upon (among other factors) the member's investment banking revenues; and
 - (ii) the member or its affiliates:
 - (a) managed or co-managed a public offering of securities for the subject company in the past 12 months;

(b) received compensation for investment banking services from the subject company in the past 12 months; or

(c) expects to receive or intends to seek compensation for investment banking services from the subject company in the next 3 months.

(B) A research analyst must disclose in public appearances if the analyst knows or has reason to know that the subject company is a client of the member or its affiliates.

(3) *Position as Officer or Director*

A member must disclose in research reports and a research analyst must disclose in public appearances if the research analyst or a member of the research analyst's household serves as an officer, director or advisory board member of the subject company.

(4) *Meaning of Ratings*

A member must define in its research reports the meaning of each rating used by the member in its rating system. The definition of each rating must be consistent with its plain meaning.

(5) *Distribution of Ratings*

(A) Regardless of the rating system that a member employs, a member must disclose in each research report the percentage of all securities rated by the member to which the member would assign a "buy," "hold/neutral," or "sell" rating.

(B) In each research report, the member must disclose the percentage of subject companies within each of these three categories for whom the member has provided investment banking services within the previous twelve months.

(C) The information that is disclosed under paragraphs (h)(5)(A) and (h)(5)(B) must be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

(6) Price Chart

A member must present in any research report concerning an equity security on which the member has assigned any rating for at least one year, a line graph of the security's daily closing prices for the period that the member has assigned any rating or for a three-year period, whichever is shorter. The line graph must:

- (A) indicate the dates on which the member assigned or changed each rating or price target;
- (B) depict each rating and price target assigned or changed on those dates; and
- (C) be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date is less than 15 calendar days after the most recent calendar quarter).

(7) Price Targets

A member must disclose in research reports the valuation methods used to determine a price target. Price targets must have a reasonable basis and must be accompanied by a disclosure concerning the risks that may impede achievement of the price target.

(8) Market Making

A member must disclose in research reports if it was making a market in the subject company's securities at the time that the research report was published.

(9) Disclosure Required by Other Provisions

In addition to the disclosure required by this rule, members and research analysts must provide disclosure in research reports and public appearances that is required by applicable law or regulation, including NASD Rule 2210 and the antifraud provisions of the federal securities laws.

(10) Prominence of Disclosure

The disclosures required by this paragraph (h) must be presented on the front page of research reports or the front page must refer to the page on which disclosures are found. Disclosures and references to disclosures must be clear, comprehensive and prominent.

(11) Disclosures in Research Reports Covering Six or More Companies

When a member distributes a research report covering six or more subject companies, for purposes of the disclosures required in paragraph (h), such research report may direct the reader in a clear manner as to where they may obtain applicable current disclosures in written or electronic format.

(i) Supervisory Procedures

Each member subject to this rule must adopt and implement written supervisory procedures reasonably designed to ensure that the member and its employees comply with the provisions of this rule, and a senior officer of such a member must attest annually to the Association that it has adopted and implemented those procedures.

IMPLEMENTATION SCHEDULE

Pursuant to the SEC's order approving NASD Rule 2711 (Research Analysts and Research Reports) dated May 10, 2002, NASD members must implement the provisions of the rule in accordance with the following schedule:

No later than Wednesday, November 6, 2002:

- ✦ Rule 2711(h)(1)(B) (Disclosure of 1% Firm Ownership) and related written procedures under Rule 2711(i)

No later than Monday, September 9, 2002:

- ✦ Rule 2711(b)(2) and (3) and Rule 2711(c)(1) and (2) (Gatekeeper Functions) and related written procedures under Rule 2711(i)
- ✦ Rule 2711(h)(5) (Disclosure of Distribution of Ratings) and related written procedures under Rule 2711(i)
- ✦ Rule 2711(h)(6) (Disclosure of Price Chart) and related written procedures under Rule 2711(i)

No later than Tuesday, July 9, 2002:

- ✦ All other provisions of Rule 2711



ATTACHMENT B

JOINT MEMORANDUM OF NASD AND THE NEW YORK STOCK EXCHANGE

Discussion and Interpretation of Rules Governing Research Analysts and Research Reports (NASD Rule 2711 and NYSE Rules 351 and 472)

Background

On May 10, 2002, the Securities and Exchange Commission ("SEC") approved new NASD Rule 2711 ("Research Analysts and Research Reports") and amendments to New York Stock Exchange ("NYSE") Rules 351 ("Reporting Requirements") and 472 ("Communications with the Public") with respect to research analysts and research reports (collectively, NASD Rule 2711 and the amendments to NYSE Rules 351 and 472 are referred to as the "SRO Rules").

The SRO Rules implement reforms designed to increase analyst independence and to provide more extensive disclosure of conflicts of interest in research reports and public appearances. Generally, the SRO Rules restrict the relationship between research and investment banking departments; require disclosure of financial interests in covered companies by the analyst and the firm; require disclosure of existing and potential investment banking relationships with subject companies; impose quiet periods for the issuance of research reports; restrict personal trading by analysts; and require disclosure of information that helps investors track the correlation between an analyst's rating and the stock's price movements.

The SRO Rules are being phased in to give members time to adopt compliant systems and procedures. Most provisions of the Rules will go into effect on July 9, 2002, with the following exceptions. The provisions requiring disclosure of firm ownership of 1% or more of any class of common equity securities of the subject company¹ and related written procedures² become effective November 6, 2002. The following rules and their accompanying written procedures become effective on September 9, 2002: the gatekeeper functions;³ the required disclosure of ratings distribution;⁴ and the price charts.⁵ The NYSE had previously issued an information memo outlining the implementation schedule (see NYSE Information Memo No. 02-24, dated May 20, 2002).

1 NASD Rule 2711(h)(1)(B) and NYSE Rule 472(k)(1)(i)a.

2 NASD Rule 2711(i) and NYSE Rule 472(c).

3 NASD Rule 2711(b)(2) and (3), NASD Rule 2711(c)(1) and (2) and NYSE Rule 472(b)(2) and (3).

4 NASD Rule 2711(h)(5) and NYSE Rule 472(k)(2)(iv).

5 NASD Rule 2711(h)(6) and NYSE Rule 472(k)(2)(v).

In its approval order, the SEC noted that NASD and the NYSE (collectively, the "SROs") would provide interpretive guidance on certain provisions of the SRO Rules. This Joint Memorandum provides that guidance, and addresses certain other issues that NASD and NYSE members have raised since the SEC approved the SRO Rules. This Joint Memorandum does not attempt to address every possible interpretive question or factual scenario that might arise under the Rules. As with other SRO Rules, the NASD and NYSE staffs will consider additional requests for interpretive guidance on a case-by-case basis.

For purposes of the NYSE Rules, the term "research analyst" as used in the Joint Memorandum refers to any "associated person" as that term is defined in NYSE Rule 472.40. In addition, for purposes of the NYSE Rules, the term "member" refers to both members and member organizations of the NYSE.

Definitions

The SRO Rules include a number of definitions that are important to their application. Certain of these definitions are discussed in more detail below.

Investment Banking Services

The SRO Rules⁶ define "investment banking services" to include, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions) or similar investments; or serving as placement agent for the issuer. The term also includes acting as a member of a selling group in a securities underwriting.

Household Members

NASD Rule 2711(a)(3) defines the term "member of a research analyst's household," and NYSE Rule 472.40 defines the term "household member," to mean any individual whose principal residence is the same as the research analyst's principal residence. These terms do not include, however, a roommate, apartment mate or other unrelated person who shares the same residence as a research analyst if that person is not financially dependent on the research analyst, or the research analyst is not financially dependent on that person.

⁶ NASD Rule 2711(a)(2) and NYSE Rule 472.20.

Public Appearance

“Public appearance” is defined in the SRO Rules⁷ to mean any participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public speaking activity in which a research analyst makes a recommendation or offers an opinion concerning an equity security. This term includes a research analyst’s participation in a conference call or Web cast that is open to the public in which the analyst makes a recommendation or offers an opinion concerning an equity security.

Research Analyst and Associated Person

NASD Rule 2711(a)(5) defines “research analyst” to mean “the associated person who is principally responsible for, and any associated person who reports directly or indirectly to such a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of ‘research analyst.’” NYSE Rule 472.40 defines “associated person” for purposes of its rule to include “a member, allied member, or employee of a member or member organization responsible for, and any person who reports directly or indirectly to such associated person in connection with the making of the recommendation to purchase, sell or hold an equity security in research reports, or public appearances or establish a rating or price target of a subject company’s equity securities.”

These terms do not include every registered person who may express an opinion on an equity security. Thus, for example, the terms exclude registered representatives who recommend securities to their customers, so long as they do not prepare the substance of research reports and do not report to persons who do prepare research reports. The terms also exclude investment advisers, such as mutual fund portfolio managers, who are not principally responsible for preparing the substance of a research report, even if they are registered persons of members.

Research Analyst Account

NASD Rule 2711(a)(6) defines “research analyst account” to mean any account in which a research analyst or member of the research analyst’s household has a financial interest or over which the analyst has discretion or control. NYSE Rule 472 does not include a comparably

⁷ NASD Rule 2711(a)(4) and NYSE Rule 472.50.

defined term. However, NYSE Rule 472.40 generally applies the rule's personal trading restrictions and disclosure requirements to any account over which an associated person has a financial interest, or over which the associated person exercises discretion or control. Under both NASD Rule 2711(a)(6) and NYSE Rule 472.40, if a research analyst manages the portfolio investments of a registered investment company, the investment company is not a "research analyst account" for purposes of NASD Rule 2711, and is not subject to the personal trading restrictions or disclosure requirements of NYSE Rule 472.

Research Report

Under the SRO Rules,⁸ the term "research report" has four components. A "research report" is (1) a written or electronic communication, (2) that includes an analysis of equity securities of individual companies or industries, (3) that provides information reasonably sufficient upon which to base an investment decision, and (4) that includes a recommendation. Members should consider each communication in this context in determining whether it is or is not a "research report." The term "research report" includes any public communication of a member that falls within the definition, regardless of the means of distribution or whether the report of the member is distributed within or outside the United States.

Member communications that mention or discuss particular equity securities come in a variety of forms, and it is not possible to provide a complete list of all types of communications that fall or do not fall within this definition. The issue of whether a particular communication constitutes a "research report" for purposes of the SRO Rules will turn on the individual facts and circumstances surrounding that communication. The SROs generally would not consider the following communications to be "research reports":

- Reports discussing broad-based indices, such as the Russell 2000 or S&P 500 index, that do not recommend or rate individual securities.
- Reports commenting on economic, political or market conditions that do not recommend or rate individual securities.
- Technical analysis concerning the demand and supply for a sector, index or industry based on trading volume and price.
- Statistical summaries of multiple companies' financial data (including listings of current ratings) that do not include any narrative discussion or analysis of individual companies' data.

⁸ NASD Rule 2711(a)(8) and NYSE Rule 472.10(2).

- Reports that recommend increasing or decreasing holdings in particular industries or sectors but that do not contain recommendations or ratings for individual securities.
- Notices of ratings or price target changes that do not contain any narrative discussion or analysis of the company, provided that the member simultaneously directs the readers of the notice as to where they may obtain the most recent research report on the subject company that includes the disclosures required by the SRO Rules. In no event should such a notice refer to a research report that contains materially misleading disclosure, i.e., where disclosures are no longer applicable or new disclosures would pertain.
- An analysis prepared by a registered representative for a specific customer's account.
- Internal communications that are not given to customers.

For purposes of this definition, the term "equity security" has the same meaning as defined in Section 3(a)(11) of the Securities Exchange Act of 1934 (the "Exchange Act").⁹

Application of the SRO Rules to Third Party Research

The SROs have received a number of questions regarding whether the SRO Rules apply to research distributed by a member that is produced by a third party. In general, the SRO Rules are intended to address conflicts of interest that can arise when a member produces its own research. When a member distributes research produced by an independent third party generated in accordance with a soft-dollar arrangement, the member's disclosure requirements do not apply. If the independent third-party source of the research is also an NASD or NYSE member, the third-party member firm must comply with the applicable SRO Rules' provisions described below.

In some cases, a member may distribute research produced by a non-member affiliate, such as a foreign broker/dealer or an investment adviser, or an independent third party other than through a soft-dollar arrangement. The member must, however, accompany this research with the following disclosures, to the extent applicable:

- the member's and its affiliates' ownership of the subject company's securities;¹⁰
- that the member or its affiliates managed or co-managed a public offering of the subject company's securities in the past 12 months, received compensation for

⁹ See 15 U.S.C. 78c(a)(11).

¹⁰ NASD Rule 2711(h)(1)(B) and NYSE Rule 472(k)(1)(i)a.

investment banking services from the subject company in the past 12 months, or expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;¹¹

- that the member was making a market in the subject company's securities at the time the research report was published;¹² and
- any other actual, material conflict of interest of the member known at the time of distribution of the research report.¹³

Generally, a member will not be considered to have distributed independent third-party research to a customer when the customer independently requests or accesses such research from the member or the member makes such research available to its customers through the member's or a third party's Web site and customers select their own research.

Prohibition of Certain Forms of Analyst Compensation

The SRO Rules¹⁴ expressly prohibit the payment of a "bonus, salary or other form of compensation to a research analyst that is based upon a specific investment banking services transaction." The SROs have received questions as to the continuing validity of existing contractual arrangements that contain compensation agreements contrary to these SRO Rule provisions.

The SROs are of the view that as of the effective date for that provision of the SRO Rules (July 9, 2002), any contractual provision that provides for compensation based upon specific banking transactions that have not yet closed is inconsistent with the SRO Rules. A member may not pay compensation based on specific investment banking transactions that may have been entered into before the effective date but that will not close until after the effective date. However, research analysts may be compensated, pursuant to contractual agreements executed prior to July 9, 2002, for any investment banking transactions that have closed before that date.

11 NASD Rule 2711(h)(2)(A)(ii) and NYSE Rule 472(k)(1)(ii).

12 NASD Rule 2711(h)(8) and NYSE Rule 472(k)(2)(i).

13 NASD Rule 2711(h)(1)(C) and NYSE Rule 472(k)(1)(i)c as they pertain solely to the member.

14 NASD Rule 2711(d) and NYSE Rule 472(h).

Prohibition of Promises of Favorable Research

The SRO Rules¹⁵ prohibit members from directly or indirectly offering a company favorable research, a specific rating or a specific price target, or threatening to change research, a rating or price target, as consideration or inducement for the receipt of business or compensation. These provisions extend to the research, ratings and price targets issued by an affiliate, since the rule prohibits indirect as well as direct actions.

Nevertheless, these provisions are not intended to prevent a member's investment banking department from obtaining a research analyst's view of a prospective client before committing to undertake an investment banking transaction. They also do not prevent a member from agreeing to provide research as part of its investment banking agreement with a subject company, so long as there is no promise of *favorable* research.

Quiet Periods

The SRO Rules¹⁶ generally prohibit a member from publishing a research report on a company for which the member has acted as manager or co-manager for 40 calendar days after an initial public offering and 10 calendar days after a secondary offering. The SRO Rules provide an exception for publication of research concerning the effects of significant news or a significant event relating to the subject company during those quiet periods. For purposes of these Rules "significant news or a significant event" refers to any news or event that is expected to have a material impact on, or that is expected to cause a material change to, the subject company's operations, earnings or financial condition. The SRO Rules also exempt research reports issued pursuant to SEC Rule 139 for certain secondary offerings of "actively-traded" securities as defined in Rule 101(c)(1) of Regulation M of the Exchange Act.

