

# Special Notice to Members

SEPTEMBER 2002

## SUGGESTED ROUTING

Executive Representatives  
Senior Management

## KEY TOPICS

NASD Board of Governors

## INFORMATIONAL

### Board of Governors Nominees

#### Nominees for NASD Board of Governors

The Annual Meeting of members of NASD will be held on December 5, 2002. The formal notice of the meeting, including the precise date, time, and location of the Annual Meeting, will be mailed on or about November 4, 2002.

The individuals nominated by the NASD National Nominating Committee (NNC) for election to the NASD Board of Governors are identified in this *Special Notice*. Pursuant to Section 10 of Article VII of the NASD By-Laws, a person who has not been so nominated for election to the Board of Governors may be included on the ballot for the election of Governors if:

- (a) within 45 days of the date of this *Special Notice* such person presents to the Secretary of NASD petitions in support of such nomination duly executed by at least 3 percent of the members of NASD. As of the date of this *Special Notice*, NASD has 5469 voting members; therefore, the applicable 3 percent threshold is 164 members. If, however, a candidate's name appears on a slate of nominees, the slate must be endorsed by 10 percent of NASD's voting members. The applicable 10 percent threshold is 546 members; and
- (b) the Secretary certifies that such petitions have been duly executed by the Executive Representatives of the requisite number of members of NASD, and the person being nominated satisfies the classification of the governorship to be filled based on the information provided by the person as is reasonably necessary for the Secretary to make the certification.

02-56

Pursuant to Article VII, Section 4, of the NASD By-Laws, the NASD Board must consist of no fewer than 17 and no more than 27 Governors. The By-Laws also provide that the number of Governors within the range is set by the Board. In recent years, the Board has operated at its maximum size of 27. However, on August 13, the Board determined to set the size of the Board at 24, effective with the December 5, 2002 Annual Meeting. As a result, on December 5, the members will elect eight Governors.

Article VII, Section 5(d), of the NASD By-Laws requires the Board to fix the term of persons being nominated. Recently, the NASD Board determined that the current NASD Board members who simultaneously serve on the NASDAQ Board of Directors and who are eligible to serve an additional term on the NASD Board would, if re-elected, serve one additional year on the NASD Board or until NASDAQ is able to operate other than as a facility of NASD, whichever occurs first. Of the eight Governors whose terms are expiring, three are presently members of the NASDAQ Board and are eligible to serve an additional term on the NASD Board.

The three are H. Furlong Baldwin, Richard C. Romano, and Hardwick Simmons,<sup>1</sup> and they have been nominated by the NNC to serve an additional term on the Board. The Board also determined that the other five positions will serve for the traditional three-year term.

Questions regarding this *Special Notice* may be directed to:

Barbara Z. Sweeney  
Senior Vice President and Corporate Secretary  
NASD  
1735 K Street, NW  
Washington, DC 20006-1500  
(202) 728-8062

or

T. Grant Callery  
Senior Vice President and General Counsel  
NASD  
1735 K Street, NW  
Washington, DC 20006-1500  
(202) 728-8285

## NASD Board of Governors Nominees

The following three persons (see attached profiles) have been nominated by the NNC to serve on the Board of Governors of NASD for a term of **one year**, or until NASDAQ is able to operate other than as a facility of NASD, whichever occurs first. These individuals currently serve simultaneously on the NASDAQ Board. Terms of office for all nominees who simultaneously serve on the NASDAQ Board run from December 5, 2002 to December 2003.

### Terms of Office 2002-2003

#### INDUSTRY

Richard C. Romano	President, Romano Brothers & Co.
Hardwick Simmons	Chairman and CEO, The NASDAQ Stock Market, Inc.

#### NON-INDUSTRY

H. Furlong Baldwin	Chairman, Mercantile Bankshares Corporation
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The following five persons (see attached profiles) have been nominated by the NNC to serve on the Board of Governors of NASD for a term of three years or until their successors are duly elected or qualified. Terms of office run from December 5, 2002 to December 2005.

### Terms of Office 2002-2005

#### INDUSTRY

M. LaRae Bakerink	Chief Executive Officer, Westfield Bakerink Brozak, LLC
David A. DeMuro <sup>2</sup>	Managing Director, Director of Global Compliance and Regulation, Lehman Brothers, Inc. (Representative of a National Retail Firm)

#### NON-INDUSTRY

John J. Brennan	Chairman and CEO, The Vanguard Group, Inc. (Representative of an Issuer of Investment Company Shares)
Eugene M. Isenberg	Chairman and CEO, Nabors Industries, Inc.

#### PUBLIC

Kenneth M. Duberstein	Chairman and CEO, The Duberstein Group, Inc.
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## NASD Profiles of Board Nominees for Industry Governors

### Industry

**M. LaRae Bakerink** is Chief Executive Officer of Westfield Bakerink Brozak, LLC. Ms. Bakerink currently serves on the Board of Directors and serves as President for the National Association of Independent Broker Dealers. Ms. Bakerink holds a B.S. and an M.B.A. from San Diego State University.

**David A. DeMuro** currently serves as Chair of the National Adjudicatory Council (2001-2002). He is Managing Director, Director of Global Compliance and Regulation at Lehman Brothers. Mr. DeMuro joined Lehman Brothers in 1984. Prior to that, he held various positions with the Securities and Exchange Commission in Detroit, Chicago, Los Angeles, and Washington, DC. Mr. DeMuro is a current member of the NASD Membership Committee and the NASD Licensing and Registration Council. He has been a member of the Executive Committee of the Securities Industry Association's Compliance and Legal Division and Chairman of the Securities Industry/Regulatory Council on Continuing Education. He currently serves on the NYSE's content committee for the Continuing Education Regulatory Element supervisor's program and the advisory board of *The Journal of Investment Compliance*, a publication of Institutional Investor, Inc. Mr. DeMuro is also a member of the Board of Trustees of the Theta Xi Fraternity Foundation. He holds a B.A. from the University of Michigan and a J.D. from the University of Notre Dame.

**Richard C. Romano** is President of Romano Brothers & Company, having joined the firm in 1964. Mr. Romano has served on the Industry/Regulatory Council for Continuing Education, the NASD District Committee, and the NASD Board of Governors (1985-1988). Mr. Romano has also served on the NASD National Nominating Committee and the NASD Small Firm Advisory Board. He holds a B.S. from the University of Illinois and an M.S. and Ph.D. from the University of Delaware.

**Hardwick Simmons** is Chairman and Chief Executive Officer of The NASDAQ Stock Market, Inc. Mr. Simmons joined NASDAQ in February 2001 as Chief Executive Officer, and was elected Chairman of the Board on September 26, 2001, succeeding Frank G. Zarb. Prior to joining the company, Mr. Simmons served from May 1991 to December 2000 as President and Chief Executive Officer of Prudential Securities, Incorporated, the investment and brokerage firm. Prior to joining Prudential Securities in 1991, Mr. Simmons was President of the Private Client Group at Shearson Lehman Brothers, Inc. Mr. Simmons is a member and former Chairman of the Securities Industry Association, a former Director of the Chicago Board Options Exchange, and former President and current member of The Bond Club of New York, Inc. He is a Director and executive committee member of the New York City Partnership and serves on the Board of the National Academy Foundation. Mr. Simmons is President of the Board of Trustees of the Groton School and a trustee of the Rippowam Cisca School in Mt. Kisco, New York. He has an A.B. from Harvard University, a M.B.A. from Harvard Business School, and served in the U.S. Marine Corps Reserve.

## NASD Profiles of Board Nominees for Non-Industry Governors

### Non-Industry

**H. Furlong Baldwin** is Chairman of the Mercantile Bankshares Corporation. Mr. Baldwin joined Mercantile-Safe Deposit & Trust Company in 1956 and was elected President in 1970 of Mercantile-Safe Deposit & Trust Company and Mercantile Bankshares Corporation, and served as CEO from 1976 - 2001. Mr. Baldwin serves on the Boards of W. R. Grace & Company, Wills Group, and NASDAQ. Mr. Baldwin graduated from Princeton University and served on active duty with the U.S. Marine Corps.

**John J. Brennan** is Chairman and Chief Executive Officer and a member of the Board of Directors of each of the mutual funds in the Vanguard Group. Mr. Brennan joined Vanguard in July 1982. He was elected President in 1989, Chief Executive Officer in 1996, and Chairman of the Board in 1998. Prior to his career at Vanguard, Mr. Brennan had been employed at S.C. Johnson & Son in Racine, Wisconsin and the New York Bank of Savings. Mr. Brennan is the past Chairman of the Investment Company Institute and is a Trustee of the Financial Accounting Foundation. He graduated from Dartmouth College in 1976 with an A.B. degree, and received an M.B.A. from the Harvard Business School in 1980.

**Eugene M. Isenberg** is Chairman and Chief Executive Officer of Nabors Industries, Inc., a position he has held since 1987. He serves as a Director of the American Stock Exchange and also Danielson Holding Corporation, an insurance holding company. Mr. Isenberg is also a member of the National Petroleum Council, which is an advisory panel to the United States Department of Energy. From 1969 to 1982, Mr. Isenberg was Chairman of the Board and principal shareholder of Genimar, Inc., a steel trading and building products manufacturing company, which was sold in 1982. From 1955 to 1968, Mr. Isenberg was employed in various management capacities with the Exxon Corporation. Mr. Isenberg is the founder and principal sponsor of the Parkside School for children with learning disabilities and has established the Eugene M. Isenberg Scholarships at the University of Massachusetts where the School of Management is named after him. He was an instructor at Princeton University from 1951 to 1952 and served as an officer in the U.S. Navy from 1952 to 1955. Mr. Isenberg holds a B.A. from the University of Massachusetts and an M.A. from Princeton University in 1952. Mr. Isenberg completed the program for Senior Executives at M.I.T.

## NASD Profile of Board Nominee for Public Governor

### Public

**Kenneth M. Duberstein** is Chairman and Chief Executive Officer of The Duberstein Group. Prior to this, Mr. Duberstein served as Chief of Staff to President Ronald Reagan from 1988 to 1989. During President Reagan's two terms in office, Mr. Duberstein also served in the White House as Deputy Chief of Staff (1987), as well as both the Assistant and the Deputy Assistant to the President for Legislative Affairs (1981 to 1983). Mr. Duberstein currently serves on the Board of Governors of the American Stock Exchange and on the Board of Directors of Boeing Company, Conoco, Fannie Mae, Fleming, and The St. Paul Companies, Inc. He is Vice Chairman of the Kennedy Center for the Performing Arts. Mr. Duberstein holds an A.B. from Franklin and Marshall College and an M.A. from American University.

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## Governors with Terms Expiring in 2002

### Industry

<b>M. LaRae Bakerink</b>	Chief Executive Officer, Westfield Bakerink Brozak, LLC
<b>David A. DeMuro</b>	Managing Director and Director of Global Compliance Regulation, Lehman Brothers, Inc.
<b>Richard C. Romano</b>	President, Romano Brothers & Co.
<b>Hardwick Simmons</b>	Chairman and CEO, The NASDAQ Stock Market, Inc.

### Non-Industry

<b>H. Furlong Baldwin</b>	Chairman, Mercantile Bankshares Corporation
<b>Eugene M. Isenberg</b>	Chairman and CEO, Nabors Industries, Inc.
<b>James F. Rothenberg*</b>	President, Capital Research and Management Company

### Public

<b>Kenneth M. Duberstein</b>	Chairman and CEO, The Duberstein Group, Inc.
<b>Donald J. Kirk*</b>	
<b>John D. Markese*</b>	President, American Association of Individual Investors

\* Not eligible for re-election

## Governors with Terms Expiring in 2003

### Industry

William C. Alsover, Jr. Chairman, Centennial Securities Company, Inc.

### Non-Industry

Arvind Sodhani\* Vice President and Treasurer, Intel Corporation

### Public

Brian T. Borders, Esq. Mayer, Brown, Rowe & Maw

Sharon P. Smith Dean, College of Business Administration, Fordham University

## Governors with Terms Expiring in 2004

### Industry

John W. Bachmann Managing Partner, Edward D. Jones & Company

Richard F. Brueckner Chief Operating Officer, Pershing Division of Credit Suisse First Boston

Raymond A. Mason Chairman & CEO, Legg Mason Wood Walker, Inc.

### Non-Industry

Harry P. Kamen\* Retired Chairman and Chief Executive Officer, Metropolitan Life Insurance Company

### Public

James E. Burton Chief Executive Officer, California Public Employees' Retirement System

Sir Brian Corby Chairman (retired), Prudential Assurance Company

James R. Rutherford, Jr. President and CEO, Moody's Corporation

\* Not eligible for re-election

## Endnotes

- 1 Hardwick Simmons was appointed to the NASD Board in 2001 to replace Arthur Rock who resigned.
  - 2 Governor DeMuro currently serves on the NASD Board as Chair of the National Adjudicatory Council (NAC). His term as Chair of the NAC expires in 2002. In accordance with Article VII, Section 5(b) of the NASD By-Laws, after serving as Chair of the NAC, an individual is eligible to serve as a Governor elected by the members of NASD.
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# Notice to Members

SEPTEMBER 2002

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Senior Management

## KEY TOPICS

Customer Accounts  
Rule 2110

## INFORMATIONAL

### Bulk Transfer of Customer Accounts

Use of Negative Response Letters for the Bulk Transfer of Customer Accounts

#### Executive Summary

In October 2000, the staff of NASD issued an interpretive letter concerning the use of "negative response letters" to transfer certain customer accounts to a new broker/dealer. Since the publication of the interpretive letter, the staff has received many inquiries from the membership for guidance on the use of negative response letters to transfer customer accounts. The purpose of this *Notice to Members* is to provide interpretive guidance to the membership on this topic.<sup>1</sup>

#### Questions/Further Information

Questions concerning this *Notice to Members* may be directed to Sarah J. Williams, Assistant General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8083.

#### Background

NASD Rule 11870, Customer Account Transfer Contracts, describes the process by which a customer can transfer his or her account from one member firm to another. The process requires the customer to submit a completed transfer instruction to the member that is to receive the customer's account, and sets forth specific procedures pursuant to which the firm receiving the account and the firm transferring the account coordinate their efforts to accomplish the transfer.

02-57

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Situations may arise where a firm seeks to initiate a bulk transfer of customer accounts. For example, a firm experiencing financial or operational difficulties may seek to transfer all of its accounts to another member. In this situation, soliciting customers individually to submit instructions directing the transfer of their accounts to a particular firm can be a lengthy process. Moreover, while the process is underway, the assets in the customer accounts may be at risk because of the member's precarious financial condition.

NASD rules do permit member firms to use "negative response letters" to obtain authorization to take certain actions on behalf of their customers without obtaining affirmative consent, but only in limited circumstances.<sup>2</sup> NASD Rule 2510(d) allows a member to use negative response letters in certain situations to effect the bulk exchange of a customer's money market mutual fund for a different fund without the affirmative consent of a customer, provided certain conditions are met.<sup>3</sup> The staff also has interpreted the NASD trade-reporting rules regarding riskless principal trading to permit the use of negative response letters to document an institutional customer's agreement to trade with a firm on a net basis.<sup>4</sup>

The staff generally believes that a customer should affirmatively consent to the transfer of his or her account to another firm. Various factors may affect an investor's decision to move an account to a new firm, including, for example, the level and quality of service of the new firm, the fees and charges imposed by the new firm, and the cost of the transfer itself. However, when a firm initiates the transfer of a customer's account, there is

no assurance that the customer has had sufficient time or information with which to decide whether to object to the transfer. Further, members may be inclined to use negative response letters because of the convenience these letters provide without giving due consideration to whether soliciting affirmative customer consent is a viable alternative. For these reasons, transfers of customer accounts by a member using negative response letters may, under certain circumstances, conflict with a member's obligation to observe high standards of commercial honor and just and equitable principles of trade under NASD Rule 2110.

In October 2000, the staff of NASD Regulatory Policy and Oversight, Office of General Counsel, issued an interpretive letter to a member firm addressing the question of whether a departing registered representative could send a negative response letter to customers serviced by the registered representative to effect the transfer of those customers to the registered representative's new firm.<sup>5</sup> The staff advised that the use of a negative response letter in those circumstances raised concerns under Rule 2110.

### **Bulk Transfers of Customer Accounts Using Negative Response Letters**

With respect to the transfer by a member firm of a group of customer accounts, the staff believes that there are situations where a negative response letter may be appropriate to provide for the efficient transfer of those accounts. In identifying these situations, the staff has considered the need to effect a timely transfer of the account and the interests of customers affected by the transfer.

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The staff generally believes the use of negative response letters may be appropriate in the following circumstances:

- ▶ **A Member Experiencing Financial or Operational Difficulties** – An introducing firm that is experiencing financial or operational difficulties may seek the transfer of all of its customer accounts to another introducing firm using negative response letters;
- ▶ **An Introducing Firm No Longer in Business** – When an introducing firm has gone out of business, the clearing firm may effect the transfer of all of the introducing firm's customer accounts to another introducing firm using negative response letters;
- ▶ **Changes in a Networking Arrangement with a Financial Institution** – Upon the conclusion or termination of a networking arrangement with a financial institution pursuant to NASD Rule 2350, a member may seek the transfer of all customer accounts established pursuant to the networking arrangement to a new firm with which the financial institution has formed a networking arrangement using negative response letters;
- ▶ **Acquisition or Merger of a Member Firm** – When a firm is acquired by or merges with another firm, the firm originating the accounts may seek the transfer of all of its accounts to the new firm using negative response letters; and

- ▶ **Change in Clearing Firm by an Introducing Firm** – When an introducing firm decides to enter into a clearing arrangement with a different firm, the introducing firm may use negative response letters to transfer customer accounts to the new clearing firm.

The staff believes that the use of a negative response letter to facilitate the bulk transfer of customer accounts in these situations is appropriate, given the potential risk to investors and costs to firms that could result if firms were required to solicit individual transfer instructions from each customer. The bulk transfer of accounts in these situations also helps minimize interruptions to customers' access to their accounts and the trading markets. The staff recognizes that circumstances may exist outside of the scenarios described above where the use of negative response letters may be appropriate. The staff is prepared to provide guidance on specific situations through NASD's interpretive letter process, as needed. While the use of negative response letters by firms to transfer customer accounts may be appropriate in the situations described above, the staff continues to believe that negative response letters may not be used by registered representatives to transfer customer accounts.

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## Recommended Disclosures in Negative Response Letters

The staff expects a member seeking to transfer customer accounts using negative response letters to provide account holders, consistent with just and equitable principles of trade under Rule 2110, with adequate time and information to decide whether to object to the transfer. The staff advises members seeking to transfer customer accounts using negative response letters as permitted under this *Notice to Members* to provide each customer with the following information in the negative response letter:

- (1) A brief description of the circumstances necessitating the transfer;
- (2) A statement that the customer has the right to object to the transfer;
- (3) Information on how a customer can effectuate a transfer to another firm;
- (4) A sufficient time period for the customer to respond to the letter (at least 30 days from the receipt of the letter unless exigent circumstances exist that warrant a shorter timer period);
- (5) Disclosure of any cost that will be imposed on the customer as a result of the transfer, including costs to the customer if the customer initiates a transfer of the account after the account is moved pursuant to the negative response letter; and
- (6) A statement regarding the firm's compliance with Securities and Exchange Commission (SEC) Regulation S-P (Privacy of Consumer Financial Information) in connection with the transfer.<sup>6</sup>

Member firms that receive customer accounts pursuant to a transfer by a negative response letter should furnish customers with any applicable customer account information and agreements upon the receipt of the accounts.

Both the transferring and receiving firms in a customer account transfer situation are reminded that the firms must be in full compliance with SEC Regulation S-P. Regulation S-P governs the collection, use, and maintenance by a financial institution of nonpublic personal information of consumers and customers. Unless the transfer is being conducted pursuant to a permitted exception to Regulation S-P, the transferring firm should have reserved the right to transfer customer accounts in its privacy notice that was previously sent to its customers.<sup>7</sup> Generally, firms receiving the customer accounts must provide privacy notices upon the establishment of a customer account. Member firms that have questions or require additional information regarding the application of Regulation S-P should consult the Office of the Chief Counsel, Division of Market Regulation, SEC.

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## Endnotes

- 1 This *Notice to Members* does not apply to transfers of special product accounts such as mutual fund or variable annuity accounts, nor does it apply to the transfer of specific securities. Further, certain account transfers may require NASD approval under Rule 1017.
  - 2 A negative response letter generally informs the recipient of the letter of an impending action, and requires the recipient to respond or act within a specified time frame if the recipient objects to the action. If the recipient does not respond, he or she is deemed to have consented to the action.
  - 3 NASD Rule 2510(d)(2) limits the use of negative response letters to situations involving mergers and acquisitions of funds, changes of clearing members, and exchanges of funds used in sweep accounts. Moreover, the rule requires that the negative response letter contain certain disclosures about the funds being exchanged and that the negative response feature will not be activated until at least 30 days after the date on which the letter was mailed.
  - 4 See *Notice to Members 00-79, "Riskless Principal Trade Reporting,"* (November 2000).
  - 5 See Letter to Merit Capital Associates, Inc., from Office of General Counsel, NASD Regulation, Inc. (predecessor to NASD Regulatory Policy and Oversight) dated October 16, 2000.
  - 6 See Exchange Act Rel. No. 42974 (June 22, 2000), 65 Fed. Reg. 40334 (June 29, 2000) ("Privacy of Consumer Financial Information").
  - 7 If applicable, firms must also abide by any opt out notices received from customers.
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# Notice to Members

SEPTEMBER 2002

## SUGGESTED ROUTING

Legal & Compliance  
Registered Representatives  
Registration  
Senior Management

## KEY TOPICS

Arbitration  
Default Procedures  
Dispute Resolution  
Registration  
Suspension  
Termination

## New Default Procedures Rule

SEC Approves Default Procedures Regarding Suspended or Terminated Respondents Who Fail to Answer Arbitration Claims; **Effective October 14, 2002**

### Executive Summary

The Securities and Exchange Commission (SEC or Commission) has approved amendments to Rule 10314 of the NASD Code of Arbitration Procedure (Code) governing Initiation of Proceedings.<sup>1</sup> The amendments provide default procedures for situations in which a suspended, terminated or otherwise defunct member or associated person fails to answer in an arbitration proceeding, and the claimant nevertheless elects to pursue arbitration.

The text of the amendments as provided in Attachment A will apply to all claims filed on or after October 14, 2002.

### Questions/Further Information

Questions regarding this *Notice* may be directed to Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, at (202) 728-6959, or [jean.feeney@nasd.com](mailto:jean.feeney@nasd.com).

### Discussion

NASD Dispute Resolution is providing default procedures for situations in which a suspended, terminated or otherwise defunct member or associated person fails to answer in an arbitration proceeding, and the claimant nevertheless elects to pursue arbitration. The procedures are designed to make it easier for claimants to obtain an award against a defunct, non-answering party, which award then can be enforced in court.