The SRO Rules impose the 40-day or 10-day quiet periods, as applicable, following the date of the offering. Members have requested clarification of the definition of date of the offering. For NASD Rule 2711(f)(1) and NYSE Rule 472(f)(1) (regarding IPOs), members should use the effective date of the registration statement as the date of the offering. For some secondary offerings, particularly shelf-offerings, the effective date of registration may not be meaningful for the purposes of the Rules. Accordingly, for NASD Rule 2711(f)(2) and NYSE Rule 472(f)(2), the date of offering is the date on which the secondary shares are first offered to the public.

15 NASD Rule 2711(e) and NYSE Rule 472(g).

16 NASD Rule 2711(f) and NYSE Rule 472(f)(1) and (2).

As noted above, the SRO Rules apply only to "equity security" offerings, as that term is defined in Section 3(a)(11) of the Exchange Act. This definition includes convertible debt offerings. The provisions do not apply with respect to straight debt offerings.

The quiet period requirements only apply to IPOs and secondary offerings that occur on or after July 9, 2002. Offerings that occur before July 9, 2002 are not subject to these provisions.

Personal Trading

The SRO Rules¹⁷ impose a number of restrictions on the personal trading of securities in accounts in which a research analyst or a member of his or her household has a financial interest or over which the analyst has discretion or control. For purposes of both SROs' rules, these accounts are referred to herein as "research analyst accounts."

Prohibition of Purchasing or Receiving Pre-IPO Securities

The SRO Rules¹⁸ prohibit a research analyst account from purchasing or receiving any securities before the issuer's initial public offering if the issuer is principally engaged in the same types of business as companies that the research analyst follows. This prohibition applies to shares of any private company that engages in the same types of business that the analyst follows, regardless of whether the company ever goes public.

The SRO Rules do not require a research analyst to divest pre-IPO shares of a company that the research analyst already owned before the SRO Rules' effective date. However, research analysts in these situations may not provide research on the company unless the analyst has divested all pre-IPO shares in the company.

The SROs have received questions on the meaning of the term "same types of business as companies that the research analyst covers." As a general matter, a member should assume that an issuer falls within this category if the issuer would be assigned to the analyst if the member began covering the issuer. To the extent that there are still questions, an acceptable approach would be to include all companies that are classified as being in the same industry as the companies that the analyst covers by a nationally recognized system of industry classification.

¹⁷ NASD Rule 2711(g) and NYSE Rule 472(e).

¹⁸ NASD Rule 2711(g)(1) and NYSE Rule 472(e)(1).

Blackout Periods

The SRO Rules¹⁹ generally prohibit a research analyst account from purchasing or selling any security issued by a company that the research analyst follows, or any option on or derivative of such security, for a period beginning 30 calendar days before and ending 5 calendar days after the publication of a research report concerning the company or a change in a rating or price target of the company's securities. For purposes of this provision, the publication date of a research report is the date that a member first disseminates the report.

Under the SRO Rules,²⁰ a member may permit a research analyst to issue a research report or change a rating or price target for a subject company fewer than 30 days after a research analyst account has traded the subject company's securities if the report or change is due to significant news or a significant event concerning the subject company. The member's legal or compliance department must pre-approve the research report or any change in the subject company's rating or price target.

Exceptions for Investment Funds

The SRO Rules²¹ exclude investments in certain investment funds from the personal trading restrictions in NASD Rule 2711(g)(1) through (g)(3) and NYSE Rule 472(e)(1) through (e)(3). The SRO Rules²² provide that the personal trading restrictions do not apply to investments in registered diversified investment companies as defined in Section 5(b)(1) of the Investment Company Act of 1940.²³ If a research analyst invests in a registered investment company that is not diversified, the investment company must meet the requirements of NASD Rule 2711(g)(5)(B) and NYSE Rule 472(e)(4)(v) in order to be excluded from the personal trading restrictions.

The SRO Rules²⁴ also exclude any other investment fund over which neither the research analyst nor household member has any investment discretion or control from the personal trading restrictions, provided that the fund meets three criteria. First, the research analyst account(s) collectively owns interests representing no more than 1% of the assets of the fund. Second, the fund invests no more than 20% of its assets in the same types of business as companies that

19 NASD Rule 2711(g)(2) and NYSE Rule 472(e)(2).

20 NASD Rule 2711(g)(2)(B) and NYSE Rule 472(e)(4)(ii).

21 NASD Rule 2711(g)(5) and NYSE Rules 472(e)(4)(v) and (vi).

22 NASD Rule 2711(g)(5)(A) and NYSE Rule 472(e)(4)(vi).

23 15 U.S.C. 80a-5(b)(1).

24 NASD Rule 2711(g)(5)(B) and NYSE Rule 472(e)(4)(v).

the research analyst follows.²⁵ Third, if the investment fund distributes securities in kind to the research analyst or household member before the issuer's IPO, the research analyst or household member must either divest those securities immediately or the research analyst must refrain from participating in the preparation of research reports concerning that issuer.

Members have inquired whether holdings of investment funds that were purchased or received prior to July 9, 2002 are excluded from the trading restrictions in the SRO Rules.²⁶ In general, the SROs will not apply the trading restrictions to these investments. However, if a research analyst or household member makes or receives additional investments in those funds after July 9, 2002, all fund holdings would be subject to the trading restrictions to the extent those funds do not meet the requirements of the SRO Rules.²⁷

Members also have inquired as to when the 1% and 20% tests must be measured. In order to qualify for the trading exceptions of the SRO Rules²⁸ an investment fund must meet the 1% and 20% tests each time a research analyst makes or receives additional investments in the fund.

Disclosure Requirements

The SRO Rules impose a number of disclosure requirements on members and research analysts with respect both to research reports and public appearances. Members are reminded that there may be additional disclosures required by SEC Rule 10b-5 or other securities laws and rules. Certain of the SRO Rules' disclosure requirements are discussed below.

Member Ownership of Subject Company Securities

The SRO Rules²⁹ require a member or research analyst to disclose in a research report and a public appearance if, as of the end of the month preceding publication of a research report or a public appearance, the "member or its affiliates" beneficially owned 1% or more of any class of common equity securities of the subject company. Several members have requested guidance as to the scope of "affiliate" ownership in this provision, including whether it encompasses mutual funds managed by an affiliated investment adviser, ownership by member

25 The phrase "same types of business as companies that the research analyst follows" has the same meaning as under the restrictions on purchasing and receiving pre-IPO securities. See discussion of NASD Rule 2711(g)(1) and NYSE Rule 472(e)(1).

26 NASD Rule 2711(g)(1), (2) and (3) and NYSE Rule 472(e)(1), (2) and (3).

27 NASD Rule 2711(g)(5)(B) and NYSE Rule 472(e)(4)(v).

28 NASD Rule 2711(g)(5)(B) and NYSE Rule 472(e)(4)(v).

29 NASD Rule 2711(h)(1)(B) and NYSE Rule 472(k)(1)(i)a.

employees, and trust accounts managed by an affiliated bank. Members have further inquired whether they may, or must, aggregate their affiliate positions for the purposes of the disclosure requirement.

The SRO Rules refer to Section 13(d) of the Exchange Act for the standards to determine what constitutes beneficial ownership. Thus, members must include the holdings of an affiliate or accounts managed by an affiliate to the same extent those holdings are subject to the Section 13(d) reporting requirements. Members should look to the SEC rules promulgated pursuant to Section 13(d) and relevant interpretations by the SEC to determine which affiliate holdings must be included in calculating whether firm ownership meets the 1% disclosure threshold. While firms must aggregate those affiliate positions that fall under the Section 13(d) reporting requirements, firms may additionally show those positions disaggregated from the member's own holdings.

The SRO Rules³⁰ further require disclosure of "any other actual, material conflict of interest" of which the analyst "knows or has reason to know" at the time of the research report or public appearance. Some members have asked whether this requirement creates a duty of inquiry by the analyst to learn of confidential, non-public information. The "knows or has reason to know" language is intended to require disclosure of those material conflicts of interest of which the analyst has actual knowledge, as well as those conflicts that should be reasonably discovered in the ordinary course of business. The provision does not impose a duty on an analyst to inquire concerning confidential, non-public material information that is properly segregated by a firm's informational barriers.

Member Receipt of Compensation from Subject Company

The SRO Rules³¹ require a member to disclose in research reports if the member or its affiliates: (a) managed or co-managed a public offering of the subject company's securities in the past 12 months; (b) received compensation for investment banking services from the subject company in the past 12 months; or (c) expects to receive or intends to seek compensation for investment banking services from the subject company in the next 3 months. The Rules do not define the term "affiliate" for purposes of this provision.

The SROs deem that the term "affiliate" includes any company that controls, is controlled by, or is under common control with, the member. "Affiliate" does not include individuals employed by the member or an affiliate. "Control" means the power to direct, or cause the

30 NASD Rule 2711(h)(1)(C) and NYSE Rule 472(k)(1)(i)c.

31 NASD Rule 2711(h)(2)(A)(ii) and NYSE Rule 472(k)(1)(ii).

direction of, the management or policies of a company, whether through ownership of securities, by contract or otherwise.³²

Meaning of Ratings

The SRO Rules³³ require a member to define in its research reports the meaning of each rating used by the member in its ratings system. For example, a member might disclose that a “strong buy” rating means that the rated security’s price is expected to appreciate at least 10% faster than other securities in its sector over the next 12-month period.³⁴ The definition of each rating must be consistent with its plain meaning. Thus, for example, a “hold” rating should not mean or imply that an investor should sell a security.

In some cases, a member may employ multiple ratings systems based upon the investor’s time horizon. For example, the member may present ratings for “long,” “intermediate” and “short” term investors. In such cases, the member is required to disclose the meanings of the ratings used in each of the ratings systems.

Distribution of Ratings

The SRO Rules³⁵ require a member to disclose in each research report the percentage of all securities rated by the member to which the member has assigned a “buy,” “hold/neutral” or “sell” rating. For example, a research report might disclose that the member has assigned a “buy” rating to 58% of the securities that it follows, a “hold/neutral” rating to 15%, and a “sell” rating to 27%. The SRO Rules³⁶ require this information to be current as of the end of the most recent calendar quarter. If the publication date of the research report is fewer than 15 calendar days after the end of the most recent calendar quarter, the information must be current as of the second most recent calendar quarter end. If a firm does not employ a rating system that uses the terms “buy,” “hold/neutral” and “sell,” a member must determine, based on its own ratings system, into which of the three categories its ratings fall.

When a member employs multiple ratings systems based on the investor’s time horizon, the member is required to disclose the distributions of the ratings used in each of the ratings systems. As discussed above, the distribution need only reflect ratings of equity securities as defined by Section 3(a)(11) of the Exchange Act.

32 See also NASD Rule 2720(b)(1) and NYSE Rule 2.

33 NASD Rule 2711(h)(4) and NYSE Rule 472(k)(2)(iii).

34 When a rating is defined in terms of a security’s performance relative to the market or sector, there is no requirement also to disclose a member’s market or sector forecast.

35 NASD Rule 2711(h)(5)(A) and NYSE Rule 472(k)(2)(iv).

36 NASD Rule 2711(h)(5)(C) and NYSE Rule 472.70.

The SRO Rules³⁷ require a member to disclose in each research report the percentage of subject companies within each of the three categories (buy, hold/neutral, sell) for which the member has provided investment banking services within the last 12 months. For example, if 20 of the 25 companies to which the member has assigned a “buy” rating are investment banking clients of the member, the member would have to disclose that 80% of the companies that received a “buy” rating are its investment banking clients.

Price Chart

The SRO Rules³⁸ require members to include with any research report in which the member has assigned a rating for at least one year a graph that indicates the correlation between the price movement of the subject security and the ratings and price targets assigned by the member. The line graph must cover the period for which a member has assigned a rating or three years, whichever is shorter. This requirement has raised several questions.

First, members have inquired whether a table may be substituted for the chart when the research report is delivered through a technology that will not allow transmission of graphic illustrations. A member may use a table in such circumstances, provided that the table provides all the required data and is presented in an easily readable format. If a table is used rather than a chart, the table is only required to provide the stock closing prices for the days on which the member assigned or changed a rating or price target. However, members may not opt to use a table format if technology is reasonably available to transmit the information as a chart.

Second, members have asked for guidance to comply with the price chart provision when the member employs multiple ratings systems depending on the investor’s time horizon (e.g., short, intermediate and long-term). In such cases, the price chart must show the ratings and price targets assigned to the subject company’s stock for each ratings system.

Third, members have asked whether the SRO Rules permit inclusion of a benchmark performance, such as the S&P 500 Index, in the price chart. Members may include such benchmarks at their discretion, so long as the information required by the rule is prominent and clearly depicted on the chart. If a member uses a benchmark in a research report’s price chart, the member should use the same benchmark in the price charts for all research reports of subject companies within the same industry or peer group.

37 NASD Rule 2711(h)(5)(B) and NYSE Rules 472(k)(2)(iv) and 472.70.

38 NASD Rule 2711(h)(6) and NYSE Rule 472(k)(2)(v).

Fourth, members have inquired whether they must include information about ratings and price targets assigned before the SRO Rules become effective. Members must include that information on price charts for any security that has been assigned a rating for at least a year before a research report is issued. Members have also asked whether the SROs might exempt firms that do not have the historical information readily available in electronic databases that go back as many as three years from the effective date. The price chart provision does not take effect until September 9, 2002. This date provides adequate time to compile the necessary information, particularly given the fact that existing NASD Rule 2210(b)(2) and NYSE Rule 472(d) (formerly Rule 472(c)) already require firms to maintain a file of all sales literature, including research reports, for three years.

Fifth, members have sought guidance on their obligations when coverage of a security is transferred from one analyst to another, i.e., whether the chart should reflect only the recommendations and price targets of the analyst to whom the security is currently assigned, or whether it should reflect data from all analysts during the period covered by the chart. The price chart is intended to depict the recommendations of the member, not the individual analyst. Consequently, the price chart must reflect all ratings and price targets during the specified period, irrespective of the analyst. The SROs would not object, however, if members chose to include additional information on the price chart that indicates when coverage shifted to a new analyst.

Sixth, some members have asked how “breaks” in coverage affect the obligation to include historical data for securities that have been assigned a rating for at least one year. Breaks in coverage would not restart the clock to determine the one-year coverage period. Moreover, the SROs expect members to indicate the breaks in coverage on the price charts.

Price Targets

The SRO Rules³⁹ require a member to disclose in research reports the valuation methods used to determine a price target. Price targets must have a reasonable basis and must be accompanied by disclosure concerning the risks that may impede achievement of a price target. This provision however does not require a member to include a price target in a research report.

³⁹ NASD Rule 2711(h)(7) and NYSE Rule 472(k)(2)(ii).

Prominence of Disclosure

The disclosures required by the SRO Rules must appear on the front page of the research report or the front page must refer to the page on which disclosures are found. Disclosures and references to disclosures must be clear, comprehensive and prominent.

Electronic research reports may utilize hyperlinks to this disclosure, provided that the first screen that the investor sees clearly and prominently labels the hyperlinks to the required disclosures. When hyperlinks are not possible (such as a report in PDF format), members should follow the requirements for paper reports. Thus, for example, the first printed page of a PDF document must either have the disclosures or refer the reader to the pages where the disclosures appear.