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## Background

The United States General Accounting Office (GAO) issued a report in June 2000 expressing concern over the number of unpaid arbitration awards issued in connection with arbitration proceedings in the securities industry arbitration forums, and making several recommendations for improvements.<sup>2</sup> The GAO Report observed that most of the unpaid awards resulted from broker/dealers that were no longer in business. In response to the GAO Report, NASD committed to undertake several initiatives to address the issue of unpaid awards. The proposed rule change will complete NASD Dispute Resolution's implementation of all initiatives.<sup>3</sup>

In 2001, NASD amended Rule 10301(a) to prohibit a member firm whose membership has been terminated, suspended, canceled, or revoked, or that has been expelled from NASD, or that is otherwise defunct, from enforcing a predispute arbitration agreement against a customer in the NASD forum, unless the customer agrees to arbitration in writing after the claim has arisen. That rule change also provided that, before serving a customer claim against a member firm, NASD will notify the customer if the member firm falls into one of the enumerated categories, so customers can make an informed decision regarding whether to proceed in arbitration, to file their claim in court, or to take no action. Therefore, claims against defunct members now proceed in arbitration only at the customer's option.

## New Default Procedures

In line with the GAO's recommendations, the new rule is designed to make it easier for claimants to obtain an award against a defunct, non-answering member or associated person. The rule applies to all categories of claimants, whether they are customers, associated persons, or member firm claimants that are bringing a claim against a defunct member or associated person. It does not apply to customer respondents, nor does it apply to respondent members or associated persons that are not defunct, as defined in Rule 10314(e).

Under the new default procedures, if a respondent is an associated person whose registration is (1) terminated, revoked, or suspended; (2) a member whose membership has been terminated, suspended, canceled, or revoked; (3) a member that has been expelled from NASD; or (4) a member that is otherwise defunct, (collectively referred to in this *Notice* as "defunct") and that respondent fails to answer the claim in a timely manner,<sup>4</sup> the claimant may elect to proceed under optional default procedures as to the defunct respondent. If there are several claimants, all must agree to use default procedures before they can be used. If the same attorney represents all claimants, a letter from the attorney agreeing on behalf of all claimants is sufficient.

Default procedures may be used against one or more defunct, non-answering respondents while the rest of the initial arbitration proceeds against any remaining respondents under regular procedures. (See the discussion below on additional considerations in divided or "bifurcated" proceedings.)

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Defunct respondents who file an answer are not subject to the default procedures rule. Suspended or terminated associated persons and members should be aware that they remain subject to the filing of an arbitration claim against them for conduct that occurred while they were associated persons or members. Therefore, it is essential that they maintain a current address in the Central Registration Depository (CRD®) to ensure prompt notice of claims.<sup>5</sup>

If the claimant opts to use default procedures, the case against the defunct, non-answering respondent will proceed with a single arbitrator without a hearing. NASD will continue to send notices to the respondent until the conclusion of the case.<sup>6</sup>

The arbitrator in the default case will make a decision based upon the Statement of Claim and any other material submitted by the claimant. The arbitrator may request additional information from the claimant before rendering an award. No hearing will be held. In keeping with the streamlined nature of the procedures, neither the claimant nor the single arbitrator will have the option to ask that two additional arbitrators be appointed to decide the case.

The default procedures have several provisions to safeguard the integrity of the process and discourage abuses:

- ◆ The claimant may not amend a claim to increase the relief requested after the staff has notified the parties that the claim will proceed under default procedures.
- ◆ An arbitrator may not make an award based solely on the non-appearance of a respondent.

The claimant's materials must present a sufficient basis to support the making of an award in its favor.

- ◆ The arbitrator may not award damages in an amount greater than the damages requested in the Statement of Claim, and may not award any other relief that was not requested in the Statement of Claim.

The above safeguards apply only to the claim that is subject to default procedures. If another part of the original claim is proceeding under regular procedures, then the normal Code provisions apply.

Finally, if a respondent thought to be defunct belatedly files an answer after the staff has notified the parties that the claim will proceed under default procedures but before an award has been rendered in the default case, the default procedures will be terminated, and the case will proceed under the regular procedures.<sup>7</sup> As noted below, however, the late-answering respondent may have missed the opportunity to select the panel, and may be barred from presenting certain matters at the hearing.

### Bifurcated Proceedings

Default procedures may be used against one or more defunct respondents while the rest of the initial arbitration proceeds against any remaining respondents. This splitting of the original case is known as "bifurcation." If a case is to be bifurcated and handled under two different procedures, regular and default, each proceeding will be assigned a separate arbitration case number to avoid confusion. Rule 10314(e) provides that the default award will have no effect on any non-defaulting party.



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If the regular case is to be decided by a single arbitrator, that same arbitrator will decide the default case. If the regular case is to be decided by a panel of three arbitrators, then the chair of the panel will serve as the single arbitrator for the default proceeding.

If a respondent in a default case belatedly files an answer, the respondent will join the regular case where the respondent finds it. That is, if a panel already has been selected, the respondent must accept that panel without input into its selection, subject only to a challenge for cause. If a prehearing conference or hearing session has been held, the late-answering respondent must deal with what has gone on before unless the respondent successfully moves the panel for relief. Finally, Rule 10314(b)(2)(C) provides that a respondent who fails to file an answer within 45 calendar days from receipt of service of a claim, unless the time to answer has been extended, "may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing."

### Fees

Claimant already will have paid a nonrefundable filing fee and hearing session deposit when the original case was filed, and a nonrefundable member surcharge and process fees will have been assessed against the appropriate member at the same time, so no new fees will be due at the commencement of the default case. Since the default case will not involve a hearing, NASD will charge only the Deposit for Cases to Be Decided on the Paper Record as shown in Rule 10332(k), which ranges from \$25 to a maximum of \$300 for cases involving more than \$10,000 (NASD will cap this

fee at \$300 for default cases, even if the dispute is for over \$25,000). At the conclusion of the default case, the arbitrator may allocate the forum fees between or among the parties as usual, and the claimant may be issued a hearing deposit refund. When a case is bifurcated, there will be no additional fees for the default case.

### Effective Date

The amendments described in this *Notice* will apply to all claims filed on or after October 14, 2002.

### Endnotes

- 1 Exchange Act Release No. 46221 (July 17, 2002) (File No. SR-NASD-2002-15), 67 Federal Register 48237 (July 23, 2002).
- 2 The report is entitled, "Securities Arbitration: Actions Needed to Address Problem of Unpaid Awards" ("GAO Report"), Report No. GAO/GGD-00-115 (June 2000), available online at [www.gao.gov](http://www.gao.gov).
- 3 See *Notices to Members 00-55* and *01-29* for information on prior initiatives.
- 4 Default procedures may be used when a defunct respondent fails to answer within the standard 45-day period provided in Rule 10314(b). In Simplified Arbitration (for claims not exceeding \$25,000), respondents have only 20 days to answer. Simplified cases already proceed on the papers with a single arbitrator; however, in the event that a claimant in a simplified case wishes to use the default procedures instead of the simplified procedures, the claimant may do so after waiting for the 45-day period to pass.
- 5 As explained in *Notice to Members 99-77*, both current and former associated persons must keep their addresses in CRD current in order to receive mailings from NASD. Such mailings will be sent to the associated person's last address in NASD's records, and are considered to have been received at that address, whether or not the individual has actually received them.

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Therefore, associated persons who have failed to update their addresses after termination may have a default decision issued against them in disciplinary proceedings. The same presumption of the accuracy of CRD addresses will apply in the context of default arbitration procedures.

- 6 Since Rule 10314(e)(7) provides for the possibility that a defunct respondent may file a late answer, which terminates the default procedures as to that respondent, three arbitrators will be chosen for cases that would otherwise require a three-person panel under Rule 10308, to eliminate delay in the event that a full three-person panel is needed later. However, only the chair will participate in the default case.
- 7 For this purpose, NASD will define the date "rendered" as the date when the award is served on the parties pursuant to Rule 10314(c)(1).

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## ATTACHMENT A

New language is underlined.

### Code of Arbitration Procedure

#### 10314. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) No change.

**(b) Answer – Defenses, Counterclaims, and/or Cross-Claims**

(1) No change.

(2) (A) - (B) No change.

(C) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to subparagraph (5), below, may, in the discretion of the arbitrators, be barred from presenting any matter, arguments, or defenses at the hearing. Such a party may also be subject to default procedures as provided in paragraph (e) below.

(3) - (4) No change.

(5) No change.

(c) - (d) No change.

(e) Default Procedures

(1) A Respondent, Cross-Respondent, or Third-Party Respondent that fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to paragraph (b)(5), may be subject to default procedures, as provided in this paragraph, if it is:

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(A) a member whose membership has been terminated, suspended, canceled, or revoked;

(B) a member that has been expelled from the NASD;

(C) a member that is otherwise defunct; or

(D) an associated person whose registration is terminated, revoked, or suspended.

(2) If all Claimants elect to use these default procedures, the Claimant(s) shall notify the Director in writing and shall send a copy of such notification to all other parties at the same time and in the same manner as the notification was sent to the Director.

(3) If the case meets the requirements for proceeding under default procedures, the Director shall notify all parties.

(4) The Director shall appoint a single arbitrator pursuant to Rule 10308 to consider the Statement of Claim and other documents presented by the Claimant(s). The arbitrator may request additional information from the Claimant(s) before rendering an award. No hearing shall be held, and the default award shall have no effect on any non-defaulting party.

(5) The Claimant(s) may not amend the claim to increase the relief requested after the Director has notified the parties that the claim will proceed under default procedures.

(6) An arbitrator may not make an award based solely on the non-appearance of a party. The party who appears must present a sufficient basis to support the making of an award in that party's favor. The arbitrator may not award damages in an amount greater than the damages requested in the Statement of Claim, and may not award any other relief that was not requested in the Statement of Claim.

(7) If the Respondent files an Answer after the Director has notified the parties that the claim will proceed under default procedures but before an award has been rendered, the proceedings under this paragraph shall be terminated and the case will proceed under the regular procedures.

# Notice to Members

SEPTEMBER 2002

## SUGGESTED ROUTING

Legal & Compliance

## Answers in Arbitration

SEC Approves Amendment to Rule 10314 Regarding Specificity of Answers; **Effective October 14, 2002**

## KEY TOPICS

Answers

Arbitration

Dispute Resolution

### Executive Summary

The Securities and Exchange Commission (SEC or Commission) has approved amendments to Rule 10314 of the NASD Code of Arbitration Procedure (Code) governing Initiation of Proceedings.<sup>1</sup> The amendments will conform Rule 10314(b) to the current minimum standard applicable to claims, so that Answers need only specify relevant facts and available defenses to the Statement of Claim submitted.

The text of the amendments as provided in Attachment A will apply to all claims filed on or after October 14, 2002.

### Questions/Further Information

Questions regarding this *Notice* may be directed to Jean I. Feeney, Chief Counsel and Associate Vice President, NASD Dispute Resolution, at (202) 728-6959, or e-mail [jean.feeney@nasd.com](mailto:jean.feeney@nasd.com).

### Discussion

NASD is amending the Code to conform Rule 10314(b) to the current minimum standard applicable to claims, so that Answers need only specify relevant facts and available defenses to the Statement of Claim that was submitted by the claimant, rather than specifying all such facts and defenses that may be relied upon at the hearing.

02-59

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As background, NASD recently streamlined its procedures for review of arbitration claims. NASD does not consider a Statement of Claim to be deficient if it meets the minimum requirements of a properly signed Uniform Submission Agreement that names the respondents as shown on the Statement of Claim, proper fees, and sufficient copies of the Statement of Claim. This has accelerated the claims review process, so that claims can be served promptly after filing. Accordingly, the Statement of Claim may not contain details on the evidence to be presented at the hearing.