Compendium Reports

If a member distributes a research report covering six or more subject companies, the member is not obligated to include the disclosures required by the SRO Rules, provided that the report directs readers in a clear manner as to where they may obtain applicable current disclosures for all covered companies in written or electronic format. In this regard, a compendium report must provide a toll-free number to call or a postal address to write for the required disclosures. Electronic compendium research reports may instead include a hyperlink to the required disclosures. Paper research reports may also include a web address of the member where the disclosures are located.

While members are not obligated to include these disclosures in a compendium report so long as the report directs readers to where they may obtain the applicable current disclosures, members are encouraged to disclose in the compendium report the distribution of the member's ratings as required by NASD Rule 2711(h)(5) and NYSE Rule 472(k)(2)(iv). Because this disclosure is not unique to a particular subject company, this disclosure will be the same regardless of the number of subject companies covered in a compendium report.

Public Appearances

The SRO Rules require an analyst to disclose the following when making a recommendation during a public appearance: any financial interest held by the analyst or his or her household members; whether the firm and its affiliates, as of the end of the preceding month, held at least a 1% ownership interest in any class of common equity shares of the subject company; any other material conflict of interest of the analyst or firm of which the analyst knows or has reason to know; and whether the subject company is a client of the member or its affiliates. The term "public appearance" is defined and discussed above.

The SROs have received a number of questions regarding these provisions. First, some members asked whether the rule applies to analysts who make public appearances outside of the United States. The SRO Rules apply to any public appearance by a person who meets the definition of research analyst. They do not apply to employees of non-members unless they also are employees of the member.

Second, the SRO Rules⁴⁰ require a research analyst to disclose in public appearances if the analyst knows or has reason to know that the subject company is an investment banking client of the firm. As used herein, the term “client” is intended to include those clients from whom the member received revenues from investment banking services within the last 12 months, or for whom the member expects to provide investment banking services in the next three months, as disclosed in the most recent research report.

Third, several members have inquired whether the public appearance disclosures must be made during an extemporaneous radio or television interview when the research analyst does not possess the required disclosure information. If an analyst cannot make all of the required disclosures during a public appearance then the analyst must decline to make a recommendation or offer an opinion.

A related question is whether a research analyst has complied with the Rules if he or she makes all of the required disclosures during an interview, but the media outlet edits out the disclosures when all or part of the appearance is broadcast. The SROs cannot control the editorial decisions of the media. An analyst will not violate the Rules if he or she makes all of the mandated disclosures with a good faith belief, based on discussions with the media outlet, that those disclosures will be included whenever the appearance is broadcast or rebroadcast. However, when an analyst or a member is aware that a particular media outlet has previously edited out the required disclosures, the SROs expect that an analyst will decline subsequent appearances, absent assurances that the disclosures will not be edited out.

Fourth, members have asked whether the required disclosures may appear in a graphics box or a “scroll” across the screen in lieu of oral disclosures during a television or other video appearance. Such disclosure would satisfy the Rules, provided the graphic includes all of the required information presented in a prominent and readable format during the time of the appearance.

⁴⁰ See NASD Rule 2711(h)(2)(B) (which requires disclosure if the research analyst knows or has reason to know that the subject company is a “client” of the member or its affiliates) and NYSE Rule 472(k)(1)(ii) (which requires disclosure if the associated person knows or has reason to know that the subject company is an “investment banking services client” of the member, member organization or one of its affiliates).

Finally, members have asked for guidance about the types of records that they should maintain to demonstrate compliance with the public appearance provisions of the Rules. Members must maintain records of appearances on television, radio or the Internet that are sufficient to record the statements made by a research analyst. These records may include a transcript or an audio or video tape of such an appearance.

Notice to Members

JULY 2002

SUGGESTED ROUTING

Legal & Compliance
Market Making
Operations
Registered Representatives
Senior Management
Trading

KEY TOPICS

Best Execution

REQUEST FOR COMMENT

ACTION REQUESTED BY AUGUST 9, 2002

Best Execution

NASD Requests Comment On Proposed Amendments to NASD Rule 2320 (Best Execution Rule); **Comment Period Expires on August 9, 2002**

Executive Summary

NASD requests comment from members, investors, and other interested parties on proposed amendments to NASD Rule 2320(a) (the "Best Execution Rule").¹ If adopted, these amendments would clarify the scope of the duty of best execution in circumstances where a broker/dealer receives, for execution, a customer order from another broker/dealer.

Specifically, NASD seeks comment on whether the scope of the duty of best execution, as codified in NASD Rule 2320, should be clarified to include customer orders received by a member from another broker/dealer and, if so, whether the scope of the duty should: (1) be limited to customer orders where there is an agreement or arrangement between the two broker/dealers that the recipient broker/dealer would comply with the duty of best execution; (2) be limited to customer orders routed pursuant to an arrangement or an agreement noted in *Notice to Members 97-57* (i.e., where a broker/dealer agrees to provide automated executions to a routing broker/dealer's customers' orders or there is another arrangement between the two broker/dealers such as a payment for order flow, reciprocal, or correspondent arrangement); (3) be limited to customer orders routed pursuant to an arrangement or an agreement (including, but not limited to, those noted in *Notice to Members 97-57*) where the recipient broker/dealer assesses a fee or charge to execute the order; (4) be defined more broadly to include all orders that are identified by the routing member as customer orders; and/or (5) clarified or amended in some other fashion. NASD also seeks comment on whether the Best Execution Rule should distinguish, if at all, between customer orders received by a member from a foreign affiliate or foreign broker/dealer (as opposed to customer orders received by a member from a domestic affiliate or domestic broker/dealer that is subject to SEC, NASD or other legal obligations concerning best execution).

02-40

Questions/Further Information

Questions concerning this *Notice* may be directed to Kathleen O'Mara, Assistant General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8071; or Peter D. Santori, Assistant Chief Counsel, Market Regulation Department, NASD Regulatory Policy and Oversight, at (240) 386-5126.

Request for Comment

NASD requests comment on the proposed amendments to Rule 2320 described herein. Comments must be received by August 9, 2002. Members and interested persons can submit their comments using the following methods:

- + mailing in written comments
- + e-mailing written comments to pubcom@nasd.com
- + submitting comments online on NASD Web Site (www.nasd.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 by mail, e-mail, or to the NASD Web Site.

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

Background and Discussion

The obligation of a member to provide best execution to its customers' orders has long been an important investor protection rule, characteristic of fair and orderly markets and a central focus of NASD's examination, customer complaint and automated surveillance programs. The Best Execution Rule requires a member, in any transaction for or with a customer, to use reasonable diligence to ascertain the best inter-dealer market for a security and to buy or sell in such a market so that the price to the customer is as favorable as possible under the prevailing market conditions. NASD Rule 0120(g), however, defines "customer" as not including a broker or dealer, unless the context otherwise requires. NASD staff has received a number of questions regarding the application of the term "customer," as that term is defined in Rule 0120(g), to the Best Execution Rule. For example, if a broker/dealer routes an order that it receives from a customer to a market maker in the subject security, and that order is executed in a manner otherwise inconsistent with the Best Execution Rule, some members have maintained that the executing market maker has not violated the Best Execution Rule, strictly on the basis that the transaction was not "for or with a customer," but rather for or with a broker/dealer. NASD views this argument as contrary to the interests of the investing public as well as the intent of the Best Execution Rule and notes that, if such an argument were sustained, a sizeable portion of transactions that take place in the over-the-counter market that involve routed customer orders would be executed without the benefit of the protections of the duty of best execution. Furthermore, NASD believes that it would be fundamentally unfair if the applicability of the Best Execution Rule

depended on whether a customer order was routed to another broker/dealer for execution (as opposed to being executed internally).

In its release adopting the Order Handling Rules, SEC Rules 11Ac1-1(c)(5) and 11Ac1-4, the Securities and Exchange Commission (SEC) made specific statements concerning the duty of best execution. Specifically, the SEC stated that when a market maker holds an undisplayed customer limit order priced better than its public quote, and it subsequently receives a customer market order on the opposite side of the market from the limit order, it is no longer appropriate for the market maker to execute both orders as principal rather than crossing the two orders at the same price.² Instead, the market maker is required to pass along the price improvement offered by the limit order to the market order (hereinafter, "the crossing obligation").³ In *Notice to Members 97-57* (September 1997), The Nasdaq Stock Market, Inc., and NASD, in consultation with the SEC, answered a number of questions regarding the obligation of members to obtain best execution of customer orders in light of this requirement. In that *Notice*, Nasdaq and NASD set forth the types of relationships pursuant to which market makers would be required to satisfy the crossing obligation specifically and, by extension, the duty of best execution generally. Specifically, Nasdaq and NASD stated that a market maker that has undertaken expressly or implicitly to provide best execution to the customer orders of another broker/dealer pursuant to an arrangement or understanding must, in fact, provide such orders best execution.⁴ In this regard, Nasdaq and NASD identified specific circumstances that would give rise to a duty of best execution, such as where a broker/dealer

agrees to provide automated executions to a routing broker/dealer's customers' orders or there is another arrangement between the two broker/dealers (such as a payment for order flow, reciprocal, or correspondent arrangement).⁵

Since the guidance provided in *Notice to Members 97-57*, developments to the market have changed the types of relationships, arrangements, and understandings that normally accompany order routing and order flow decisions. For example, decimalization and other competitive forces have reduced dramatically the level of customer order flow that is directed from one broker/dealer to another pursuant to payment for order flow or reciprocal order routing arrangements. In fact, in some cases market makers that formerly paid for order flow now charge for order flow. Moreover, the language of *Notice to Members 97-57* referred to arrangements "under which [the receiver of order flow] has implicitly or explicitly undertaken to provide best execution [to the routing broker/dealer's] customer orders."⁶ In many current order routing arrangements, the receiver of order flow expressly states that it will not treat the routing member's orders as customer orders or that it does not owe a duty of best execution to the routing member's customer orders, in an apparent attempt to renounce any duty that it may owe to provide best execution to such orders.⁷

NASD staff believes that the application of the Best Execution Rule to a customer order should not depend on the method by which it is routed for execution and executed. It is unlikely that retail customers and routing broker/dealers appreciate the distinction between "customer" and "non-customer" orders that some members have maintained concerning the scope of the Best

Execution Rule. Furthermore, assuming that a member meets its "regular and rigorous" obligations, it is unreasonable to expect a routing broker/dealer to be the sole guarantor on an order-by-order basis of execution quality for that class of customer orders that it routes to another member for execution because of the difficulties of the routing member to monitor the execution of individual customer orders.⁸

NASD, therefore, solicits comment on whether to amend the Best Execution Rule to clarify that, under certain circumstances, the Best Execution Rule extends to customer orders routed by a broker/dealer to another broker/dealer for execution. Specifically, NASD seeks comment on whether the scope of the Best Execution Rule should be clarified to include customer orders received by a member from another broker/dealer and, if so, whether the scope of the duty in this circumstance should: (1) be limited to customer orders where there is an agreement or arrangement between the two broker/dealers that the recipient broker/dealer would comply with the duty of best execution; (2) be limited to customer orders routed pursuant to an arrangement or an agreement noted in *Notice to Members 97-57* (i.e., where a broker/dealer agrees to provide automated executions to a routing broker/dealer's customers' orders or there is another arrangement between the two broker/dealers (such as a payment for order flow, reciprocal, or correspondent arrangement); (3) be limited to customer orders routed pursuant to an arrangement or an agreement (including, but not limited to, those noted in *Notice to Members 97-57*) where the recipient broker/dealer assesses a fee or charge to execute the order; (4) be defined more broadly to include all orders that are identified by the routing member as

customer orders; and/or (5) clarified or amended in some other fashion. NASD also seeks comment on whether the Best Execution Rule should distinguish, if at all, between customer orders received by a member from a foreign affiliate or foreign broker/dealer (as opposed to customer orders received by a member from a domestic affiliate or domestic broker/dealer that is subject to SEC, NASD or other legal obligations concerning best execution).

Although NASD recognizes that the Best Execution Rule is a fundamental customer protection rule, NASD also recognizes that member firms may have concerns about the impact any change to the Best Execution Rule may have on potential liability and litigation issues. Accordingly, NASD is seeking comments from members, investors, and other interested parties on how best to address the important issues raised in this *Notice*.

Endnotes

- 1 Nothing in this *Notice* should be construed as an attempt to define or to change what constitutes satisfaction of the duty of best execution; rather, the purpose of this *Notice* is to request comments on whether and to what extent the scope of the duty of best execution should be clarified.
- 2 Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290, 48322-48323 (September 12, 1996) (SEC Adopting Release). The SEC Adopting Release appears in its entirety as published in the *Federal Register* in the Appendix to *NASD Notice to Members 96-65* (October 1996). For the convenience of the reader, this *Notice* will cite to *NASD Notice to Members 96-65* when referencing the Adopting Release. *NASD Notice to Members 96-65* at 542.
- 3 *Id.*
- 4 *NASD Notice to Members 97-57* at 458 (September 1997).

-
-
- 5 Id.
- 6 Id.
- 7 Although NASD notes the practice by certain recipient firms of disclaiming best execution responsibilities for customer orders that are routed to them, it is not clear that such a practice has any legally operative effect on the best execution responsibilities owed to such routed orders or that such a practice otherwise comports with SEC, NASD or other legal obligations concerning best execution. Furthermore, a member firm should take such statements by recipient firms into account when making order routing decisions.
- 8 See *NASD Notice to Members 01-22* (April 2001). Nothing in this *Notice* changes the obligation of a member firm to regularly and rigorously examine execution quality likely to be obtained from different markets or market makers trading a security, as explained more fully in *Notice to Members 01-22*.

© 2002. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

Notice to Members

JULY 2002

SUGGESTED ROUTING

Compliance
Legal
Senior Management

KEY TOPICS

Gross Income Assessment
NASD By-Laws
Personnel Assessment
Regulatory Fee

Gross Income Assessment, Personnel Assessment, and Regulatory Fee

NASD Informs Members of Proposed Changes to NASD's Gross Income Assessment, Personnel Assessment, and Regulatory Fee

Executive Summary

NASD is issuing this *Notice to Members* to inform members that NASD's Board of Governors has approved proposed changes to NASD's Gross Income Assessment (GIA), Personnel Assessment, and Regulatory Fee. Under the current structure, these three types of fees and assessments are used to fund NASD's member regulatory activities. The proposed restructuring will be comprised of four important amendments: 1) eliminate the Regulatory Fee; 2) institute a new transaction-based Trading Activity Fee similar to the Securities and Exchange Commission's (SEC) Section 31 Fee; 3) increase the rates assessed to member firms under the Personnel Assessment; and 4) implement a simplified three-tiered flat rate for the GIA and eliminate current deductions and exclusions. The proposed changes are revenue neutral to NASD and strive to better align NASD's member regulatory fees with its functions, efforts, and costs. NASD will be filing these proposals with the SEC shortly. Previously, NASD proposed changes to the Regulatory Fee in *Notice to Members 02-09* and requested comments. NASD received a number of comments on this proposal. As a result, the proposal set forth in *Notice to Members 02-09* is not being pursued. Additionally, this revised proposal takes into consideration those comments received.

These fees assessed upon and paid by member firms are used by NASD to fund NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. These amendments to the current pricing structure are intended to serve the following purposes: 1) simplify NASD's fee structure; 2) ensure fairness in NASD's fee structure by assessing higher fees to those member firms that require more NASD regulatory services; 3) assess a transaction-based fee in a manner that, unlike the Regulatory Fee, does not influence where members choose to execute trades; 4) reduce where possible the cyclical nature of the current NASD fee structure; and 5) eliminate NASD's reliance on funds generated from

02-41

the Regulatory Fee on transactions executed through Nasdaq. These changes will also enhance the diversity of revenue sources. This proposal was reviewed, discussed, and is strongly supported by the NASD Small Firm Advisory Board and a working group from the Securities Industry Association.

Currently, there is a lack of standardization, consistency, and uniformity in the manner in which the GIA is reported by and assessed on member firms. Therefore, NASD is proposing to eliminate deductions and exclusions, which have been subject to varying interpretations, and instead apply a three-tiered flat rate applied to gross FOCUS revenue. NASD also proposes to eliminate the existing Nasdaq market-based Regulatory Fee and institute a transaction-based Trading Activity Fee similar to the SEC's Section 31 Fee at a reduction of approximately 50% from current levels. The Trading Activity Fee would be assessed on the sell side of all member transactions in all covered securities regardless of where the trade is executed. To offset the proposed reduction in the Trading Activity Fee and reflect the vast size differential of NASD's member firms, the Personnel Assessment would be raised to a three-tiered rate structure of \$65 to \$75.

Although this proposal would be revenue neutral, there are impacts, both negative and positive, to individual firms due to the realignment of revenues with services rendered. The impact of restructuring these fees would be phased in over a three-year period in order to alleviate significant variances experienced by various member firms.

Questions/Further Information

Questions concerning this *Notice* should be directed to NASD Finance,

at (240) 386-5397, or Division of Regulatory Policy and Oversight, Office of General Counsel, at (202) 728-8071.

Action Requested

NASD encourages member firms to submit formal comments through the SEC once the proposal is filed.

IMPORTANT NOTE: Before becoming effective, any rule change must be approved by the SEC.

Discussion

The GIA, Regulatory Fee, and Personnel Assessment are assessed upon and paid by member firms and used by NASD to fund NASD's member regulatory activities, including the supervision and regulation of members through examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. The amendments to this current pricing structure are intended to serve the following purposes: 1) simplify NASD's fee structure; 2) ensure fairness in NASD's fee structure by assessing higher fees to those member firms that require more NASD regulatory services; 3) assess a transaction-based fee in a manner that, unlike the Regulatory Fee, does not influence where members choose to execute trades; 4) reduce the cyclical nature of the current NASD fee structure; and 5) eliminate NASD's reliance on funds generated from the Regulatory Fee on transactions executed through Nasdaq. These changes will also enhance the diversity of revenue sources.

NASD's membership population varies greatly with regard to factors that drive the cost of required regulation. Historically, member regulatory fees were derived

primarily from industry revenues and Nasdaq transactions, while NASD derived minimal fees from the registration of member firm personnel. Analysis revealed that the number of registered persons serves as an effective proxy in determining the frequency of certain types of regulatory efforts, and, therefore, regulatory costs. Therefore, as before, the three critical factors used to measure regulatory cost for NASD member firms are overall size of the member firm, level of trading activity, and number of registered representatives. However, the weight from each, as well as the benchmark used to measure industry revenues and transactions, has been shifted under the proposed amendments to better link the fees assessed under these factors with NASD's costs.

Gross Income Assessment (GIA)

The current GIA is assessed on a member firm's gross FOCUS revenues less various exclusions and deductions. The allowable exclusions and deductions have grown to the point where they totaled over 60% of gross FOCUS revenues in 2001.

Member firms are assessed 0.125% on the net assessable FOCUS revenue that converts into a .0355% effective rate on

gross FOCUS revenues. Member firms having gross FOCUS revenues less than or equal to \$960,000 are assessed at a flat rate of \$1,200.

Under the current fee structure for the GIA, the amount of revenue received by NASD is subject to unpredictable swings due to deductions and exclusions taken by member firms. The exclusions and deductions include interest expense, investment management fees, exchange revenue, and unrelated revenues. In 2001, gross FOCUS revenue increased by 30%, yet the total assessment only increased by 15% due to a disproportionate increase in exclusions and deductions, primarily in interest expense. The proposed amendments to the pricing structure are intended to improve the standardization, consistency, and uniformity in which the GIA is assessed on and paid by member firms.

The proposed GIA solution is similar to that employed by the New York Stock Exchange. The rate would be applied to the gross FOCUS revenue with deductions and exclusions eliminated. Given the diversity and size of our member firms, we propose the following three-tiered rate structure:

Revised Rate Structure:		
Gross FOCUS Revenue < or = to \$960 Thousand	Assessed Flat Fee of:	\$1,200
Gross FOCUS Revenue > \$960 Thousand		
Tiered Rate on Gross FOCUS Revenue:	over \$1 Billion	0.014%
	>\$100 Million to \$1 Billion	0.029%
	< or = to \$100 Million	0.125%
Effective Rates at FOCUS Revenue Category Levels:	\$10 Billion	0.017%
	\$1 Billion	0.039%
	\$250 Million	0.067%
	\$100 Million	0.125%

Small member firms with gross FOCUS revenues less than or equal to \$960,000 would continue to be assessed a flat fee of \$1,200. As outlined above, all other member firms will be assessed using a tiered rate based on their gross FOCUS revenues. The higher the gross FOCUS revenue, the lower the effective rate.

This type of rate structure will allow for greater equity among member firms because each member firm will be assessed on the same revenue base. Additionally, the new rate structure will simplify the process because member firms will report only gross FOCUS revenue as currently done on FOCUS form Part II or IIA and will no longer need to report deductions and exclusions.

Trading Activity Fee

NASD currently assesses a Regulatory Fee upon its members, through approximately 250 clearing and self-clearing firms, on all transactions reported through Nasdaq's Automated Confirmation Transaction (ACT) system. There is a 400 share minimum and 7,500 share maximum per transaction.

Under the current structure, this revenue stream is at risk due to marketplace changes and Nasdaq's separation from NASD and registration as a national securities exchange. The current fee structure is out of step with marketplace changes as evidenced by the drastic growth in trading volumes, reductions in average trade size, decimalization, and trading no longer remaining exclusive to the listing exchange. Additionally, this fee is assessed against Nasdaq and other over-the-counter transactions, although revenues are used to support member regulation activities across all markets.

The Regulatory Fee as assessed also has become a factor in determining on which market members choose to execute trades. NASD, by its fee assessment, should not promote or disadvantage one trading venue over alternative trading venues.

The proposal would eliminate the existing Nasdaq market-based Regulatory Fee and would institute a transaction-based Trading Activity Fee similar to the SEC's Section 31 Fee. The proposed fee would be assessed on the sell side of all member transactions in all covered securities regardless of where the trade is executed. Specifically, covered securities would include: 1) all exchange-registered securities wherever executed (other than bonds, debentures, other evidence of indebtedness); 2) all other equity securities traded other than on an exchange; and 3) all security futures wherever executed.

The rate to be assessed for the Trading Activity Fee is currently being developed based on industry data for NASD members' transactions in covered securities. Although the rate has yet to be determined, the revenue generated from this fee will be reduced by approximately 50%.

Traditionally, the Regulatory Fee had been assessed on clearing firms on behalf of members. Although reporting obligations are ultimately the responsibility of the member, the Trading Activity Fee would continue to be assessed directly to the clearing firm responsible for clearing the transaction on behalf of the member firm. Firms will self-report to NASD on a monthly basis the aggregate share, contract, and/or round turn volume of sales of covered securities.

Personnel Assessment

The current Personnel Assessment is a minimal fee of \$10 per registered representative that generates only 4% of total member regulatory fees and inadequately supports NASD's member regulatory costs. The number of registered representatives per firm is a fair and representative measure of the cost of member regulatory activities, yet it has not been used as a significant basis for the assessment of fees. Additionally, based on the current fee structure, some firms with a disproportionately large number of registered representatives yet lower FOCUS revenues are avoiding the payment of the cost of regulation of member firms through the payment of NASD fees.

As part of this proposal, the Personnel Assessment will become a more prominent assessable base for the funding of member regulatory activities. Given the vast size differential of our member firms, NASD proposes the following three-tiered rate structure:

Revised Rate Structure:

Tiered rate on registered reps:

> 25 registered reps	\$ 65.00
6 to 25 registered reps	\$ 70.00
1 to 5 registered reps	\$ 75.00

Phase-In

NASD's overall proposal will be revenue neutral to NASD. However, due to the link of revenues to regulatory services provided, there will be effects, both negative and positive, on individual member firms. To minimize the impact on member firms, the restructuring of fees will be phased in over a three-year period. Specifically, for the Gross Income Assessment, any negative or positive variances experienced by the firms would be phased in at 33% in Year 1, 67% in Year 2 and 100% in Year 3. For the Trading Activity Fee, since the revenue generated from this fee would be reduced by approximately 50%, the fee reduction will be phased in at a rate of 33% in Year 1, 67% in Year 2 and 100% in Year 3. For the Personnel Assessment, since the revenue generated from this fee would be increased to cover the reduction in the Trading Activity Fee, the fee increase will be phased in at a rate of 33% in Year 1, 67% in Year 2 and 100% in Year 3. Based upon a review of the majority of NASD's small member firms, the net increase of fees will average approximately \$100 in Year 1.

Additionally, NASD will continue to reduce these fees through rebates to the member firms in connection with the proceeds raised from the sale of Nasdaq. NASD will continue to use a portion of these rebates to eventually reduce the minimum GIA amount from \$1,200 to \$600. The remaining balance and other additional discretionary rebates will be used to further reduce fees paid to NASD.

Summary

The changes proposed above are intended to stabilize and maintain the existing revenue streams in a neutral manner with minimal impact to NASD's members. NASD will continue to review its overall fee structures to ensure that its assessment methods are modernized and keep pace with industry developments and practices. Additionally, NASD will periodically review the funding from these fees in conjunction with its member regulation costs to make appropriate adjustments to the assessment rates. NASD will publish any adjustments to the assessment rates as determined by this review process.

© 2002. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

ATTACHMENT A

Proposed New Text of Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Section 1 – Member Regulation Fees

- (a) Recovery of cost of services. NASD shall, in accordance with this section, collect Member Regulation fees that are designed to recover the costs to NASD of the supervision and regulation of members, including performing examinations, processing of membership applications, financial monitoring, policy, rulemaking, interpretive, and enforcement activities. NASD shall periodically review these revenues in conjunction with these costs to determine the applicable rate. NASD shall publish notices of the fees and adjustments to the assessment rates applicable under this section.
- (b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.
 - (1) Covered Securities. For purposes of the rule, covered securities shall mean:
 - (i) All exchange registered securities wherever executed (other than bonds, debentures and other evidence of indebtedness);
 - (ii) All other equity securities traded otherwise than on an exchange; and
 - (iii) All security futures wherever executed.
 - (2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:
 - (i) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by Section 3(a) or 3(b) thereof, or a rule thereunder;
 - (ii) Transactions by an issuer not involving any public offering within the meaning of Section 4(2) of the Securities Act of 1933;

- (iii) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;
- (iv) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and
- (v) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in Rule 11Aa3-1 and any approved plan filed thereunder.

NASD may exempt other securities and transactions as it deems appropriate.

- (3) Fee Rates
 - (i) Each member shall pay to NASD a fee per share for each sale of a covered security.
 - (ii) Each member shall pay to NASD a fee per contract for each sale of an option.
 - (iii) Each member shall pay to NASD a fee for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) of a security future.
 - (4) Reporting of Transactions. Members shall report to NASD the aggregate share, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.
- (c) Each member shall pay an annual Gross Income Assessment equal to the greater of \$1,200.00 or the total of:
- (1) 0.125% of annual gross revenue less than or equal to \$100,000,000.00;
 - (2) 0.029% of annual gross revenue greater than \$100,000,000.00 up to \$1,000,000,000.00; and
 - (3) 0.014% of annual gross revenue greater than \$1,000,000,000.00.

Each member is to report annual gross revenue as defined in Section 2 of this Schedule, for the preceding calendar year.

- (d) Each member shall pay an annual Personnel Assessment equal to:
- (1) \$75.00 per principal and each representative up to five principals and representatives as defined below;
 - (2) \$70.00 per principal and each representative for six principals and representatives up to twenty-five principals and representatives as defined below; or
 - (3) \$65.00 per principal and each representative for twenty-six or more principals and representatives as defined below.

A principal or representative is defined as a principal or representative in the member's organization who is registered with NASD as of December 31st of the prior fiscal year.

Section 2 – Gross Revenue for Assessment Purposes

Gross revenue is defined for assessment purposes as total income as reported on FOCUS form Part II or IIA.

Section 3 – SEC Transaction Fee

Each member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act.

Section 4 – Fees

No Change to rule language.

Section 5 – Elimination of Duplicate Assessments and Fees

No Change to rule language.

Section 6 – Assessments and Fees for New Members, Resigning Members and Successor Organizations

No Change to rule language.

Section 7 – Fees for Filing Documents Pursuant to the Corporate Financing Rule

No Change to rule language.

Section 8 – Service Charge for Processing Extension of Time Requests

No Change to rule language.

Section 9 – Subscription Charges for Firm Access Query System (FAQS)

No Change to rule language.

Section 10 – Request for Data and Publications

No Change to rule language.

Section 11 – Reserved

No Change to rule language.

Section 12 – Application and Annual Fees for Member Firms with Statutorily Disqualified Individuals

No Change to rule language.

Section 13 – Review Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

No Change to rule language.

Notice to Members

JULY 2002

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Operations
Senior Management
Trading

KEY TOPICS

FIPS

FIPS

Fixed Income Pricing SystemSM Additions, Changes, and Deletions as of May 22, 2002

As of May 22, 2002, the following bonds were added to the Fixed Income Pricing System (FIPSSM).