The rules relating to Answers continued to provide, however, that the Answer had to specify all available defenses and relevant facts that would be relied upon at the hearing, and that a respondent that failed to specify all available defenses and relevant facts in its Answer could be barred from presenting such facts or defenses at the hearing.<sup>2</sup>

NASD determined that the above provisions could place the respondent at an unfair disadvantage because the initial claim may be quite brief, but may be expanded substantially by the time of the hearing. Based on Rule 10314(b), the arbitrators might prevent the respondent from introducing additional facts or defenses to the expanded claim. Therefore, Rule 10314(b)(1) has been amended to provide that the Answer should only be required to specify all relevant facts and available defenses to the Statement of Claim submitted, which makes the requirement consistent with the streamlined claims procedure; and Rule 10314(b)(2)(A) has been amended to apply only to general denials to pleadings that state specific facts and contentions.

## Effective Date

The amendment described in this *Notice* will apply to all claims filed on or after October 14, 2002.

## Endnotes

- 1 Exchange Act Release No. 46256 (July 25, 2002) (File No. SR-NASD-2002-62, 67 Federal Register 50499 (August 2, 2002).
- 2 The term "defenses" in Rule 10314 is understood to include not only defenses to the specific allegations in the Statement of Claim, but also any affirmative defenses that the respondent may wish to set forth.

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## ATTACHMENT A

New language is underlined; deletions in brackets.

### Code of Arbitration Procedure

#### 10314. Initiation of Proceedings

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

(a) No change.

**(b) Answer – Defenses, Counterclaims, and/or Cross-Claims**

(1) Within 45 calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of the Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall specify all [available defenses and] relevant facts and available defenses [thereto that will be relied upon at the hearing] to the Statement of Claim submitted and may set forth any related Counterclaim the Respondent(s) may have against the Claimant, any Cross-Claim the Respondent(s) may have against any other named Respondent(s), and any Third-Party Claim against any other party or person based on any existing dispute, claim, or controversy subject to arbitration under this Code.

(2) (A) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who pleads only a general denial [as an Answer] to a pleading that states specific facts and contentions may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

[Remainder of rule unchanged.]

# Notice to Members

SEPTEMBER 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

Columbus Day

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 14, 2002. On this day, The NASDAQ Stock Market and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

Trade Date	Settlement Date	Reg. T Date*
Oct. 8	Oct. 11	Oct. 15
9	15	16
10	16	17
11	17	18
14	17	21
15	18	22

**Note:** October 14, 2002, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 14, will be combined with transactions made on the previous business day, October 11, for settlement on October 17. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 14.

02-60



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

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# Notice to Members

SEPTEMBER 2002

## SUGGESTED ROUTING

Executive Representatives  
Legal & Compliance  
Operations  
Senior Management

## KEY TOPICS

Rule 3010  
IM-8310-2  
Taping Rule

## INFORMATIONAL

### Taping Rule

SEC Approves Proposed Changes to the Taping Rule and NASD Interpretive Material 8310-2; **Effective Date: October 14, 2002**

#### Executive Summary

On August 28, 2002, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 3010(b)(2), also known as the Taping Rule, and NASD IM-8310-2. The amendments to the Taping Rule (1) permit firms that become subject to the Taping Rule a one time opportunity to adjust their staffing levels to fall below the prescribed threshold levels and thus avoid application of the Rule; (2) revise the criteria by which firms become subject to the Taping Rule by not including certain short-term employees of disciplined firms into the calculations of the Taping Rule threshold levels; (3) expand the compliance deadline from 30 to 60 days for firms subject to the Taping Rule to install taping systems; (4) clarify NASD's authority to grant exemptions from the Rule pursuant to the Rule 9600 Series only in exceptional cases; and (5) extend the taping requirements from two years to three years to eliminate conflicting time periods in the Taping Rule. In addition, the amendments to NASD IM-8310-2 permit, upon request, public disclosure of whether a particular firm is subject to the Taping Rule.

The amendments become effective on October 14, 2002. The text of the amendments to Rule 3010(b)(2) and IM-8310-2 is provided in Attachment A.

#### Questions/Further Information

Questions regarding this *Notice to Members* may be directed to Grace Yeh, Assistant General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-6939, or to Kyra Armstrong, Senior Attorney, Department of Member Regulation, NASD Regulatory Policy and Oversight, at (202) 728-6962.

02-61

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## Discussion

The Taping Rule, which was adopted in 1998, is designed to ensure that members with a large number of registered persons from firms that have been expelled from membership or have had their registration revoked for sales practice violations (Disciplined Firms) have proper supervisory procedures over telemarketing activities to prevent fraudulent and improper sales practices or other customer harm. Under the Rule, firms that hire a significant number of employees from Disciplined Firms must establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all their registered persons. In addition, such firms are required to install taping systems to record all telephone conversations between all of their registered persons and both existing and potential customers, review the tape recordings, and file quarterly reports with NASD.

Generally, the amendments refine the application of the Taping Rule and provide additional flexibility to assist member firms in meeting their compliance obligations under the Rule.

### 1. *Establishment of a 30-Day Staff Adjustment Period*

The amendments provide all firms that, on or after October 14, 2002, trigger application of the Taping Rule (for the first time) a one-time opportunity to obtain relief from the Taping Rule requirements by adjusting their staffing levels.<sup>1</sup> In particular, the amendments permit firms, within 30 days after receiving the notice that they are subject to the Taping Rule or obtaining actual knowledge that they are subject to the Rule (and have promptly notified the Department of Member Regulation that

they are subject to the Rule), to reduce their staffing levels to fall below the threshold levels set forth in the Taping Rule and thus avoid application of the Taping Rule.<sup>2</sup> Firms will not be permitted to hire additional registered representatives to fall below the stated thresholds but rather will be required to reduce their number of registered representatives from Disciplined Firms. Once a firm has made the reductions, the firm will not be permitted to rehire the terminated individuals for a period of at least 180 days. Firms may elect, but are not required, to make reductions to their staffing levels. If a firm chooses not to make the adjustment, then it will be required to comply with the Taping Rule requirements.

A firm is permitted to adjust its staffing levels only when it becomes subject to the Taping Rule for the first time. If the firm re-triggers the Taping Rule at any point in the future, then the firm automatically will become subject to its provisions. While the amendments allow a new entity resulting from a restructuring (by a merger, acquisition, or otherwise) to make a staff adjustment to avoid application of the Taping Rule even if one of the participating members in the restructuring had previously adjusted its staff level pursuant to the amendments, this will not be the case for an entity that was restructured in an effort to avoid compliance with the Rule.

### 2. *Revision of the Criteria by Which Firms Become Subject to the Taping Rule*

The amendments revise the criteria for determining whether a firm is subject to the Taping Rule by excluding from the firm's calculations registered persons who were associated with a Disciplined Firm for only a short period of time.

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Specifically, in calculating whether firms exceed the Taping Rule thresholds set forth in the Rule, registered persons who were registered with one or more Disciplined Firms for 90 days or less within the last three years and who have no disciplinary history by a finding of a violation of the provisions set forth in IM-1011-1, while still included in the total number of registered persons at a firm, may be excluded from the number of registered persons at the firm from Disciplined Firms. The amendments recognize that persons registered with Disciplined Firms for a short period of time (*i.e.*, an aggregate total of 90 days or less) are less likely to have acquired the “bad habits” from the Disciplined Firms that the Taping Rule seeks to redress.

In addition, the amendments clarify that the calculation of registered representatives from Disciplined Firms includes independent contractors previously registered with a Disciplined Firm.

### *3. Expansion of the Compliance Deadline from 30 to 60 Days*

The amendments extend the period for firms to implement the special supervisory procedures, including the installation of taping systems from 30 days to 60 days of receiving notice from NASD (or obtaining actual knowledge) that they are subject to the Taping Rule. Based on NASD’s experience, 60 days should provide adequate time for firms to install the taping systems and would alleviate the need for firms to request extensions of time. NASD notes that generally, an acceptable taping system would not include one where a firm’s associated persons whose communications with customers are

required to be taped have control over the operation of, or the tape recordings produced from, the taping system.

### *4. Clarification of the Exemptive Relief Authority*

The amendments clarify that NASD may grant exemptions from the Taping Rule in “exceptional circumstances” only. In reviewing exemptive requests, NASD generally has established high standards and required a firm to establish that it has alternative procedures to assure supervision at a level functionally equivalent to a taping system.

### *5. Increase Duration of the Special Supervisory Requirements*

The amendments extend the time period for which firms must maintain taping systems from two years to three years. The period for which firms are required to maintain the taping system begins from the date that the member establishes its special supervisory procedures and implements the taping system. The amendments further clarify that a firm is required to both establish and implement the taping system within 60 days of receiving notice from NASD or obtaining actual knowledge that it is subject to the Taping Rule.

### **Publication of the Identity of Firms Subject to the Taping Rule**

The amendments allow investors and the general public to ascertain, upon request, whether an identified firm is subject to the Taping Rule. Inquiries about whether a particular firm is subject to the Taping Rule may be made through the Public Disclosure Program’s toll-free telephone listing.

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## Endnotes

- 1 Firms that, as of October 14, 2002, have a pending exemption request from the Taping Rule requirements, based on the firm's first-time triggering of the Rule, (or related appeal before the (National Adjudicatory Council) (NAC)), or for which the time period in which to seek an applicable exemption (or related appeal to the NAC) has not yet expired, may elect to comply with the Taping Rule as modified by the amendments in lieu of complying with the current requirements under the Rule.
- 2 Firms that reduce their staffing levels pursuant to the amendments may consider reporting the termination as a voluntary termination on the Form U-5.

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## ATTACHMENT A

New language is underlined; deletions are in brackets.

### 3010. Supervision

(a) No Change.

(b) Written Procedures

(1) No Change.

(2) Tape recording of conversations

(A) [(i)] Each member that either is notified by NASD Regulation or otherwise has actual knowledge that it meets one of the criteria in paragraph (b)(2)(H)[(viii)] relating to the employment history of its registered persons at a Disciplined Firm as defined in paragraph (b)(2)(J)[(x)] shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered persons.

(B)[(ii)] The member must establish and implement the supervisory procedures required by this paragraph within [30] 60 days of receiving notice from NASD Regulation or obtaining actual knowledge that it is subject to the provisions of this paragraph.

A member that meets one of the criteria in paragraph (b)(2)(H) for the first time may reduce its staffing levels to fall below the threshold levels within 30 days after receiving notice from NASD Regulation pursuant to the provisions of paragraph (b)(2)(A) or obtaining actual knowledge that it is subject to the provisions of the paragraph, provided the firm promptly notifies the Department of Member Regulation, NASD Regulation, in writing of its becoming subject to the Rule. Once the member has reduced its staffing levels to fall below the threshold levels, it shall not rehire a person terminated to accomplish the staff reduction for a period of 180 days. On or prior to reducing staffing levels pursuant to this paragraph, a member must provide the Department of Member Regulation, NASD Regulation with written notice, identifying the terminated person(s).

(C) [(iii)] The procedures required by this paragraph shall include tape-recording all telephone conversations between the member's registered persons and both existing and potential customers.

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(D) [(iv)] The member shall establish reasonable procedures for reviewing the tape recordings made pursuant to the requirements of this paragraph to ensure compliance with applicable securities laws and regulations and applicable rules of [this] the Association. The procedures must be appropriate for the member's business, size, structure, and customers.

(E) [(v)] All tape recordings made pursuant to the requirements of this paragraph shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each member shall catalog the retained tapes by registered person and date.

(F) [(vi)] Such procedures shall be maintained for a period of [two] three years from the date that the member establishes and implements the procedures required by the provisions of this paragraph.