Symbol	Name	Coupon	Maturity
ENQ.GD	Amer Media Operations Inc.	10.250	05/01/09
ACVC.GA	American Achievement Corp. Ser B	11.625	01/01/07
BGG.GA	Briggs & Stratton Corp.	7.250	09/15/07
CBGS.GA	Cott Beverages Inc.	8.000	12/15/11
EQFC.GA	Equistar Chem/Funding Corp.	8.500	02/15/04
EQFC.GB	Equistar Chem/Funding Corp.	8.750	02/15/09
EQFC.GC	Equistar Chem/Funding Corp.	10.125	09/01/08
FELP.GB	Felcor Lodging LP	9.500	09/15/08
FLM.GG	Fleming Corp. Inc. Ser D	10.625	07/31/07
FLM.GH	Fleming Corp. Inc.	9.875	05/01/12
IHSC.GB	Insight Health Svcs Ser B	9.875	11/01/11
ICIX.GB	Intermedia Communications Inc.	11.250	07/15/07
ICIX.GD	Intermedia Communications Inc.	8.500	01/15/08
ICIX.GE	Intermedia Communications Inc.	8.875	11/01/07
ICIX.GF	Intermedia Communications Inc.	8.600	06/01/08
ICIX.GG	Intermedia Communications Inc.	12.250	03/01/09
ICIX.GH	Intermedia Communications Inc.	9.500	03/01/09
LDLK.GA	Land O'Lakes Inc.	8.750	11/15/11
LYO.GD	Lyondell Chemical Co.	9.500	12/15/08
MJIV.GA	Majestic Investor Hldgs LLC	11.653	11/30/07
MCLD.GA	McLeodUSA Inc.	10.500	03/01/07
MCLD.GB	McLeodUSA Inc.	9.250	07/15/07
MCLD.GC	McLeodUSA Inc.	8.375	03/15/08
MCLD.GD	McLeodUSA Inc.	9.500	11/01/08

02-42

MCLD.GE	McLeodUSA Inc.	8.125	02/15/09
MCLD.GF	McLeodUSA Inc.	12.000	07/15/08
MCLD.GG	McLeodUSA Inc.	11.500	05/01/09
MTNT.GA	Mountain States Tel and Teleg	7.375	05/01/30
MTNT.GB	Mountain States Tel and Teleg	4.500	06/01/02
MTNT.GC	Mountain States Tel and Teleg	5.500	06/01/05
MTNT.GD	Mountain States Tel and Teleg	6.000	08/01/07
NTWN.GA	Northwest Airlines Inc.	7.039	01/02/06
NWBL.GA	Northwestern Bell Tel Co.	6.250	01/01/07
NWBL.GB	Northwestern Bell Tel Co.	7.750	05/01/30
PAX.GC	Paxson Comm. Corp.	12.250	01/15/09
PZL.GC	Pennzoil-Quaker State Co.	10.000	11/01/08
PME.GB	Penton Media Inc.	11.875	10/01/07
PLY.GA	Pliant Corp.	13.000	06/01/10
QWST.GF	Quest Communications Intl Inc.	8.290	02/01/08
QFUG.GA	Qwest Cap Funding Inc.	7.750	08/15/06
QFUG.GB	Qwest Cap Funding Inc.	7.900	05/15/10
QFUG.GC	Qwest Cap Funding Inc.	7.250	08/15/11
QFUG.GD	Qwest Cap Funding Inc.	5.875	08/03/04
QFUG.GE	Qwest Cap Funding Inc.	7.000	08/03/09
QFUG.GF	Qwest Cap Funding Inc.	7.625	08/03/21
GFUG.GG	Qwest Cap Funding Inc.	7.750	02/15/31
QRWP.GA	Qwest Corp.	7.625	06/09/03
QRWP.GB	Qwest Corp.	8.875	03/15/12
RGX.GA	Radiologix Inc. Ser B	10.500	12/15/08
ROIC.GA	Resorts Intl Hotel & Casino Inc.	11.500	03/15/09
SBGI.GE	Sinclair Broadcast Group Inc.	8.750	12/15/11
SAH.GC	Sonic Automotive Inc.	11.000	08/01/08
TSIV.GA	TSI Telecom Services inc.	12.750	02/01/09
UCAR.GB	Ucar Finance Corp.	10.250	02/15/12
UTAI.GA	United Airlines	7.371	09/01/06
USWY.GA	US Airways Inc.	7.960	01/20/18
USFG.GA	US West Cap Funding Inc.	6.125	07/15/02
USFG.GB	US West Cap Funding Inc.	6.250	07/15/05
USFG.GC	US West Cap Funding Inc.	6.375	07/15/08
USFG.GD	US West Cap Funding Inc.	6.875	07/15/28
USFG.GE	US West Cap Funding Inc.	6.500	11/15/18
USWT.GA	US West Communication Inc.	8.875	06/01/31

USWT.GB	US West Communication Inc.	7.500	06/15/23
USWT.GC	US West Communication Inc.	5.650	11/01/04
USWT.GD	US West Communication Inc.	6.125	11/15/05
USWT.GE	US West Communication Inc.	6.625	09/15/05
USWT.GF	US West Communication Inc.	6.375	10/15/02
USWT.GG	US West Communication Inc.	7.250	09/15/25
USWT.GH	US West Communication Inc.	7.200	11/10/26
USWT.GI	US West Communication Inc.	5.625	11/15/08
USWT.GJ	US West Communication Inc.	7.200	1/01/04
USWT.GK	US West Communication Inc.	7.625	06/09/03

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

Symbol	Name	Coupon	Maturity
ADEI.GA	Adience Inc.	11.000	06/15/02
ABEC.GA	Albecca Inc.	10.750	08/15/08
AMCU.GA	Amer Comm LLC	10.250	06/30/08
BVLF.GA	Beaver Valley LL Fdg Corp.	8.625	06/01/07
BVLF.GB	Beaver Valley LL Fdg Corp.	8.250	06/01/03
BVLF.GC	Beaver Valley LL Fdg Corp.	9.000	06/01/17
BNO.GB	Benton Oil and Gas Co.	11.625	05/01/03
BCC.GD	Boise Cascade Corp.	9.850	06/15/02
BVPS.GB	BVPS II Funding Corp.	8.330	12/01/07
BVPS.GC	BVPS II Funding Corp.	8.890	06/01/17
BVPS.GE	BVPS II Funding Corp.	8.680	06/01/17
CHCA.GB	Chancellor Media Corp.	10.500	01/15/07
CLKO.GA	Clark Oil & Refining Corp. Del	9.500	09/15/04
CLKU.GA	Clark USA Inc.	10.875	12/01/05
CSCF.GA	Conseco Finl Corp.	10.250	06/01/02
FNWH.GA	First Nationwide Holdings Inc.	10.625	10/01/03
FLRY.GA	Floridaeast Cost Ry Co.	5.000	11/15/01
GSTF.GA	GST Equipment Funding Inc.	13.250	05/01/07
GST.GA	GST Telecommun	12.750	11/15/07
HMJQ.JA	Hammons John Q Hotels LP Corp.	8.875	02/15/04
ITUR.GA	Intl Tourist Entertainment Corp.	10.000	06/01/08
JQHH.GA	John Q Hammons Hotels LP	9.750	10/01/05
MOIL.GE	Marathon Oil Co.	7.000	06/01/02

WCOM.GD	MCI Worldcom Inc.	0.000	06/11/02
MDFG.GA	Midland Fdg Corp.	1 10.330	07/23/02
MDFG.GB	Midland Fdg Corp.	1 10.330	07/23/02
NAV.GB	Navistar Finl Corp.	9.000	06/01/02
OHI.GB	Omega Healthcare Inv Inc.	6.950	06/15/02
OPLI.GA	Op Tel Inc.	13.000	02/15/05
OPLI.GB	Op Tel Inc.	11.500	07/01/08
OWNC.GA	Owens-Corning	8.875	06/01/02
PIDM.GJ	Piedmont Aviation Inc. Ser A	10.000	01/15/02
PIDM.GK	Piedmont Aviation Inc. Ser B	10.000	01/15/02
PIDM.GL	Piedmont Aviation Inc. Ser C	10.000	01/15/02
PIDM.HW	Piedmont Aviation Inc. Ser D	10.150	03/28/02
PIDM.HX	Piedmont Aviation Inc. Ser E	10.150	03/28/02
PIDM.HY	Piedmont Aviation Inc. Ser F	10.150	03/28/02
PIDM.JP	Piedmont Aviation Inc. Ser H	9.750	05/08/02
PIDM.JQ	Piedmont Aviation Inc. Ser I	9.750	05/08/02
PIDM.KP	Piedmont Aviation Inc. Ser J	9.900	05/13/02
PIDM.KQ	Piedmont Aviation Inc. Ser K	9.900	
PKS.GB	Premier Parks Inc.	9.250	04/01/06
PCKI.GA	Print Pack Inc.	9.875	08/15/04
PCKI.GB	Print Pack Inc.	10.625	08/15/06
SXFG.GA	Six Flags Entertainment Corp.	8.875	04/01/06
SMDU.GA	Smith Food & Drug Ctrs Inc.	8.640	07/02/12
SMDU.GB	Smith Food & Drug Ctrs Inc.	9.200	07/02/18
SAH.GB	Sonic Automotive Inc.	11.000	08/01/08
STCS.GA	STC Broadcasting Inc.	11.000	03/15/05
TLNU.GA	Talon Automotive Group Inc.	9.625	05/01/08
TRAM.GC	Transamerican Refining Corp.	0.000	02/15/02
TRAM.GD	Transamerican Refining Corp.	16.500	02/15/02
TLTX.GA	Tultex Corp.	10.625	03/15/05
TLTX.GB	Tultex Corp.	9.625	04/15/07
USAR.JK	US Air Inc. Ser 88-A	10.000	01/15/02
USAR.JL	US Air Inc. Ser 88-B	10.000	01/15/02
USAR.JM	US Air Inc. Ser 88-C	10.000	01/15/02
USAR.JN	US Air Inc. Ser 88-D	10.000	01/15/02
USAR.LS	US Air Inc. Ser 88_E	10.600	01/01/02
USAR.LT	US Air Inc. Ser 88-F	10.700	01/01/02
USAR.LU	US Air Inc. Ser 88-G	10.700	01/01/02

USAR.LV	US Air Inc. Ser 88-H	10.700	01/01/02
USAR.LW	US Air Inc. Ser 88-I	10.700	01/01/02
USAR.LX	US Air Inc. Ser 88-J	10.700	01/01/02
USAR.LY	US Air Inc. Ser 88-K	10.700	01/01/02
USAR.GV	US Air Inc. Ser A	10.400	01/15/02
USAR.GW	US Air Inc. Ser B	10.400	01/15/02
USAR.GX	US Air Inc. Ser C	10.400	01/15/02
USAR.GY	US Air Inc. Ser D	10.400	01/15/02
USAR.GZ	US Air Inc. Ser E	10.400	01/15/02
USAR.HA	US Air Inc. Ser F	10.400	01/15/02
USAR.LZ	US Air Inc. Ser 88-L	10.700	01/01/02
UBK.GA	US Banknote Corp.	10.375	06/01/02

As of May 22, 2002 there were no symbols changes:

Date Old Symbol/Name Coupon Maturity New Symbol/Name Coupon Maturity

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.

Notice to Members

JULY 2002

SUGGESTED ROUTING

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

KEY TOPICS

Holiday Trade Date—
Settlement Date Schedule

Trade Date—Settlement Date

Labor Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, September 2, 2002, in observance of Labor Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Aug. 27	Aug. 30	Sept. 4
28	Sept. 3	5
29	4	6
30	5	9
Sept. 2	Markets Closed	—
3	6	10

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

© 2002. NASD. All rights reserved.

02-43

Disciplinary Actions

REPORTED FOR JULY

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 June 2002.

Firm Expelled, Individual Sanctioned

Emerson Bennett & Associates, Inc. (CRD #36171, Fort Lauderdale, Florida) and Brently Chad Martin (CRD #2320760, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$45,000, jointly and severally. In addition, the firm was expelled from NASD membership and Martin was barred from association with any NASD member in any principal or supervisory capacity with a right to reapply after three years from the effective date of the bar. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Martin, failed to timely establish adequate written supervisory procedures for ensuring compliance with the NASD Taping Rule, and failed to begin taping telephone conversations between its registered representatives and existing and potential customers within 30 days of receiving notice. The findings also stated that the firm, acting through Martin, failed to begin taping telephone conversations at a branch office until about 5 1/2 months after receiving notice from NASD, and failed to tape telephone conversations at another branch office from September 30, 2000, through at least December 4, 2000. The findings also stated that the firm, acting through Martin, filed quarterly summary reports with NASD inaccurately reporting the extent to which the firm had taken disciplinary action against certain registered representatives, and was unable to produce certain specified telephone conversation tape recordings requested by the staff. NASD also found that Martin represented to members of NASD that the firm was in full compliance with the requirements of the Taping Rule when, in fact, he knew, or should have known, that a branch office of the firm had not been taped since at least September 30, 2000. In addition, the firm, acting through Martin, failed to take timely and appropriate action to address and prevent the recurrence of numerous continuous and ongoing instances of sales-practice abuses by the firm's registered representatives disclosed on the firm's tape recording of its registered representatives' phone conversations. (NASD Case #C07020043)

Firm Fined, Individual Sanctioned

SCA Development, Inc. (CRD #35451, Birmingham, Alabama), and Beall Dozier Gary Jr., (CRD #2754744, Registered Representative, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Gary was also suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with best efforts contingency offerings of securities, the firm, acting through Gary, failed to promptly transmit customer funds to an unaffiliated bank that had agreed to act as escrow agent, but instead held customers' uncashed checks for long periods of time prior to transmitting the checks to the bank.

Gary's suspension will begin August 5, 2002, and will conclude at the close of business August 14, 2002. (NASD Case #C05020022)

Firms and Individuals Fined

MMS Securities, Inc. (CRD #43120, Troy, Michigan), Craig Frank Moncher (CRD #1463324, Associated Person, Bloomfield Hills, Michigan), James Sylvester Currier (CRD #2070654, Registered Principal, Bloomfield Hills, Michigan), and Neal Appelbaum (CRD #2534089, Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured. The firm, Moncher, and Currier were fined \$35,000, jointly and severally; the firm and Moncher were fined \$5,000, jointly and severally; and the firm and Currier were fined \$7,500, jointly and severally. Additionally, the firm and Appelbaum were fined \$40,000, jointly and severally, and the firm was fined \$2,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Appelbaum, failed to prepare and maintain an accurate and current general ledger, current trial balance sheet, income statement and stock record, and failed to prepare and maintain adequate supporting documentation to evidence compliance with SEC Rule 15C3-1.

The findings also stated that the firm, acting through Appelbaum, failed to evidence the accuracy of FOCUS Part IIA reports and failed to provide support evidencing the accuracy of the amount required to be deposited in its Special Reserve Bank account. NASD also found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws, regulations, and NASD rules with respect to the monitoring of customer stock positions, location of securities, and the identification and correction of security position differences. In

addition, NASD determined that the firm, acting through Currier, failed to timely report to NASD customer complaints, and the firm, acting through Moncher and Currier, permitted the distribution of sales literature that emphasized the advantages and savings of investing in a fractional share investment program but omitted material facts. The firm also allowed Moncher to act in a principal capacity without being properly registered with NASD. (NASD Case #C8A020030)

VMR Capital Markets US (CRD #38755, Los Angeles, California) and Todd Michael Ficeto (CRD #1927084, Registered Principal, Malibu, California) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Ficeto, failed to report customer complaints to NASD. The findings also stated that the firm permitted Ficeto to execute equity securities transactions without being properly registered with NASD. (NASD Case #C02020026)

William Scott & Co., L.L.C. (CRD #14979, Union, New Jersey) and Joseph William Glodek (CRD #223163, Registered Principal, Somerset, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were each censured and fined \$10,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Glodek, failed to establish, maintain, and enforce supervisory procedures reasonably designed to achieve compliance with NASD rules. The findings stated that the firm, acting through Glodek, failed to maintain certain correspondence and have it reviewed by a supervisory principal; failed to evidence in writing the review of its transactions by a supervisory principal; and failed to establish, maintain, and enforce adequate written supervisory procedures relating to NASD Conduct Rule 3070, trade reporting, and Continuing Education. Additionally, NASD found that the firm, acting through Glodek, failed to report customer complaints; failed to prepare and maintain an adequate Need Analysis and written training plan for the Firm Element of NASD's Continuing Education Program; and failed to provide Firm Element training to its covered persons. Moreover, NASD found that the firm, acting through Glodek, failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction ServiceSM (ACTSM) last sale reports of transactions in over-the-counter (OTC) equity securities, and failed to designate through ACT such last sale reports as late and failed to show the correct time of execution on brokerage order memoranda. Furthermore, the findings stated that the firm, acting through Glodek, executed short sale transactions and failed to make an affirmative determination prior to executing such transactions, and executed short sale transactions and failed to make an affirmative determination prior to executing such transactions. (NASD Case #C9B020042)

Firms Fined

Beyer & Co. (CRD #1243, Davenport, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it permitted registered representatives to conduct securities business and to act in a registered capacity when their registrations had lapsed for non-compliance with the Regulatory Element of the Continuing Education Requirements, and/or that the firm compensated the representatives for securities transactions while their registration was inactive as a result of not completing the Regulatory Element of the Continuing Education Requirement. (NASD Case #C04020015)