(G) [(vii)] By the 30th day of the month following the end of each calendar quarter, each member firm subject to the requirements of this paragraph shall submit to the Association a report on the member's supervision of the telemarketing activities of its registered persons.

(H) [(viii)] The following members shall be required to adopt special supervisory procedures over the telemarketing activities of their registered persons:

- A firm with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been [employed by] associated with one or more Disciplined Firms in a registered capacity within the last three years;
- A firm with at least ten but fewer than twenty registered persons, where four or more of its registered persons have been [employed by] associated with one or more Disciplined Firms in a registered capacity within the last three years;
- A firm with at least twenty registered persons, where 20% or more of its registered persons have been [employed by] associated with one or more Disciplined Firms in a registered capacity within the last three years.

For purposes of the calculations required in subparagraph (H), firms should not include registered persons who:

- (1) have been registered for an aggregate total of 90 days or less with one or more Disciplined Firms within the past three years; and

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(2) do not have a disciplinary history.

(I)(ix) For purposes of this Rule, the term “registered person” means any person registered with the Association as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series or pursuant to Municipal Securities Rulemaking Board (“MSRB”) Rule G-3.

(J)(x) For purposes of this Rule, the term “disciplined firm” means a member that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the Securities and Exchange Commission revoking its registration as a broker/dealer.

(K)(xi) For purposes of this Rule, the term “disciplinary history” means a finding of a violation by a registered person in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the provisions (or comparable foreign provision) listed in IM-1011-1 or rules or regulations thereunder.

(L) Pursuant to the Rule 9600 Series, the Association may in exceptional circumstances, taking into consideration all relevant factors, exempt any member unconditionally or on specified terms and conditions from the requirements of this paragraph [upon a satisfactory showing that the member’s supervisory procedures ensure compliance with applicable securities laws and regulations and applicable rules of the Association].

\* \* \*

**IM-8310-2. Release of Disciplinary [Information] and Other Information Through the Public Disclosure Program**

(a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, the Association shall release certain information contained in the Central Registration Depository regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through the Public Disclosure Program. Such information shall include:

(1) the person’s employment history and other business experience required to be reported on Form U-4;



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- (2) currently approved registrations for the member or associated person;
  - (3) the main office, legal status, and type of business engaged in by the member; and
  - (4) an event or proceeding–
    - (A) required to be reported under Item 23 on Form U-4;
    - (B) required to be reported under Item 11 on Form BD; or
    - (C) reported on Form U-6.

The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. In addition, the Association shall make available in response to telephonic inquiries via the Public Disclosure Program's toll-free telephone listing whether a particular member is subject to the provisions of Rule 3010(b)(2). The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.

(b) through (l) No Change.

## Disciplinary Actions

### REPORTED FOR SEPTEMBER

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 August 2002.

### Firms Fined, Individuals Sanctioned

**C.B. Hill & Associates, Inc. (CRD #23786, Jacksonville, Florida) and Wise Alsop Skillman, III (CRD #1757886, Registered Principal, Jacksonville, Florida)** submitted an Offer of Settlement in which the firm was censured and fined \$10,000, and Skillman was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 10 business days. The fine must be paid before Skillman reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Skillman, failed to implement, or to implement timely, taping systems to record all telephone conversations between the firm's registered representative and clients or prospective clients at its branch offices. The findings also stated that the firm, acting through Skillman, failed to establish, maintain, and enforce supervisory procedures for the supervision of the firm's registered representatives telemarketing activities or to do so in a timely manner.

Skillman's suspension began February 19, 2002, and concluded at the close of business March 2, 2002. (NASD Case #C07010055)

**Joseph Dillon & Company, Inc. (CRD #35220, Great Neck, New York) and Steven Richard Jaloza (CRD #1320831, Registered Principal, Oyster Bay, New York)** submitted an Offer of Settlement in which they were censured and fined \$35,000, jointly and severally. Jaloza was also suspended from association with any NASD member in any principal capacity for two months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to comply with the provisions of the NASD Taping Rule in that they failed to implement a tape recording system for telephone calls and failed to establish, maintain, or enforce special written procedures for supervising telemarketing activities of the firm's registered representatives. The findings also stated that the firm and Jaloza failed to submit to NASD a quarterly written report concerning the firm's supervision of the telemarketing activities of its registered representatives.

Jaloza's suspension began July 2, 2001, and concluded September 1, 2001. (NASD Case #C10000172)

**Legend Merchant Group, Inc. (CRD #5155, New York, New York) and Michael Davidson (CRD #2271320, Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000, jointly and severally, with Davidson. Davidson was also suspended from association with any NASD member as a financial and operations principal (FINOP) for 10 business days and required to requalify by exam as a FINOP within 90 days. If Davidson fails to requalify as a FINOP within 90 days, he will be suspended from acting in such capacity until he successfully completes the exam. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Davidson, failed to maintain the minimum required net capital while conducting a securities business. The findings also stated that the firm, acting through Davidson, incorrectly reported its net capital in its monthly Financial and Operational Combined Uniform Single (FOCUS) reports.

Davidson's suspension began September 3, 2002, and concluded at the close of business September 16, 2002. (NASD Case #C10020068)

**Sierra Brokerage Services, Inc. (CRD #36573, Columbus, Ohio), Richard M. Geiger (CRD #873869, Registered Representative, Morton, Illinois), and Jeffrey Allen Richardson (CRD #736249, Registered Principal, Columbus, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Richardson were censured and fined \$10,000, jointly and severally, and Geiger was fined \$10,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Richardson, permitted Geiger and another individual to function in a capacity requiring registration as an equity trader when they were not registered in that capacity.

Geiger's suspension began August 19, 2002, and will conclude at the close of business September 16, 2002. (NASD Case #C8B020014)

**William Scott & Co., LLC (CRD #14979, Union, New Jersey), Joseph William Glodek, Sr. (CRD #223163, Registered Principal, Somerset, New Jersey), and Joseph Scott Glodek, Jr. (CRD #2024287, Registered Principal, Roseland, New Jersey)** submitted an Offer of Settlement in which the firm was censured and fined \$10,000. The firm also will not be permitted to underwrite any initial public offerings (IPOs) of any equity securities for any "Developmental Stage Company" as defined in Regulation S-X, Rule 1-02(h); make a market in any publicly traded security; and/or offer for sale to public customers any securities of the firm or its holding company for three years. The firm will also hire, within 60 days, an independent consultant to review and revise its supervisory and compliance procedures and

systems, and provide a copy of the consultant's recommendations to NASD's Department of Enforcement not later than six months after the consultant's retention by the firm. The Glodeks were individually fined \$10,000, required to requalify as general securities principals before again acting in that capacity with any NASD member, and required to pay \$82,301.92, plus interest, in restitution to public customers, jointly and severally. Glodek, Sr. was suspended from association with any NASD member in any capacity for six months. Glodek, Jr. was suspended from association with any NASD member in any capacity for 45 days, and suspended from association with any NASD member in any principal capacity for one year.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through associated persons, directly or indirectly, by the use of any means or instrumentalities of interstate commerce or the mails, or of any facility of any national securities exchange employed artifices, devices, or schemes to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit; effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances; and failed to observe high standards of commercial honor and just and equitable principles of trade. The firm, acting through the Glodeks and others, engaged in acts and practices in connection with the accounts of public customers including, but not limited to, the use of high-pressure telephone sales pitches to sell low-priced, speculative securities; the use of baseless price and performance predictions; the use of material, false, misleading, and inaccurate representations; the failure to disclose material information in connection with the solicitation of purchases in certain securities; the effecting of unauthorized transactions in the accounts of public customers; and the failure or refusal to sell securities from the accounts of customers despite customer instructions to do so.

The findings also stated that the firm, acting through the Glodeks, failed to implement, maintain, and enforce effective supervisory systems and procedures that would have enabled the firm to comply with federal securities laws and NASD rules regarding underwriting and retail brokerage activities and the qualifications of, and registration process for, associated persons. In addition, NASD found that the firm, acting through the Glodeks, knew, or should have known, of "red flags" indicating sales-practice violations, including the firm's receipt of numerous customer complaints alleging material misrepresentations, its failure to disclose material information, its effecting of unauthorized transactions, and its failure to take sufficient supervisory steps in response to the "red flags." NASD also found that the firm failed to establish, maintain, and enforce

written procedures that would have enabled the firm to prevent and detect the conduct alleged in the customer complaints.

Glodek, Sr.'s suspension will begin October 18, 2002, and will conclude at the close of business April 17, 2003. Glodek, Jr.'s suspension in any capacity began September 3, 2002, and will conclude at the close of business October 17, 2002. Glodek, Jr.'s suspension in any principal capacity will begin October 18, 2002, and will conclude at the close of business October 17, 2003. (NASD Case #C10010004)

## Firms and Individuals Fined

**Cantella & Co., Inc. (CRD #13905, Boston, Massachusetts) and James Michael Freeman (CRD #1501323, Registered Principal, Newburyport, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Freeman, failed to establish and maintain a system to supervise the activities of each registered representative and associated person that was reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. (NASD Case #C11020029)

**K.W. Chambers & Co., (CRD #1432, Clayton, Missouri) and Robert Lewis Chambers (CRD #1231649, Registered Principal, Clayton, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$12,500, jointly and severally. The firm is required to revise its written supervisory procedures with respect to the Regulatory Element of NASD's Continuing Education requirements. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Chambers, permitted registered representatives to perform duties as registered persons while their registration status was inactive due to their failure to timely complete the Regulatory Element of NASD's Continuing Education requirements. The findings also stated that the firm, acting through Chambers, failed to establish, maintain, and enforce written supervisory procedures designed to fulfill the firm's obligation to comply with the Regulatory Element of NASD's Continuing Education requirements. (NASD Case #C04020021)

**Terra Nova Trading, L.L.C. (CRD #37761, Chicago, Illinois) and Gerard Dean Putnam, Jr. (CRD #1033935, Registered Principal, Kenilworth, Illinois)** submitted an Offer of Settlement in which the firm was censured and fined \$25,000 and Putnam was 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, in connection with its advertisement on the firm's Web site, the firm made exaggerated, unwarranted, and false statements and

claims to members of the public and omitted to state material facts. According to the findings, the advertisement omitted any disclosure of the risks inherent in day trading, including the risk of loss of funds, risks that trades would not be executed, risks associated with volatile stocks, risks that customers would pay high commissions due to the large volume of trades, the risk that customers might not have sufficient market knowledge or understanding of how the member firm's systems worked, and risks associated with margin trading or short selling while making misrepresentations regarding day trading. The findings also stated that Putnam failed to supervise the firm's branch office reasonably to detect and prevent the above violations. (NASD Case #C01000037)

## Firms Fined

**Anglo-American Investor Services Corp. (CRD #14278, Charlottesville, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$7,000, jointly and severally, and fined an additional \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed officers of the firm to engage in a securities business while their registrations were inactive for failing to comply with the Regulatory Element of NASD's Continuing Education requirements. The findings also stated that the firm, acting through an individual, failed to adopt, implement, and enforce adequate written supervisory procedures reasonably designed to ensure compliance with NASD Membership and Registration Rule 1120. (NASD Case #C07020064)

**BNY Clearing Services, LLC (CRD #15879, Milwaukee, Wisconsin)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) execution reports that contained inaccurate, incomplete, or improperly formatted data. The findings also stated that the firm, for certain orders received from its correspondents, failed to report all applicable order information required to be recorded under NASD Marketplace Rule 6954 to OATS. (NASD Case #CMS020135)