Brinson Advisors (CRD #583, Weehawken, New Jersey) 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 submit required information to the Order Audit Trail SystemSM (OATSSM). The findings also stated that the firm failed to follow its written supervisory procedures concerning OATS and thus failed to maintain a system reasonably designed to achieve compliance with Marketplace Rule 6955(a). (NASD Case #CMS020098)

GFI Securities LLC (CRD #19982, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in OTC Equity/Bulletin Board (OTC/OTCBB) securities; incorrectly reported to ACT last sale reports of transactions in OTC/OTCBB on an "as of" basis; and failed to designate through ACT last sale reports as late. The findings also stated that the firm incorrectly designated as ".SLD" through ACT last sale reports of transactions in OTC/OTCBB securities reported to ACT within 90 seconds of execution. (NASD Case #CMS020092)

Josephthal & Co., Inc. (CRD #3227, New York, New York) was censured and fined \$10,000. The NAC imposed the sanctions following appeal of an Officer of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm failed to comply with an arbitration panel's order to produce a document for the arbitration panel to review. (NASD Case #CAF000015)

Market Wise Securities, Inc. (CRD #45269, Broomfield, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures. 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 Nasdaq National Market[®] (NNM[®])

securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short sales. (NASD Case #CMS020088)

Mesirow Financial, Inc. (CRD #2764, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise the firm's written supervisory procedures regarding firm quotations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders presented to the firm at its published bid or offer in an amount up to its published quotation size, thereby failing to honor its published quotation. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning firm quotations. (NASD Case #CMS020094)

MPAC Capital Partners, L.P. (CRD #39136, Sausalito, 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 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 #CMS020087)

UBS Warburg LLC (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$112,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it incorrectly designated as ".PRP" through ACT reports of transactions in NNM securities for which the execution price was not based on a prior reference point in time. The findings also stated 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 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 also found that the firm, without making reasonable efforts to avoid a locked or crossed market, executed transactions with all market participants whose quotations

would be locked or crossed, and entered bid or ask quotations in Nasdaq securities for which it was a market maker that caused a locked or crossed market condition to occur. In addition, NASD determined that the firm locked/crossed the market during the pre-opening market period in Nasdaq securities for which it was a market maker; failed immediately to send a Trade-or-Move Message through SelectNet® to the market participant whose quote it locked or crossed that was priced at the receiving market participant's quoted price; and/or failed to send a Trade-or-Move Message through SelectNet with an aggregate size of at least 5,000 shares to all market participants whose quotes it locked/crossed. Moreover, NASD found that the firm was a party to a locked or crossed market condition in Nasdaq securities for which it was a market maker prior to the market opening, and received a Trade-or-Move Message through SelectNet. But, within 30 seconds of receiving such message, failed to fill the incoming 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. Furthermore, the findings stated that the firm was presented with orders at its published bid or offer in an amount up to its published quotation size, failed to execute the orders upon presentment, and thereby failed to honor its published quotation. (NASD Case #CMS020055)

Individuals Barred or Suspended

Steven Anthony Anello (CRD #2101112, Registered Principal, Portchester, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any principal or supervisory capacity with a right to reapply after three years, and suspended from association with any NASD member in any capacity for 30 days. In light of the financial status of Anello, no monetary sanctions have been imposed. Without admitting or denying the allegations, Anello consented to the described sanctions and to the entry of findings that he failed to reasonably supervise the registered representatives in his branch to detect and prevent the recurrence of continuous and ongoing sales practice abuses.

Anello's suspension began June 3, 2002, and concluded at the close of business July 2, 2002. (NASD Case #C07020042)

Dionne Maria Aubert (CRD #3197843, Registered Representative, New Orleans, Louisiana) 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, Aubert consented to the described sanction and to the entry of findings that she came into possession of \$5,792 from a bank affiliated with her member firm and converted the funds to her own use and benefit without the knowledge or consent of the customer or

the bank. The findings also stated that Aubert failed to respond to NASD requests for information. (NASD Case #C05020020)

William Hamilton Averill (CRD #1049192, Registered Representative, West Chester, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Averill reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Averill consented to the described sanctions and to the entry of findings that he sold viatical settlement contracts outside the scope of his employment with his member firm, for compensation, and failed to provide prompt written notice of the sales to his member firm.

Averill's suspension began June 3, 2002, and will conclude at the close of business August 2, 2002. (NASD Case #C9A020023)

Joseph John Azzata (CRD #2446677, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any principal or supervisory capacity for six months. Without admitting or denying the allegations, Azzata consented to the described sanctions and to the entry of findings that he failed to reasonably supervise the branch office of his member firm with respect to compliance with the requirements of NASD Rule 3010(b)(2), which relates to the taping of conversations between registered persons and existing and potential public customers.

Azzata's suspension began June 17, 2002, and will conclude at the close of business December 16, 2002. (NASD Case #C07020036)

George Fleischer Balmer (CRD #1046182, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member as a financial and operations principal for two years. Without admitting or denying the allegations, Balmer consented to the described sanctions and to the entry of findings that, acting on behalf of a member firm, he failed to compute accurately the amount required to be deposited into the firm's Special Reserve Bank Accounts for the Exclusive Benefit of Customers and, as a result, the firm had a deficiency in its accounts. NASD also found that Balmer, acting on behalf of a member firm, made numerous withdrawals from the firm's Reserve Bank Accounts, but failed to compute its reserve requirements prior to making such withdrawals.

Balmer's suspension began July 1, 2002, and will conclude at the close of business June 30, 2004. (NASD Case #C02020024)

Brian Coleman Barge (CRD #3243595, Registered Representative, Detroit, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that Barge received \$1,225 from public customers for investment purposes and failed to apply the funds as instructed, and, without the customers' knowledge and authorization, used the funds for his own benefit or for some purpose other than the benefit of the customers. NASD also found that Barge affixed the signature of a public customer to an application to purchase an automobile insurance policy without the knowledge or consent of the customer. In addition, Barge failed to respond to NASD requests for information and documents. (NASD Case #C8A010078)

Decole LeeAnn Bee (CRD #3251151, Registered Representative, Dallas, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bee completed a personal line of credit application in the name of her grandfather and forged his name to the application without his knowledge or consent. NASD also found that Bee executed and processed cash advances and checks on the line of credit totaling \$6,550, thereby converting the funds to her own use and benefit. In addition, Bee failed to respond to NASD requests for information. (NASD Case #C05010055)

James Henry Bond, III (CRD #2001777, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Bond executed unauthorized transactions in the accounts of public customers. (NASD Case #C10000210)

Ronald A. Borunda (CRD #1819437, Registered Representative, Carlsbad, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, ordered to pay \$27,517.96 in disgorgement, and suspended from association with any NASD member in any capacity for six months. Payment of the fine and satisfactory proof of payment of the disgorgement is required before Borunda reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Borunda consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with detailed written notice of the transactions and his role therein, and failed to receive permission from his member firm to engage in such transactions.

Borunda's suspension began July 15, 2002, and will conclude at the close of business January 14, 2003. (NASD Case #C02020025)

Wilbur Steven Brown (CRD #33129, Registered Representative, Jacksonville, Florida) submitted a Letter of

Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for eight months, and required to disgorge \$47,520 in commissions to public customers in partial restitution. The fine must be paid and the commissions disgorged before Brown reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, without providing prior written notice to, and receiving authorization from, his member firm.

Brown's suspension began June 3, 2002, and will conclude at the close of business February 2, 2003. (NASD Case #C07020034)

John Joseph Buglino (CRD #1112971, Registered Representative, Oakdale, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Buglino willfully failed to disclose information on his Form U-4. (NASD Case #C10010155)

Bradley James Burgess (CRD #2943905, Registered Principal, Parkland, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member in any capacity after three years. The fine is due and payable before Burgess requests relief from any statutory disqualification resulting from this or any other event or proceeding. Without admitting or denying the allegations, Burgess consented to the described sanctions and to the entry of findings that he used high-pressure sales tactics and knowingly made numerous baseless predictions of substantial price increases and material misrepresentations of fact to public customers in connection with his solicitation of orders to purchase low-priced speculative and other securities. (NASD Case #C07020038)

Kent Jay Carter (CRD #2094797, Registered Representative, McCook, Nebraska) 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, Carter consented to the described sanctions and to the entry of findings that he engaged in the sale of securities to public customers referred to him by a registered representative with another firm, and paid a portion of the commissions received for these sales to the registered representative.

Carter's suspension began June 3, 2002, and concluded at the close of business June 14, 2002. (NASD Case #C04020016)

James Edward Cleary, Jr. (CRD #2655551, Registered Representative, Averturer, 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 30 days. Without admitting or denying the allegations, Cleary consented to the described sanctions and to the entry of findings that he used high-pressure sales tactics and knowingly made numerous baseless predictions of substantial price increases and material misrepresentations of fact to public customers in connection with his solicitation of orders to purchase low-priced speculative and other securities.

Cleary's suspension began June 17, 2002, and will conclude at the close of business July 16, 2002. (NASD Case #C07020041)

Howard Daniels (CRD #4010119, Registered Representative, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$641.37 in restitution to a bank. The restitution must be paid before Daniels requests relief from any statutory disqualification. Without admitting or denying the allegations, Daniels consented to the described sanctions and to the entry of findings that while working as a "Specialty Banker" with a bank that was an affiliate of his member firm, he took \$641.37 from the bank without its authorization or consent. The findings also stated that Daniels failed to respond to NASD requests for information. (NASD Case #C9A020022)

Luis Javier DelCastillo, II (CRD #2379491, Registered Representative, Lake Worth, 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, DelCastillo consented to the described sanctions and to the entry of findings that he used high-pressure sales tactics and knowingly made numerous baseless predictions of substantial price increases and material omissions of fact to public customers in connection with his solicitation of orders to purchase low-priced speculative and other securities.

DelCastillo's suspension began June 17, 2002, and concluded at the close of business June 28, 2002. (NASD Case #C07020037)

Harold Philip Donnerstag (CRD #2691932, Registered Representative, Matawan, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Donnerstag consented to the described sanctions and to the entry of findings that he purchased shares of stock for public customers without the customers' authorization.

Donnerstag's suspension began July 1, 2002, and concluded at the close of business July 12, 2002. (NASD Case #C9B020038)

George Ronald Dye (CRD #74390, Registered Representative, Warren, Indiana) submitted a Letter of

Acceptance, Waiver, and Consent in which he was fined \$31,640, including \$16,640 disgorgement of compensation, and suspended from association with any NASD member in any capacity for one year. Payment of the fine is required before Dye reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dye consented to the described sanctions and to the entry of findings that he engaged in business activities outside the scope of his relationship with his member firm without prompt written notice to the firm. The findings also stated that Dye participated in private securities transactions away from his member firm and failed to provide his firm with prior written notice of the transactions and his role therein, and failed to receive permission from the firm to engage in the transactions.

Dye's suspension began June 17, 2002, and will conclude at the close of business June 16, 2003. (NASD Case #C3A020024)

Vinson Foresta (CRD #2567149, Registered Representative, Edison, New Jersey) submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Foresta reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Foresta consented to the described sanctions and to the entry of findings that, in the solicitation of public customers to purchase warrants and initial public offering (IPO) units, he intentionally, or, at a minimum, recklessly, made material, misleading, and false representations to public customers that were without a reasonable basis. The findings also stated that Foresta, acting intentionally, or, at a minimum, recklessly, made material, misleading, and false representations to a public customer to induce the customer to ratify unauthorized transactions in his account that had been effected by another registered representative without the prior knowledge, authorization, or consent of the customer. In addition, NASD found that Foresta sold, or caused to be sold, warrants from the account of a public customer without the customer's prior knowledge, authorization, or consent.

Foresta's suspension began June 3, 2002, and will conclude at the close of business June 2, 2004. (NASD Case #C10010004)

Michael Carroll Gainer (CRD #2753550, Registered Representative, Jacksonville Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for eight months and required to disgorge \$22,000 in commissions to public customers in partial restitution. In light of the financial status of Gainer, no fines have been imposed and the disgorgement of commissions has been reduced from full disgorgement to \$22,000. The commissions must be disgorged

before Gainer reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gainer consented to the described sanctions and to the entry of findings that he participated in the sale of promissory notes outside the scope of his employment with his member firms without providing prior written notice to, and receiving authorization from, his member firms.

Gainer's suspension began June 3, 2002, and will conclude at the close of business February 2, 2003. (NASD Case #C07020033)

Anthony Salvatore Gentile (CRD #1307472, Registered Representative, Roswell, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid immediately upon reassociation with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gentile consented to the described sanctions and to the entry of findings that he referred a client away from his member firm to another entity with which the client consummated a financing deal and for which Gentile received a referral fee. The findings also stated that Gentile failed to provide prompt written notice to his member firm of the referral fee.

Gentile's suspension began June 3, 2002, and concluded at the close of business July 2, 2002. (NASD Case #C07020031)

Stephan Jay Giuffrida (CRD #2586987, Registered Representative, Eastchester, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Giuffrida consented to the described sanctions and to the entry of findings that he used high-pressure sales tactics and knowingly made numerous baseless predictions of substantial price increases and material misrepresentations of fact to public customers in connection with his solicitation of customers and prospective customers to purchase equity securities.

Giuffrida's suspension began June 17, 2002, and will conclude at the close of business July 16, 2002. (NASD Case #C07020039)

George Robert Gonzalez (CRD #1266143, Registered Principal, Pompton Lakes, New Jersey) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and ordered to pay \$8,000 in restitution to a public customer. Proof of restitution must be provided to NASD within 30 days of payment of the restitution or Gonzalez will be suspended from association with any NASD member in any capacity until such

proof has been provided. Without admitting or denying the allegations, Gonzalez consented to the described sanctions and to the entry of findings that he recommended and effected purchase transactions in the accounts of public customers without having reasonable grounds for believing that these recommendations and subsequent transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs.

Gonzalez' suspension began July 1, 2002, and will conclude at the close of business July 30, 2002. (NASD Case #C9B010093)

George Michael Goritz (CRD #226024, Registered Representative, New York, New York) was fined \$82,500 and suspended from association with any NASD member in any capacity for six months. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Goritz participated in private securities transactions without giving prior written notice to, and obtaining written approval from, his member firms. The findings also stated that Goritz disseminated an Offering Memorandum that contained material misrepresentations regarding Goritz' investment banking experience, and that he was reckless in using the Offering Memorandum to solicit investors without reviewing it and correcting the misrepresentation regarding his investment banking experience.

Goritz' suspension began July 1, 2002, and will conclude at the close of business December 31, 2002. (NASD Case #C10000037)

Vernard Benny Greene, Jr. (CRD #2831764, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Greene made unsuitable recommendations to public customers when he recommended, without a reasonable basis, the purchase of speculative securities in their individual retirement accounts. The findings also stated that Greene made baseless price predictions to public customers in connection with the purchase of speculative securities. In addition, NASD found that Greene failed to respond to NASD requests for information and documents. (NASD Case #C10010164)

Michael Glyn Grimes (CRD #2859084, Registered Representative, Memphis, Tennessee) was barred from association with any NASD member in any capacity. The sanction was based on findings that Grimes received a \$323 check from a public customer to pay a premium on his variable life insurance policy; failed to apply the premium payments; and converted the funds to his own use and benefit by endorsing the check and depositing it into a business checking account that he controlled, without the knowledge or consent of the customer. The findings also stated that Grimes failed to respond to NASD requests for information. (NASD Case #C05010033)

Chet C. Harris (CRD #2770791, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity and ordered to pay \$222,000, plus interest, in restitution to public customers. The sanctions were based on findings that Harris represented falsely or without a reasonable basis that securities would be publicly traded, would be purchased by institutional investors in the aftermarket, and would increase in value substantially. The findings also stated that Harris omitted to disclose material facts concerning the issuer's operating history and financial condition. (NASD Case #C10010166)

Carmell E. Hergert (CRD #4066113, Registered Representative, Beaumont, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Payment of the fine is required before Hergert reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hergert consented to the described sanctions and to the entry of findings that she willfully failed to disclose a material fact on her Form U-4.