**Consultiva Securities, Inc. (CRD #103818, Hato Rey, Puerto Rico)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$5,000, jointly and severally, and fined \$7,500 individually. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to ensure compliance with NASD Rule 1120. The findings also stated that the firm allowed an officer of the firm

to engage in a securities business while her registrations were inactive after failing to complete the Regulatory Element of NASD's Continuing Education requirements. In addition, NASD found that the firm failed to file an annual audited report within the time period prescribed by the Securities and Exchange Commission (SEC) Act Rule 17a-5. (NASD Case #C07020063)

**EarlyBirdCapital, Inc. (CRD #28629, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$19,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to engage in activities that required a general securities principal registration when they did not hold such registration. The findings stated that the firm used a bank account owned by an affiliated broker/dealer to hold investors' funds in connection with a private placement of securities. NASD also found that the firm failed to establish a special reserve account in connection with a private placement of securities, failed to make three weekly reserve calculations, and failed to inform the SEC and NASD that it had not made required deposits to the reserve account on three occasions. In addition, the findings stated that the firm received and held customer funds in connection with a private placement in contravention of its membership agreement, and received checks from investors in connection with the private placement but failed to establish and maintain a checks-received-and-delivered blotter. Moreover, NASD found that the firm permitted an individual to act in a registered capacity when his registration status was inactive due to his failure to comply with the Regulatory Element of NASD's Continuing Education requirements. (NASD Case #C10020070)

**Gerard Klauer Mattison & Co., Inc. (CRD #16686, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that as a registered market maker in securities listed on NASDAQ and in other securities traded in the over-the-counter (OTC) market, it failed to execute the orders in an amount up to its published quotation size upon presentment and thereby failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning the firm quote rules. (NASD Case #CMS020128)

**Glenn Michael Financial, Inc. (CRD #37912, Melville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) the correct symbol indicating whether it executed

transactions in eligible securities in a principal, riskless principal, or agency capacity. 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 trade reporting. (NASD Case #CLI020004)

**Icapital Markets LLC (CRD #5209, Jersey City, 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 entered a priced order into an electronic communication network (ECN) that was displayed in The NASDAQ Stock Market. NASD found that the firm caused a locked/crossed market condition prior to the market opening by entering a priced order into an ECN, that, in turn, displayed the order by entering a bid (ask) quotation that locked/crossed another market maker's quotations. The findings stated that the firm did not immediately thereafter send through SelectNet<sup>®</sup> to the market maker(s) whose quote(s) were locked or crossed a Trade-or-Move message(s) that was at the receiving market maker's quoted price, and whose aggregate size was at least an amount equal to the size of the agency order the firm entered into the ECN. (NASD Case #CMS020132)

**Keane Securities Co., Inc. (CRD #8452, 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 NASDAQ National Market<sup>®</sup> (NNM<sup>®</sup>) and SmallCap<sup>SM</sup> securities, and failed to designate through ACT such last-sale reports as late. In addition, NASD found that the firm failed to report the time of execution through ACT in late, last-sale reports of transactions in NNM securities. The findings also stated that the firm, as a registered market maker in the securities, failed to execute orders upon presentment and thereby failed to honor its published quotation. NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning firm quotations. (NASD Case #CMS020127)

**Needham & Company, Inc. (CRD #16360, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$80,000, and required to undertake to retain an independent consultant to review the firm's policies, practices, and procedures relating to the Rule. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in connection with market making activity in a stock, the firm traded ahead of its research report. The findings also stated that the firm failed to establish and maintain a supervisory system and written supervisory procedures

reasonably designed to achieve compliance with Interpretation IM-2110-4 that prohibits member firms from purposefully trading ahead of research reports. (NASD Case #CMS020131)

**One Financial Network, LLC (CRD #47966, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it was a party to a locked or crossed market condition prior to the market opening, received a Trade-or-Move message in each instance through SelectNet, and within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. (NASD Case #CMS020133)

**Robertson Stephens, Inc. (CRD #41271, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$72,500, required to pay \$37,294.55, plus interest, in restitution to public customers, and required to revise its written supervisory procedures concerning obtaining and maintaining a record of dealers contacted and quotations received in order to comply with best execution and recordkeeping obligations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker, it failed to execute orders upon presentment and thereby failed to honor its published quotation. In addition, NASD found that the firm, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market participants whose quotations would be locked or crossed, entered bid or asked quotations in The NASDAQ Stock Market, which caused a locked or crossed condition to occur. The findings also stated that the firm failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions and failed to designate through ACT such last-sale reports as late. NASD also determined that the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions, failed to execute an order fully and promptly, and failed to contact and obtain quotations from dealers to determine the best inter-dealer market for the subject security. Furthermore, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning obtaining and maintaining a record of dealers contacted and quotations received in order to comply with best execution and recordkeeping obligations. (NASD Case #CMS020119)

**Ryan, Beck & Co., LLC (CRD #3248, Livingston, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which

the firm was censured and fined \$31,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report OTC transactions in high-yield securities that are not otherwise reported during the operating hours of Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>) or that are not executed through FIPS. NASD also found that the firm failed to accurately prepare order memoranda ("order tickets"), in that the firm failed to memorialize the time of entry and/or the correct time of execution of order tickets for equity and high-yield fixed income securities transactions, and failed to maintain order tickets for transactions in high-yield fixed income securities. The findings also stated that the firm was the underwriter for a firm commitment underwriting in the IPO of an issuer, and, in connection with the IPO, the firm received payments for the purchase of common stock from public customers prior to the effective date of the Offering. (NASD Case #C8A020046)

**Spear, Leeds & Kellogg, L.P. (CRD #3466, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$156,000, and required to revise its written supervisory procedures within 30 days to address deficiencies. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in NASDAQ securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. NASD found that the firm, as a non-market maker, executed short-sale transactions on a riskless principal basis, and failed to make an affirmative determination prior to executing such transactions.

The findings stated that the firm, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or asked quotations in The NASDAQ Stock Market that caused a locked or crossed market condition to occur in each instance, and caused a locked or crossed market condition prior to the market opening by entering a bid (ask) quotation that locked or crossed another market maker's quotations without immediately thereafter sending through SelectNet, to the market maker(s) whose quotes it locked or crossed, a Trade-or-Move message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. In addition, NASD found that the firm received an order to buy or sell through SelectNet for a normal unit of trading greater than its published quotation size at the time of receipt of such order; executed a transaction in an amount of shares less than the size of the order; and, after such execution, failed to immediately display a revised quotation at a price that was inferior to its

previous published quotation. Furthermore, the findings stated that the firm failed to execute the orders upon presentment and thereby failed to honor its published quotation and effected transactions in securities listed on The NASDAQ Stock Market while a trading halt was in effect with respect to such securities. NASD also found that the firm was a party to a locked or crossed market condition prior to the market opening and received a Trade-or-Move message in each instance through SelectNet, and, within 30 seconds of receiving such message, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked or uncrossed that market.

In addition, NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning the designation of supervisory personnel, ACT compliance, the duty of best execution, limit order protection, order handling rules, one percent rule, registration of traders and supervisors, transaction reporting, Small Order Execution System (SOES), record keeping, locked/crossed markets, anti-competitive practices, information barriers, short sales, firm quote compliance, and the obligation to regularly and rigorously assess the quality of competing markets. (NASD Case #CMS020124)

**Spencer Edwards, Inc. (CRD #22067, Englewood, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in OTC Equity securities. The findings also stated that the firm failed to designate through ACT such last-sale reports as late. (NASD Case #CMS020120)

**Terra Nova Trading, L.L.C. (CRD #37761, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it published and distributed advertisements and pieces of sales literature that were exaggerated, unwarranted, or misleading. The findings also stated that the firm's advertising and sales literature mischaracterized an SEC study and misleadingly suggested that public customers who executed trades through the firm would receive better prices than through most other market participants. (NASD Case #CAF010022)

**The Key Group Inc. (CRD #42373, Ramsey, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$7,000, fined \$4,180, jointly and severally, and required to pay \$3,320, plus interest, in restitution to public customers. Without admitting or denying the allega-

tions, the firm consented to the described sanctions and to the entry of findings that it effected transactions for public customers of various municipal bonds on a principal basis at prices that were not fair and reasonable without taking into consideration all relevant factors. NASD also found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with the Municipal Securities Rulemaking Board (MSRB) Rule concerning municipal markups. The findings also stated that the firm engaged in activity that was not provided for in the firm's membership agreement and that constituted a material change in the firm's business operations. (NASD Case #C9B020051)

**Thomas Weisel Partners, LLC (CRD #46237, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders upon presentment and thereby failed to honor its published quotation. NASD found that the firm caused a locked or crossed market condition prior to the market opening by entering a bid (ask) quotation that locked or crossed another market maker's quotations without immediately thereafter sending through SelectNet, to the market maker(s) whose quote(s) it locked or crossed, a Trade-or-Move message(s) that was at the receiving market maker's quoted price and whose aggregate size was at least 5000 shares. The findings also stated that the firm was a party to a locked or crossed market condition prior to the market opening, received a Trade-or-Move message in each instance through SelectNet, and, within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked or uncrossed that market. (NASD Case #CMS020129)

## Individuals Barred or Suspended

**Ellen Marie Aleshire (CRD #2411031, Registered Representative, Antioch, Illinois)** was fined \$15,000, suspended from association with any NASD member in all capacities for 30 days, and ordered to requalify as a general securities representative and a general securities principal. The sanctions were based on findings that Aleshire disseminated to members of the public memoranda and form letters soliciting the purchase of securities that were misleading.

Aleshire's suspension began August 5, 2002, and concluded at the close of business September 3, 2002. (NASD Case #C8A010060)

**Emad Amin Alwan (CRD #2582497, Registered Representative, Arnold, Maryland)** submitted a Letter of

Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to disgorge \$106,392 in commissions in partial restitution to public customers. Alwan must pay the restitution before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Alwan consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. **(NASD Case #C9A020028)**

**Manuel Martin Bello (CRD #1557140, Registered Principal, Kinnelon, New Jersey)** was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanction following the review of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Bello failed to produce bank records in response to NASD requests for documents, and failed to produce certain bank account statements in a timely manner in response to NASD requests for documents. **(NASD Case #CAF000030)**

**Robert Elmer Bowman (CRD #2837329, Registered Representative, Naples, Florida)** 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 12 months, and ordered to disgorge \$19,500 in commissions received to public customers in partial restitution. Bowman must pay the fine and disgorgement immediately upon reassociation with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bowman consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm.

Bowman's suspension began September 3, 2002, and will conclude at the close of business September 2, 2003. **(NASD Case #C07020062)**

**Mario Andretti Chotoosingh (CRD #4315338, Registered Representative, Freeport, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Chotoosingh must pay the fine immediately upon reassociation with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Chotoosingh consented to the described sanctions and to the entry of findings that he failed to disclose material facts on a Uniform Application for Securities Industry Registration or Transfer Form (Form U-4).

Chotoosingh's suspension began August 19, 2002, and will conclude at the close of business October 17, 2002. **(NASD Case #C10020065)**

**James David Clifford (CRD #1335296, Registered Principal, Sayville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$17,500, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam in any capacity for which registration is sought. In light of the financial status of Clifford, a fine of \$17,500 has been imposed. The fine must be paid before Clifford reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Clifford consented to the described sanctions and to the entry of findings that he failed to amend, or cause to amend, the Forms U-4 for registered representatives after receiving information regarding customer complaints filed against the registered representatives of his member firm. In addition, Clifford failed to report to NASD customer complaints that were received by his member firm. The findings also stated that, on behalf of his member firm, Clifford failed to establish, maintain, and enforce adequate written supervisory procedures and a supervisory system reasonably designed to prevent and detect unauthorized trading by his member firm's registered representatives.