Hergert's suspension began July 1, 2002, and will conclude at the close of business December 31, 2002. (NASD Case #C05020025)

Paul Jerome House, III (CRD #2471155, Registered Principal, Decatur, Illinois) 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, House consented to the described sanction and to the entry of findings that he participated in private securities transactions away from his member firm and failed and neglected to provide his firm with prior written notice of the transactions and his role therein, and failed to receive permission from the firm to engage in the transactions. The findings also stated that House opened, or caused to be opened, a securities account with another member firm; failed to provide written notice to his member firm of his intention to execute transactions at the other firm; and failed to advise the firm at which he had opened the account of his association with his member firm. In addition, NASD found that House responded untruthfully to NASD requests for information and documents. (NASD Case #C8A020028)

Brian Michael Hunter (CRD #1002251, Registered Representative, Lincoln, Rhode Island) 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 required to disgorge \$12,750 of the commissions he received and pay partial restitution, plus interest, to public customers. The fine and restitution amounts must be paid before Hunter reassociates with any NASD member in any capacity following the suspension or before requesting relief

from any statutory disqualification. Without admitting or denying the allegations, Hunter consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, without prior written notice to, or written approval from, his member firm.

Hunter's suspension began July 1, 2002, and will conclude at the close of business July 30, 2002. (NASD Case #C11020023)

Lisa Jean Jayne (CRD #4293153, Registered Representative, Meza, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jayne consented to the described sanction and to the entry of findings that, while associated with a member firm and the firm's bank affiliate, she accessed the computer system of the bank; created bank accounts in the name of a relative without her authorization with \$1,000 credit lines to cover overdrafts; withdrew a total of \$3,760 from the fictitious accounts; and utilized the funds for her own use and benefit. The findings also stated that when Jayne's member firm and affiliate bank became aware of her inappropriate activities, she promptly repaid the \$3,760 to the bank. (NASD Case #C3A020022)

Alan Bruce Johnston (CRD #1559039, Registered Representative, Williamston, South Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Johnston engaged in private securities transactions, for compensation, without providing prior written notification to, or receiving authorization from, his member firm. The findings also stated that Johnston failed to respond to NASD requests for information. (NASD Case #C07010101)

Tony Gray Jones (CRD #4223507, Associated Person, Crestview, 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 one year. The fine must be paid immediately upon reassociation with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U-4.

Jones' suspension began June 3, 2002, and will conclude at the close of business June 2, 2003. (NASD Case #C07020032)

John Joseph Kenny (CRD #2122478, Registered Principal, Hoboken, New Jersey) 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, Kenny consented to the entry of findings that he executed a transaction in the joint account of public customers without the

customers' prior knowledge, authorization, or consent. The findings also stated that Kenny failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C10010158)

Thomas Joseph Kigin (CRD #4134681, Registered Representative, Downers Grove, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kigin provided false information on his Form U-4 and failed to respond to NASD requests for information. (NASD Case #C8A010090)

Troy Adam Koubek (CRD #2575692, Registered Representative, Howard Beach, New York) was barred from association with any NASD member in any capacity and ordered to pay \$17,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Koubek engaged in private securities transactions and failed to provide prior written notice of the transactions to his member firm. The findings also stated that Koubek failed to respond to NASD requests for information and to appear for an on-the-record record. (NASD Case #C10010114)

William Scott Langley (CRD #2267018, Registered Representative, Adrian, Michigan) 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, Langley consented to the described sanction and to the entry of findings that he received checks totaling \$43,106 from a public customer for investment purposes made payable to a company that Langley owned and controlled. The findings stated that Langley failed and neglected to invest the funds as instructed by the customer and instead endorsed the checks, deposited them into his own business account, and used the funds for his own personal benefit without the customer's knowledge or consent. (NASD Case #C8A020027)

Salvatore Paul Liggieri (CRD #850269, Registered Principal, Garden City, 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, Liggieri consented to the described sanction and to the entry of findings that he entered into a settlement agreement with a public customer to compensate the customer for trading losses without informing or obtaining authorization from his member firm. The findings also stated that Liggieri entered into a revised settlement agreement with the customer, increasing the amount of compensation owed to the customer, without informing or obtaining authorization from his member firm. NASD found that Liggieri entered into a settlement agreement with a public customer and made settlement payments to a public customer totaling \$52,000 without informing or obtaining authorization from his member firm. In addition, the findings stated that Liggieri entered into an agreement with a public customer to recompense the customer

for trading losses, secured over \$200,000 in payments to the customer, and signed a promissory note in which he assumed a \$122,500 debt owed by the customer without informing or obtaining authorization from his firm. In order to secure the payments from the customers, Liggieri intentionally or recklessly misrepresented the nature of the payments to the customers by stating that the customer managed a hedge fund into which their funds would be invested; this action constituted a material misrepresentation or omission of facts because Liggieri knew, or should have known, that the former customer did not manage a hedge fund and did not intend to invest the funds as alleged. Moreover, NASD found that Liggieri engaged in private securities transactions and failed to provide prior written notification to, or obtain written authorization from, his member firm. (NASD Case #C10020049)

James Patrick Maher (CRD #2183507, Registered Representative, Loveland, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Maher reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Maher consented to the described sanctions and to the entry of findings that he applied for and received personal bank loans solely in the name of his wife and obtained these loans in the total amount of \$10,550 by forging his wife's signature on the loan applications without her knowledge, authorization, or consent.

Maher's suspension began July 15, 2002, and will conclude at the close of business July 14, 2003. (NASD Case #C88020013)

Michael Dennis Moody (CRD #1008506, Registered Principal, Las Vegas, Nevada) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in a principal capacity and suspended from association with any NASD member in any capacity for two years. In light of the financial status of Moody, no monetary sanctions have been imposed. Without admitting or denying the allegations Moody consented to the described sanctions and to the entry of findings that he did not adequately supervise a registered representative to achieve compliance with certain NASD rules.

Moody's suspension began July 1, 2002, and will conclude at the close of business June 30, 2004. (NASD Case #C02020023)

Victor Mowat (CRD #341765, Registered Representative, Trenton, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mowat consented to the described

sanction and to the entry of findings that he failed to respond to NASD requests for documents and information. (NASD Case #C9A020021)

Monty Reasor Myler (CRD #1922281, Registered Representative, Palm Beach Gardens, Florida) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity; ordered to pay \$56,120, plus interest, in restitution to public customers; and ordered to pay a public customer the arbitration award granted to him in the sum of \$15,005, plus interest. The restitution amounts and the arbitration award must be paid, or proof provided that the arbitration award has been settled, immediately upon Myler's reassociation with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Myler consented to the described sanctions and to the entry of findings that he recommended to public customers the purchase of shares of stock—falsely representing that the shares could be purchased through an IPO—and predicted the price of the stock would increase substantially without any reasonable basis for the prediction. The findings also stated that Myler failed to disclose the speculative nature of the stock, including the fact that it had generated no revenue and had lost approximately \$200,000 since its inception. In addition, NASD found that Myler failed to pay an arbitration award to a public customer. (NASD Case #CAF010024)

Brian Joseph Nagy (CRD #2652316, Registered Representative, East Brunswick, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nagy consented to the described sanction and to the entry of findings that he converted \$36,033 of a public customer's funds for his own use and benefit without the customer's knowledge, authorization, and consent. (NASD Case #C9B020041)

Edmond Namordi (CRD #1036774, Registered Representative, Skokie, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 business days. Payment of the fine is required before Namordi reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Namordi consented to the described sanctions and to the entry of findings that he engaged in outside business activities for which he received compensation without prior written notice to his member firm.

Namordi's suspension began July 1, 2002, and will conclude at the close of business August 12, 2002. (NASD Case #C8A020034)

Matthew Edward Nolen (CRD #4132361, Registered Representative, Mt. Zion, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Payment of the fine is required before Nolen reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Nolen consented to the described sanctions and to the entry of findings that he participated in private securities transactions, failed to provide his member firm with detailed written notice of the transactions and his role therein, and failed to receive permission from his member firm to engage in such transactions.

Nolen's suspension began June 17, 2002, and concluded at the close of business June 28, 2002. (NASD Case #C8A020029)

Michael Weldon Norville (CRD #1078005, Registered Representative, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to pay \$785,612, plus interest, in restitution to public customers. Payment of restitution is required before Norville reassociates with any NASD member following the bar or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Norville consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide his member firm with detailed written notice of the transactions, his role therein, and whether he had received or would receive selling compensation in connection with the transactions. (NASD Case #C05020028)

John Michael Palermo (CRD #2156479, Registered Principal, Holbrook, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for three months. In light of the financial status of Palermo, a fine of \$2,500 has been imposed. Without admitting or denying the allegations, Palermo consented to the described sanctions and to the entry of findings that, while associated with a member firm, he contacted a prospective customer of the firm and recommended that he purchase securities in a transaction away from the firm, and failed to provide written notification to his member firm prior to the prospective customer transmitting funds away from the firm to effect the purchase.

Palermo's suspension began June 3, 2002, and will conclude at the close of business September 2, 2002. (NASD Case #C10020047)

Stephen Dean Palmer (CRD #1667018, Registered Representative, Tecumseh, Michigan) submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30

business days. Payment of the fine is required before Palmer reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Palmer consented to the described sanctions and to the entry of findings that he settled a customer complaint away from his member firm.

Palmer's suspension began July 15, 2002, and will conclude at the close of business August 25, 2002. (NASD Case #C8A020009)

Howard Richard Perles (CRD #1174341, Registered Principal, Staten Island, New York) and Laurence Mark Geller (CRD #1533947, Registered Representative, Demarest, New Jersey) were fined \$25,000 each and required to requalify as general securities representatives. Perles was suspended from association with any NASD member in any capacity for one year and Geller was suspended from association with any NASD member in any capacity for 30 business days. The Securities and Exchange Commission (SEC) imposed the sanctions following appeal of a NAC decision. The sanctions were based on findings that Perles and Geller aided and abetted another member firm in the fraudulent manipulation of a Nasdaq-listed common stock by engaging in prearranged, matched trading with the firm. The findings also stated that Perles and Geller failed to reflect accurately the prearranged trades on the books and records of their member firms.

Perle's suspension began July 1, 2002, and will conclude at the close of business on June 30, 2003. Geller's suspension began July 1, 2002, and will conclude at the close of business on August 12, 2002. (NASD Case #CAF980005)

John Thomas Pisapia (CRD #2336216, Registered Principal, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in a principal capacity for 20 business days. Without admitting or denying the allegations, Pisapia consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce adequate written supervisory procedures in that he failed to designate an appropriately registered person to supervise the activities of a registered representative. The findings also stated that Pisapia failed to establish, maintain, and enforce adequate written supervisory procedures for monitoring compliance with the Regulatory Element of NASD's Continuing Education Program. NASD also found that the firm's written supervisory procedures failed to address adequately advertising, registration of personnel, recordkeeping, SEC Rule 21(a) issues, order execution rules, trade reporting, and dates when supervisory responsibility became effective. In addition, NASD found that Pisapia permitted individuals associated with his member firm to act as registered individuals while their registration status with NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Requirement.

Pisapia's suspension began June 17, 2002, and will conclude at the close of business July 15, 2002. (NASD Case #C10020048)

Joseph Augustus Polhill, Jr. (CRD #1131458, Registered Principal, Lincolnton, 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, Polhill consented to the described sanction and to the entry of findings that he participated in private securities transactions away from his member firm and failed to provide his firm with prior written notice of the transactions and his role therein. (NASD Case #C3A020025)

Brian Timothy Rice (CRD #3019174, Registered Representative, Niskayuna, 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, Rice consented to the described sanction and to the entry of findings that he misappropriated to his own use and benefit, insurance premium payments totaling approximately \$2,600 received from insurance clients. (NASD Case #C11020022)

Rex Allen Rodda (CRD #2611179, Registered Principal, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in a general securities principal capacity for 10 business days. In light of the financial status of Rodda, no monetary sanction has been imposed. Without admitting or denying the allegations, Rodda consented to the described sanction and to the entry of findings that Rodda, acting on behalf of his member firm, participated in a contingency offering of common stock and in contravention of Section 15c of the Exchange Act and Rule 15c2-4 thereunder; investor funds raised in the offering were not transmitted to a proper escrow account as required by the Rule because the escrow agreement did not set forth the contingency deadline or the extended contingency deadline. The findings also stated that Rodda, acting on behalf of his member firm, did not return investor funds to the persons entitled thereto when his member firm failed to raise the minimum-offering amount by the contingency deadline or the extended contingency deadline.

Rodda's suspension began July 15, 2002, and will conclude at the close of business July 24, 2002. (NASD Case #C02020027)

Michael Gerard Rogan (CRD #1503029, Registered Principal, Clearwater, 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 principal capacity for 30 days. In light of the financial status of Rogan, a \$5,000 fine was imposed. Without admitting or denying the allegations, Rogan consented to the described sanctions and to the entry of findings that a

member firm, acting through Rogan, failed to establish and maintain a supervisory system reasonably designed to achieve compliance with federal securities laws, regulations, and NASD rules. The findings also stated that Rogan failed to reasonably supervise an associated person's activities on behalf of his member firm. NASD also found that Rogan failed to take steps to investigate the person's conduct and insure that his actions complied with applicable securities laws and NASD rules despite receiving notice that the person was acting improperly as a registered principal.

Rogan's suspension began June 17, 2002, and will conclude at the close of business July 16, 2002. (NASD Case #CAF020017)

Michael Jay Rudolph (CRD #1199943, Registered Representative, Twinsburg, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$90,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Rudolph reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rudolph consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed to provide his member firm with prompt written notice of his activities.

Rudolph's suspension began June 17, 2002, and will conclude at the close of business June 16, 2003. (NASD Case #C8B020011)

Richard Alfred Saitta (CRD #2592014, Registered Principal, Yorktown Heights, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 30 days, and suspended from association with any NASD member in a principal capacity for one year. Without admitting or denying the allegations, Saitta consented to the described sanctions and to the entry of findings that he made material misrepresentations of fact in the form of unwarranted predictions of substantial price increases without a sufficient basis in connection with his solicitation of public customers and prospective customers to purchase low-priced speculative and other securities. The findings also stated that Saitta failed to reasonably supervise the registered representatives in his branch office in that they made material misrepresentations of fact in connection with the solicitation of public customers and prospective customers to purchase equity securities.