Clifford's suspension began August 19, 2002, and will conclude at the close of business February 18, 2003. **(NASD Case #C3A020033)**

**Riley Chad Cochran (CRD #2960214, Associated Person, Arlington, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Cochran reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cochran consented to the described sanctions and to the entry of findings that he caused the signature of a public customer to be applied on an application and supporting documents for a life insurance policy without the customer's knowledge or consent and submitted them to an insurance company for processing.

Cochran's suspension began September 3, 2002 and will conclude on March 2, 2003. **(NASD Case #C06020006)**

**Gerald Mason Crossman (CRD #2769096, Registered Representative, Bakersfield, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 120 days. Without admitting or denying the allegations, Mason consented to the described sanctions and to the entry of findings that he signed the name of a public customer to a letter of authorization relating to the transfer of an account, without the customer's knowledge or consent, and submitted it to his member firm in order to expedite the account transfer.



Crossman's suspension began August 19, 2002, and will conclude at the close of business December 16, 2002. (NASD Case #C02020037)

**Bari Lee Courts (CRD #2202457, Registered Representative, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,165, including disgorgement of \$7,665 in commissions, and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Courts reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Courts 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.

Courts' suspension began August 19, 2002, and will conclude at the close of business September 17, 2002. (NASD Case #C8B020015)

**Delesley Dessasau (CRD #4188874, Associated Person, East Orange, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Dessasau willfully filed a false Form U-4. Dessasau also failed to respond to NASD requests for information. (NASD Case #C9B020015)

**Gregg Alan Emde (CRD #2309776, Registered Representative, Ballwin, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Emde consented to the described sanction and to the entry of findings that he deposited checks drawn from public customers' securities and checking accounts made payable to Emde for investment purposes into his own personal bank account without the knowledge or consent of the customer. (NASD Case #C04020027)

**Eric Anthony Eunis (CRD #2389961, Registered Representative, East Greenwich, Rhode Island)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any member firm in any capacity for three months, required to disgorge \$18,100 in commissions received, and required to pay partial restitution, plus interest, to public customers. The fine and restitution must be paid before Eunis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Eunis consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Eunis' suspension began September 3, 2002, and will conclude at the close December 2, 2002. (NASD Case #C11020030)

**George Mallory Freeman, Jr. (CRD #835077, Registered Representative, Longwood, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Freeman consented to the described sanction and to the entry of findings that he engaged in private securities transactions, for compensation, without prior written authorization from his member firms to participate in these transactions. (NASD Case #C07020060)

**John Patrick Goldsworthy (CRD #730533, Registered Representative, Metairie, Louisiana)** was barred from association with any NASD member in any capacity. The SEC affirmed the sanction following appeal of an October 2000 NAC decision. The sanction was based on findings that Goldsworthy engaged in private securities transactions without prior written notice to, and approval from, his member firm. (NASD Case #C05940077)

**Patricia Bisch Green (CRD #1320375, Registered Principal, Houston, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$15,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Green consented to the described sanctions and to the entry of findings that she effected, or caused to be effected, transactions totaling \$237,679 in the securities account of a public customer, and exercised discretionary power in the account without prior written authorization from the customer or acceptance in writing by her member firm of the account as discretionary. The findings also stated that Green failed to follow a customer's instructions, which resulted in losses in excess of \$300,000 to the customer.

Green's suspension began September 3, 2002 and will conclude at the close of business September 23, 2002. (NASD Case #C06020007)

**Arthur Edward Gurr (CRD #232190, Registered Principal, Woodinville, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gurr consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The findings also stated that Gurr failed to respond to NASD requests for information. (NASD Case #C3B020012)

**Forrest G. Harris (CRD #4219457, Registered Representative, Charlotte, North Carolina)** was fined \$7,500 and suspended from association with any NASD member in any

capacity for two months. The sanctions are based on findings that Harris submitted an inaccurate Form U-4 to NASD.

Harris' suspension began August 5, 2002, and will conclude at the close of business October 4, 2002. (NASD Case #C07010084)

**David Vernon Jackson (CRD #870389, Registered Representative, Marina del Rey, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$30,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before any application for reentry into the securities industry will be considered. Without admitting or denying the allegations, Jackson consented to the described sanctions and to the entry of findings that he authorized and gave publicity to investment research reports recommending the purchase of securities and failed to disclose fully on the reports the nature, terms, and amounts of compensation he received from the reports.

Jackson's suspension began February 19, 2002, and will conclude at the close of business February 18, 2004. (NASD Case #CMS020015)

**Hunter Hobson Johnson, III (CRD #2941305, Registered Representative, Montgomery, Alabama)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Johnson consented to the described sanction 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.

Johnson's suspension began August 19, 2002, and will conclude at the close of business September 30, 2002. (NASD Case #C05020035)

**Matthew Jun Kang (CRD #2855301, Registered Representative, Fort Lee, 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, Kang consented to the described sanction and to the entry of findings that at various time periods, without authorization, he released hold designations that had been placed on collateral that his customers had pledged in connection with loans each customer had obtained through a bank. The findings stated that by improperly releasing the hold designations, Kang permitted his customers to liquidate their collateral, thereby leaving the loans unsecured. (NASD Case #C9B020049)

**John F. Keegan (CRD #2125338, Registered Principal, Duluth, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$30,000, suspended from

association with any NASD member in any capacity for 15 days, and suspended from association with any NASD member in a principal or supervisory capacity for 80 days. Keegan must pay the fine immediately upon reassociation with any NASD member following the suspensions or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Keegan consented to the entry of findings that, as his member firm's chief compliance officer, he failed to obtain supervisory review and approval of advertising and sales literature (ASL), and failed to file pieces of ASL with NASD's Advertising Regulation Department, as required, before they were distributed to the public. The findings also stated that Keegan failed to adequately supervise his member firm's advertising activities, including the use of ASL that omitted material facts, and the use of ASL containing exaggerations and unwarranted and misleading statements. NASD found that Keegan was responsible for his member firm's failure to develop systems and procedures, including written supervisory procedures, reasonably designed to achieve compliance with NASD's advertising regulations regarding review of ASL. Keegan was also found responsible for his firm's failure to establish procedures reasonably designed to achieve compliance with NASD rules regarding unlicensed persons illegally discussing or recommending securities products to potential customers.

Keegan's suspension in any capacity will begin December 13, 2002, and will conclude December 27, 2002. Keegan's suspension in any principal or supervisory capacity will begin December 30, 2002, and will conclude at the close of business March 19, 2003. (NASD Case #CAF020025)

**Charles Robert Kolesar (CRD #1381404, Registered Representative, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$45,318, including disgorgement of \$40,318 of financial benefits received, and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Kolesar reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kolesar consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notification to, or obtaining written approval from, his member firm.

Kolesar's suspension began August 19, 2002, and will conclude on May 18, 2003. (NASD Case #C3A020035)

**Igor Krishtul (CRD #2011198, Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement in which he was fined \$27,500 and suspended from association with any NASD member in any capacity for two years. Krishtul must pay the fine immediately upon reassociation with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or

denying the allegations, Krishtul consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm. The findings also stated that Krishtul provided false, misleading, and/or evasive testimony during an on-the-record interview with NASD.

Krishtul's suspension began August 19, 2002, and will conclude at the close of business August 18, 2004. (NASD Case #C10020017)

**Michael Philip Kummerer (CRD #4059287, Registered Representative, Naperville, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Kummerer reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kummerer consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on a Form U-4.

Kummerer's suspension began August 19, 2002, and will conclude at the close of business February 18, 2003. (NASD Case #C8A020047)

**Rodney Louis (CRD #2842334, Registered Representative, Wellington, Florida)** 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, Louis consented to the described sanction and to the entry of findings that he engaged in business activities outside the scope of his employment with his member firm, for compensation, and failed to provide written notification to his member firm. The findings also stated that Louis failed to respond to NASD requests for information. (NASD Case #C07020054)

**Lewis Evan Miller (CRD #2310740, Registered Representative, Cedarhurst, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, suspended from association with any NASD member in any capacity for three months, and required to pay \$4,662.50, plus interest, in restitution to member firms. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders in NASDAQ securities into Instinet ("INCA") at prices that he knew would improve, and intended to improve, the National Best Bid or Offer ("NBBO") in such securities, in that the full price and size of such orders would be reflected in the public quotation system as the best price and size at which a market participant was willing to buy or sell such securities. NASD also found that after entering such orders into INCA, Miller knowingly and intentionally entered orders to buy or sell shares of such securities in his trading account at his member firm because he knew, and intended,

that they would be routed to market makers whose automated execution systems were programmed to buy or sell, and did buy and sell, such securities on an automated basis at prices equal to the NBBO and in an amount greater than the NBBO. The findings stated that, by knowingly and intentionally engaging in this course of conduct, Miller bought (sold) shares of these securities at prices that were lower (higher) than he would otherwise have been able to buy (sell) shares of these securities immediately after Miller received the executions of the orders that he had entered in his trading account; intentionally and knowingly canceled certain priced limit orders that he entered into INCA; and obtained a financial benefit of approximately \$4,662.50.

Miller's suspension began September 3, 2002, and will conclude at the close of business December 2, 2002. (NASD Case #CMS020134)

**Michael Miola (CRD #1255741, Registered Representative, Upper Brookville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000, including disgorgement of \$4,565.43, and suspended from association with any NASD member in any capacity for 30 days. Miola must pay the fine before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Miola consented to the described sanctions and to the entry of findings that he submitted advertisements to NASD that were materially misleading and failed to disclose the risks inherent in investing in the technology and sciences area; failed to disclose that a fund was a non-diversified fund; and failed to disclose that the fund had an undue concentration in a limited number of securities. The findings also stated that Miola failed to obtain approval from a registered principal of the firm prior to submitting the ads to NASD. In addition, the findings stated that Miola acted as a general securities principal and general securities representative without proper registration.

Miola's suspension began March 4, 2002, and concluded at the close of business April 2, 2002. (NASD Case #CAF020002)

**Jamie Mireles (CRD #4385949, Associated Person, Merrillville, Indiana)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Mireles willfully filed a false Form U-4 and failed to respond to NASD requests for information. (NASD Case #C8A020004)

**Joanne Crenshaw Mohrman (CRD #1102226, Registered Representative, Jackson, Mississippi)** 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, Mohrman consented to the described sanction and to the entry of findings that she

received \$15,344.75 in checks from an insurance company, which were sent in error for the benefit of her deceased mother; failed and neglected to return the checks to the insurance company; and, instead, converted the funds to her own use and benefit, without the knowledge or consent of the insurance company. The findings also stated that Mohrman forged the signature of her deceased mother to checks issued by an insurance company and to a letter requesting the insurance company to replace a lost check. **(NASD Case #C05020039)**

**Michael John Mussay (CRD #2147562, Registered Principal, Grayslake, 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. Without admitting or denying the allegations, Mussay consented to the described sanctions and to the entry of findings that under the mistaken belief that the customer had given consent, affixed the signature of a public customer to a mutual fund Change of Dealer Authorization Form without the knowledge or consent of the customer.

Mussay's suspension began August 15, 2002, and concluded at the close of business August 28, 2002. **(NASD Case #C8A020048)**

**Mark Bryon Neumeier (CRD #2181967, Registered Representative, Springfield, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Neumeier consented to the described sanction and to the entry of findings that he intentionally or recklessly employed devices to defraud a customer, and engaged in a course of business that operated as a fraud or deceit upon a customer by making untrue statements of material facts and/or omitting to state material facts necessary to make the statements made, in light of the circumstances in which they were made, not misleading, in connection with the sale of mutual funds shares held in accounts with his member firm, which Neumeier sold through redemptions on behalf of the customer. The findings stated that Neumeier recommended the redemption by a public customer of mutual fund shares held in securities accounts with his member firm and the subsequent issuance of personal checks totaling \$169,230 by the customer payable to Neumeier for investment purposes, when in fact, Neumeier failed to invest the funds for the customer's benefit, converted \$40,000 for his own use and benefit, and applied \$129,230 to other securities accounts with his member firm in which the customer had no beneficial interest. The findings also stated that Neumeier failed to respond to NASD requests for information. **(NASD Case #C04020026)**

**Hao D. Nguyen (CRD #2458736, Registered Representative, Houston, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from

association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Nguyen consented to the described sanctions and to the entry of findings that he paid advances on escrowed commissions to unregistered persons and encouraged unlicensed persons to engage in conduct requiring registration.