Saitta's suspension in any capacity began June 17, 2002, and will conclude at the close of business July 16, 2002. Saitta's suspension in a principal capacity began June 17, 2002, and will conclude at the close of business June 16, 2003. (NASD Case #C07020040)

Matthew Lee Sechter (CRD #2826214, Registered Representative, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member in any capacity after three years. The fine is due and payable before Sechter reassociates with any NASD member in any capacity or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sechter consented to the described sanctions and to the entry of findings that he used high-pressure sales tactics and knowingly made numerous baseless predictions of substantial price increases and material misrepresentations of fact to public customers in connection with his solicitation of orders to purchase low-priced speculative and other securities. (NASD Case #C07020035)

Richard Shane (CRD #419822, Registered Representative, Old Brookville, 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, Shane consented to the described sanction and to the entry of findings that he engaged in business activities outside the scope of his relationship with his member firm, for compensation, and failed to provide prompt written notice to his member firm concerning his activities. The findings also stated that Shane failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #CLIO20002)

Amador Sierra (CRD #4249904, Registered Representative, Redding, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. Payment of the fine is required before Sierra reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sierra consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U-4. The findings also stated that Sierra failed to respond timely to NASD requests for information.

Sierra's suspension began June 17, 2002, and will conclude at the close of business December 16, 2002. (NASD Case #C01020009)

Thomas Michael Thomas, II (CRD #2070738, Registered Representative, Chagrin Falls, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Forms U-4. The findings also stated that Thomas failed to respond to NASD

requests for documents and information. (NASD Case #C8B020012)

Bobby R. Turner, Jr. (CRD #3252999, Registered Representative, Westland, Michigan) was barred from association with any NASD member in any capacity. The sanction was based on findings that Turner willfully failed to disclose a material fact on his Form U-4. (NASD Case #C8A010063)

Robert Lawrence Vanderbrook (CRD #2544244, Registered Representative, Metairie, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 business days. Payment of the fine is required before Vanderbrook reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Vanderbrook consented to the described sanctions and to the entry of findings that he exercised discretionary transactions in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The findings also stated that Vanderbrook interfered with his member firm's compliance with NASD Conduct Rule 2230 by delaying the delivery of securities transaction confirmations to a public customer.

Vanderbrook's suspension began June 3, 2002, and will conclude at the close of business July 15, 2002. (NASD Case #C05020019)

Frank James Varsalona (CRD #3211699, Registered Representative, Margate, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Varsalona effected unauthorized transactions in the accounts of public customers. (NASD Case #C07010086)

Michelle Louise Webb (CRD #2565381, Registered Representative, Prescott, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$34,890 and suspended from association with any NASD member in any capacity for two years. Payment of the fine is required before Webb reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Webb consented to the described sanctions and to the entry of findings that she participated in private securities transactions away from her member firm and failed to provide her firm with prior written notice of the transactions and her role therein, and failed to receive permission from the firm to engage in the transactions.

Webb's suspension began June 17, 2002, and will conclude at the close of business June 16, 2004. (NASD Case #C3A020023)

Benjamin Tianbing Wei (CRD #2832553, Registered Principal, Oklahoma City, Oklahoma) 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 five business days. Payment of the fine is required before Wei reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wei consented to the described sanctions and to the entry of findings that he maintained accounts with a member firm over which he had discretionary authority without providing written notification to his member firm.

Wei's suspension began July 1, 2002, and concluded at the close of business July 8, 2002. (NASD Case #C05020026)

Richard Irving Weise (CRD #2023552, Registered Principal, Eustis, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, including disgorgement of \$12,460 in earned commissions, and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Weise reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Weise 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 written approval from, his member firm.

Weise's suspension began July 1, 2002, and will conclude at the close of business March 31, 2003. (NASD Case #C07020046)

Dennis Felton Whitfield (CRD #1662916, Registered Representative, Modesto, California) submitted an Offer of Settlement in which he was fined \$12,875 and suspended from association with any NASD member in any capacity for 60 days. Payment of the fine is required before Whitfield reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Whitfield consented to the described sanctions and to the entry of findings that he participated in private securities transactions away from his member firm and failed to provide his firm with prior written notice of the transactions and his role therein, and failed to receive permission from the firm to engage in the transactions.

Whitfield's suspension began June 17, 2002, and will conclude at the close of business August, 15, 2002. (NASD Case #C01010013)

John Sherwood Wilson, Jr. (CRD #1348671, Registered Representative, Dallas, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any

capacity for six months. The fine must be paid before Wilson reassociates with any NASD member in any capacity following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wilson consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information and documents.

Wilson's suspension began July 1, 2002, and will conclude at the close of business December 31, 2002. (NASD Case #C9A020025)

Edward Joseph Wolf, Jr. (CRD #471134, Registered Representative, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. Payment of the fine is required before Wolf reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wolf consented to the described sanctions and to the entry of findings that he participated in private securities transactions away from his member firm and failed to provide his firm with prior written notice of the transactions.

Wolf's suspension began July 1, 2002, and will conclude at the close of business June 30, 2003. (NASD Case #C05020027)

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of June 7, 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*.

Dane Stephen Faber (CRD #1020637, Registered Principal, Sausalito, California) was fined \$35,000, suspended from association with any NASD member in any capacity for one year, and ordered to pay restitution of \$134,435, plus interest, to public customers. The sanctions were based on findings that Faber, while soliciting public customers to purchase common stock, made material misrepresentations that the stock was being sold pursuant to an IPO; made baseless price predictions and generalized assurances of success regarding the stock; and failed fully to disclose the speculative nature of the security. The findings also stated that Faber made recommendations to a public customer that were unsuitable for her stated investment objectives.

Faber has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #CAF010009)

Alexander Osterneck (CRD #1663321, Registered Representative, Palm Beach, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Osterneck failed to respond timely to NASD requests for information and to appear for an on-the-record interview.

Osterneck has appealed this decision to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C9A010006)

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.

Andy Cracchiolo (CRD #4233882, Associated Person, Phoenix, Arizona) was named as a respondent in an NASD complaint alleging that he engaged in a course of conduct whereby he would enter a small buy (sell) order into an Electronic Communications Network (ECN) at a price that affected the national best bid (offer) for the purpose of facilitating the automatic execution of his larger sell (buy) order on the opposite side of the market at that price by a market maker that guaranteed that it would provide an execution at the inside market. The complaint also alleges that, by engaging in this manipulative scheme, Cracchiolo was able to buy (sell) shares of a security at a price that otherwise would not have been available in the market. (NASD Case #CMS020089)

Richard Scott From (CRD #703869, Registered Principal, Roseville, California) and **Frank Darnell Fisher, Jr. (CRD #2642052, Registered Representative, Vacaville, California)** were named as respondents in an NASD complaint alleging that they recommended and sold shares of securities to public customers and failed to disclose that they received a bonus in the form of a commission or sales credit on the security amounting to 33 percent of the retail sales price. The complaint also alleges that From and Fisher knew, or should have known, that such prices were excessive and unfair and represented material, financial self-interests in the security, the existence and magnitude of which was required to be disclosed to their customers. The complaint further alleges that From and Fisher, in their recommendations of penny stock purchases, failed to furnish customers, prior to effecting transactions, a risk disclosure document containing information required by the penny stock rules, and failed to obtain from customers a manually signed and dated written statement acknowledging

receipt of such risk disclosure document prior to effecting customer transactions.

In addition, the complaint alleges that From and Fisher failed to disclose to their penny stock customers, either orally or in writing, the inside bid and offer quotations prior to effecting transactions, and failed to provide the same in writing at, or prior to, the time of any written confirmation sent to the customer. Furthermore, the complaint alleges that From and Fisher failed to disclose to customers, either orally or in writing, the aggregate amount of cash compensation received, or to be received, from any source in connection with the transaction prior to effecting such customer transactions, and failed to keep and preserve records of such disclosures as required by the penny stock rules. Moreover, the complaint alleges that From recommended the purchase of shares of another security to public customers and failed to disclose that he had entered into an agreement with the issuer to receive 120,000 shares of stock—representing a material, financial self-interest that was large enough to influence his recommendation of the security—thereby depriving his customers of material information needed to evaluate his recommendation of the security. (NASD Case #CMS020090)

James Edward Hurley (CRD #2626141, Registered Representative, Plano, Texas) was named as a respondent in an NASD complaint alleging that he caused checks totaling \$186,000 to be drawn on a public customer variable annuity account without the customer's knowledge or consent in that Hurley signed the customer's name and/or customer's daughter name on a withdrawal form, forwarded the form to the issuer of the annuity, and, when the checks were disbursed pursuant to a withdrawal form, Hurley went to the customer's home to retrieve the check from the mail. The complaint alleges that Hurley subsequently signed the customer's name and/or customer's daughter name on each check, endorsed the checks with the phrase "pay to the order of James E. Hurley," deposited each check into his personal bank accounts, and utilized the majority of the funds to his personal benefit and enjoyment. In addition, the complaint alleges that Hurley failed to respond to NASD requests for information. (NASD Case #C06020005)

Howard William Schwartz (CRD #2706982, Registered Representative, Rego Park, New York) was named as a respondent in an NASD complaint alleging that, in connection with the purchase or sale of a security, Schwartz, through means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly employed a device, scheme, contrivance or artifice to defraud a public customer made an untrue

statement of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or courses of business that operated as a fraud or deceit upon the public customer. The complaint also alleges that Schwartz executed, or caused to be executed, transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint further alleges that Schwartz failed to provide an accurate, non-deceptive, and/or complete response to an NASD request for information. (NASD Case #C10020052)

Stanley Walker (CRD #2601447, Registered Representative, Crestwood, New York) was named as a respondent in an NASD complaint alleging that he converted approximately \$35,500 in funds of a public customer in that he effected the transfer of funds from the customer's checking account to his own checking account for his own use and benefit without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Walker failed to respond to NASD requests for information. (NASD Case #10020050)

Stephen Robert Walling (CRD #2265946, Registered Representative, Jackson, New Jersey) was named as a respondent in an NASD complaint alleging that he purchased, or caused to be purchased, securities in the accounts of public customers without the prior knowledge, authorization, or consent of the customers. The complaint also alleges that Walling failed to respond to NASD requests for information. (NASD Case #C9B020039)

James Arthur Will (CRD #2701284, Registered Representative, Indianapolis, Indiana) was named as a respondent in an NASD complaint alleging that he purchased and sold shares of stock in the account of a public customer without the knowledge or consent of the customer, and in the absence of written or oral authorization to exercise discretion in the account. The complaint also alleges that Will failed to respond to NASD requests for information and documents. (NASD Case #C8A020026)

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.

American Investment Services, Inc.
Oklahoma City, Oklahoma
(June 3, 2002)

Astute Investors Corporation
Bronx, New York
(June 3, 2002)

Extrayield.com LLC
New York, New York
(May 21, 2002)

Gem Advisors, Inc.
New York, New York
(June 3, 2002)

Oak Brook Securities Corp.
Oakbrook Terrace, Illinois
(May 28, 2002)

Sartena Securities, Inc.
New York, New York
(May 31, 2002)

Firm Barred Pursuant to NASD Rule 9511(a)(2)(B) for Failure to Meet the Eligibility Requirements for Continuance in Membership

Diamond Funding, LLC
Greenville, South Carolina
(June 3, 2002)

Diamond Funding has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #RSC020703)

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.)

Amenu, Dodzi K.
Silver Spring, Maryland
(May 28, 2002)

Anderson, Thomas W.
 Mooresville, North Carolina
(May 28, 2002)

Biddick, Bruce A.
Rancho Santa Fe, California
(May 28, 2002)

Busse, Paul J.
San Francisco, California
(May 28, 2002)

Giordano, Anthony F.
Deerfield Beach, Florida
(June 5, 2002)

Lu, Frederick
Los Angeles, California
(May 20, 2002)

Sapienza, Salvatore
Ronkonkoma, New York
(May 6, 2002)

Schafranick, Paul R.
Aventura, Florida
(May 20, 2002)

Simmons, Monica Lynn
St. Petersburg, Florida
(May 7, 2002)

Valentino, Toni M.
Boca Raton, Florida
(May 13, 2002)

Valentino has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #FPI010004)

Warren, Jeffrey S.
Coral Spring, Florida
(May 13, 2002)

Whiton, Rod
Marlton, New Jersey
(May 16, 2002)

Yang, Yonseung
Sunnyvale, California
(May 9, 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.)

Bailey, Robert W.
Canton, Michigan
(May 6, 2002)

Bari, Jr., James L.
Woodhaven, New York
(May 22, 2002)

Boedigheimer, David W.
Morris, Illinois
(May 20, 2002)

Bongiorno, Gaspare
Glendale, New York
(May 9, 2002)

Cassuto, David I.
Lido Beach, New York
(May 14, 2002)

Crosby, David
Sandy, Utah
(May 29, 2002)

Dodd, Thomas R.
Venice, Florida
(June 3, 2002)

Finkel, David Solomon
West Hempstead, New York
(May 17, 2002)

Fleitz, Chad Alan
Toledo, Ohio
(May 23, 2002)

Ford, Ralph
White Pigeon, Michigan
(May 6, 2002)

Kim, Jungmin
Pasadena, California
(June 3, 2002)

Morgan, Leslie E.
Converse, Texas
(May 10, 2002)

Shuey, III, Robert A.
Dallas, Texas
(May 20, 2002)

Speights, Sharon
Toledo, Ohio
(May 13, 2002)

Tambke, Theodore
New York, New York
(May 17, 2002)

Thompson, Rory L.
Conway, Arkansas
(May 28, 2002)

Torres, Ricardo M.
Miami, Florida
(May 21, 2002)

Individual Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award or a Settlement Agreement

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

Smith, Daniel
Tampa, Florida
(June 7, 2002)



For Your Information

Revision to Net Capital Treatment of Clearing Agreement Penalty Clauses

In the Regulatory Short Takes section of the Spring 2000 *Regulatory & Compliance Alert*, Volume 14-1, NASD indicated that all or a portion of the amount specified in a clearing agreement as a termination fee would be treated as a charge to the introducing firm's net capital. The Question and Answer included in the Regulatory Short Take was as follows:

Q: Is the penalty amount in a penalty clause contained in a clearing agreement a charge to net capital?

A: Yes. A penalty contained as a provision in a clearing agreement is a charge to the introducing firm's net capital. NASD has generally viewed these as early termination penalties.

For example: a clearing agreement requires a \$100,000 deposit, no fixed expiration date. There is a clause in the agreement that states; "If during the first year of the agreement it is terminated the introducing firm would forfeit \$25,000, during the second year \$15,000, and during the third year \$10,000." In this example, if the introducing firm were to terminate its clearing agreement in the first year it would only receive \$75,000 from the clearing firm, in the second year, \$85,000, and in the third year, \$90,000. Consequently, a charge to net capital would have to be taken equal to the total amount that would be forfeited at the date of the net capital computation, or in this example, a charge of \$25,000 in the first year, \$15,000 in the second year, \$10,000 in the third, and no charge thereafter.

In May 2002, the staff of the SEC's Division of Market Regulation informed NASD that the introducing firm would not be subject to the net capital charge discussed in the preceding paragraph, if the clearing agreement provides explicitly that the clearing firm **will not** enforce the penalty clause or otherwise attempt to collect the penalty amount if the introducing firm becomes the subject of a proceeding under SIPA (the Securities Investor Protection Act). The clearing firm is not required to forfeit any rights it would have as a general creditor of the failed broker/dealer.



For Your Information

To facilitate this change, clearing firms may revise their clearing agreements to include the following language:

"In the event that [the Introducing Broker] is the subject of the issuance of a protective decree pursuant to the Securities Investor Protection Act of 1970 (15 USC 78aaa-III), [the Clearing Firm's] claim for payment of a termination fee under this Agreement shall be subordinate to claims of [the Introducing Broker's] customers that have been approved by the Trustee appointed by the Securities Investor Protection Corporation pursuant to the issuance of such protective decree."

Questions about this item may be directed to the NASD Member Regulation Department at (202) 728-8221.