Nguyen's suspension began August 5, 2002, and will conclude at the close of business October 3, 2002. **(NASD Case #CAF020021)**

**Nelson Daniel Polite, Jr. (CRD #2698001, Registered Principal, Orlando, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Polite failed to respond to NASD requests for information. The findings also stated that Polite entered into a written agreement with a public customer to trade his account and share the profits earned in the account without prior written authorization from his member firm to share in the profits. **(NASD Case #C07020021)**

**David Vyacheslav Polushkin (CRD #2557710, Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Polushkin, no monetary sanctions have been imposed. Without admitting or denying the allegations, Polushkin consented to the described sanction and to the entry of findings that he effected purchase transactions in the joint account of public customers without their prior knowledge, authorization, or consent.

Polushkin's suspension began August 5, 2002, and will conclude at the close of business November 4, 2002. **(NASD Case #C10020018)**

**Robert Louis Redding (CRD #1114706, Registered Representative, Reno, Nevada)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$116,687 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Redding reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Redding 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.

Redding's suspension began August 19, 2002, and will conclude at the close of business February 18, 2003. **(NASD Case #C02020038)**

**Sean Michael Sanborn (CRD #2900360, Registered Representative, Staten Island, 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 nine months. Sanborn must pay the fine immediately upon reassociation with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sanborn 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.

Sanborn's suspension began August 19, 2002, and will conclude on May 18, 2003. (NASD Case #C10020051)

**Joseph Anthony Sanchez (CRD #2393619, Registered Representative, Tampa, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sanchez failed to respond to NASD requests for documents and information. Sanchez also executed unauthorized transactions in a public customer's account. (NASD Case #C9B020018)

**Terry Michael Skocher (CRD #1453144, Registered Representative, Tarpon Springs, 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 15 business days. The fine must be paid before Skocher reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Skocher consented to the described sanctions and to the entry of findings that he failed to properly qualify and/or register with NASD in the appropriate capacity prior to engaging in a securities business and/or functioning as a representative with his member firm.

Skocher's suspension began August 19, 2002, and concluded at the close of business September 9, 2002. (NASD Case #C04020024)

**David Phillip Scheyer (CRD #1362617, Registered Representative, Cincinnati, Ohio)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Scheyer received at least \$8,459.01 from public customers representing payments for insurance premiums, failed to apply the premium payments to the applicable policies, and failed to use the funds to benefit the insurance customers in any manner. The findings also stated that Scheyer failed to respond to NASD requests for information. (NASD Case #C8B020001)

**Todd Alan Shermer (CRD #2921738, Registered Representative, Tarpon Springs, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$37,402.37, including disgorgement of \$32,402.37 in earned commissions, and suspended from association with any NASD member in any capacity for nine months. Shermer must pay the fine immediately upon reassociation with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the

allegations, Shermer consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed to provide prompt written notice to his member firm.

Shermer's suspension began August 5, 2002, and will conclude on May 4, 2003. (NASD Case #C07020059)

**Henry Shin a/k/a Yoo Ho (CRD #3210557, Registered Representative, Levittown, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Shin effected unauthorized transactions in the account of a public customer and misrepresented to the customer that he would reimburse the customer for any losses resulting from a transaction. The findings also stated that Shin engaged in the solicitation and purchase or sale of call and put contracts for which NASD did not register him to do. NASD also found that Shin failed to respond to NASD requests for information. (NASD Case #C10020027)

**Frederick Joseph Smilek (CRD #3133710, Associated Person, Tuckahoe, New York)** submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for four months. Smilek must pay the fine immediately upon reassociation with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Smilek consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U-4.

Smilek's suspension began August 19, 2002, and will conclude at the close of business December 18, 2002. (NASD Case #C10010145)

**Melissa Jane Thomas (CRD #4410492, Registered Representative, Newington, Connecticut)** 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, Thomas consented to the described sanction and to the entry of findings that she deposited a public customer's \$150 check into her personal checking account and converted those funds for her own use and benefit without the customer's knowledge or consent. (NASD Case #C11020031)

**Rory Lyle Thompson (CRD #4019820, Registered Representative, Conway, Arkansas)** 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 four months. The fine must be paid before Thompson reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Thompson consented to the described sanctions and to the entry of findings that he signed the name of a public customer

to "Change of Agent of Record & Broker/Dealer" forms for the purpose of changing the broker/dealer of record on variable annuity contracts owned by the customer. The findings also stated that Thompson failed to respond timely to NASD requests for information.

Thompson's suspension began August 19, 2002, and will conclude at the close of business December 18, 2002. (NASD Case #C05020037)

**Christopher Stephen Venetis (CRD #2930555, Registered Representative, Youngsville, Louisiana)** 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, Venetis consented to the described sanction and to the entry of findings that he executed an unauthorized sale of shares in the account of a public customer in the amount of \$6,206.18, without the customer's knowledge or consent. (NASD Case #C05020038)

## Decisions Issued

The following decisions have been issued by the District Business Conduct Committee or the Office of Hearings and has been appealed to or called for review by the NAC as of August 2, 2002. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions for which time for appeal has not yet expired will be reported in the next *Notices to Members*.

**David Mark Hopkins (CRD #2176588, Registered Representative, Houston, Texas)** was fined \$19,100 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Hopkins reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanction was based on findings that Hopkins participated in private securities transactions without providing prior written notice to, or receiving written permission from, his member firm.

Hopkins has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3A020010)

**Key West Securities, Inc. (CRD #38305, Cardiff by the Sea, California)** and **Amr "Tony" Elgindy (CRD #1824634, Registered Principal, Colleyville, Texas)** were each fined \$3,000. The firm was suspended from NASD membership for one year and Elgindy was suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that the firm, acting through Elgindy, made a series of high bids without intending to honor them. Furthermore, the firm, acting through Elgindy, issued recommendations that failed to disclose that the firm was a market maker in the stock.

The firm and Elgindy have appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #CMS000015)

**Mark Horace Love (CRD #1268245, Registered Representative, Tucson, Arizona)** was fined \$25,000 and suspended from association with any NASD member in any capacity for 90 days. The sanction was based on findings that Love participated in private securities transactions without providing prior written notice to his member firm.

Love has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3A010009)

**Timothy John Ryan (CRD #1245453, Registered Principal, Kingston, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Ryan effected four unauthorized transactions in two institutional customer accounts without their approval or consent. The findings also stated that Ryan opened an account for one of the two institutional customers at his member firm without the knowledge or consent of the managing director of the advisor to the institutional customer.

Ryan has appealed this decision to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #CAF010013)

**John Valentino Tito (CRD #3215150, Associated Person, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Tito provided a false response on his Form U-4. The findings also stated that Tito failed to respond to NASD requests for information.

Tito has appealed this decision to the NAC, and the sanction is not in effect pending consideration of the appeal. (NASD Case #C10010146)

## 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.

**Jeffrey Clyde Adams (CRD #2833013, Registered Representative, Lake Mary, Florida)** was named as a respondent in an NASD complaint alleging that he effected the purchase of securities in the accounts of public customers without the prior authorization of the customers. The complaint

also alleges that Adams created and transmitted falsified and unauthorized requests to his member firm's clearing firm for \$18,016 to be transferred from his member firm's error account and credited to the accounts of public customers for the incurred losses that resulted from Adams' unauthorized trades in their accounts. In addition, the complaint alleges that Adams exercised discretion in effecting the sale and purchase of stocks in the account of a public customer without obtaining the discretionary authority in writing from the customer, and without having the account accepted as a discretionary account by his member firm. (NASD Case #C07020058)

**Michael Baldo a/k/a Miguel Baldo Lozano (CRD #2620455, Registered Representative, Long Island City, New York)** was named as a respondent in an NASD complaint alleging that he engaged in unauthorized transactions in the accounts of public customers without their prior knowledge, authorization, or consent. (NASD Case #C10020062)

**Mathieu Siddhartha Chamberlain (CRD #2292343, Registered Representative, New York, New York)** was named a respondent in an NASD complaint alleging that he opened an account at his member firm in the name of a public customer and executed the purchase of stocks without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Chamberlain executed discretion in the accounts of public customers pursuant to a customer's verbal authorization without consulting the customer before each transaction, without having obtained prior written authorization from the customer, and without having obtained his member firm's prior written acceptance of the account as discretionary. In addition, the complaint alleges that Chamberlain exceeded his authority in the accounts of public customers and executed the sale of stocks without the customers' knowledge, authorization, or consent. (NASD Case #C10020067)

**Cybervest Securities, Inc. (CRD #40767, Ft. Lauderdale, Florida), William Pang Chien (CRD #2251029, Registered Principal, Plantation, Florida), Michael Chien (CRD #3066470, Registered Principal, Sunrise, Florida), and Scott Keith Kaplan (CRD #2908394, Registered Representative, Brooklyn, New York)** were named as respondents in an NASD complaint alleging that the firm, William Chien, Michael Chien, and Kaplan engaged in an unregistered distribution of common stock. The complaint also alleges that the firm, acting through the Chiens, by use of the instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud public customers by making untrue statements of material facts or omitting to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. Specifically, the complaint alleges that the firm, at the direction of the Chiens, provided to public customers an overview and/or private placement memorandum that contained material misrepresentations and omissions of facts.

In addition, the complaint alleges that Kaplan, in connection with the sale of common stock, by use of the instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud public customers by making untrue statements of material facts or omitting to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. Specifically, the complaint alleges that Kaplan told public customers that they were directly or indirectly buying shares of NASDAQ; that NASDAQ was going to engage in an IPO within a short period of time; and failed to disclose the conflicts of interest between the common stock and his member firm, the lack of secondary market for the stock, the limited operating history of many of the target companies, and specific industry risk factors for the target companies. In addition, the complaint alleges that Kaplan made price predictions to customers without a reasonable basis. Moreover, the complaint alleges that Michael Chien failed to properly qualify and register as a general principal, and the firm and William Chien delegated to Michael Chien supervisory responsibilities for a branch office when he was not qualified or registered as a general principal.

Furthermore, the complaint alleges that the firm allowed Kaplan to conduct a securities business that required registration when he was not registered and permitted a statutorily disqualified individual to associate with the firm and work in a branch office and the firm's main office. The complaint also alleges that the firm, acting through William Chien, failed to establish, maintain, and enforce written supervisory procedures and systems to supervise the activities of registered representatives and associated persons reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. In addition, the complaint alleges that Michael Chien became aware of "red flags" indicating that salespersons might have been misrepresenting a stock offering and failed to take adequate steps to investigate whether salespersons were engaging in sales practice violations. The complaint also alleges that the firm allowed a branch office supervisor to fail to take steps to supervise the sales practices of registered persons at the branch office. Furthermore, the complaint alleges that the Chiens failed to maintain a file or records of Web sites for the firm and the common stock that included the persons who prepared and approved of their use, the dates the Web sites were activated, and the dates the Web sites were materially revised. (NASD Case #CAF020024)

**Stephen Jay Drescher (CRD #2619465, Registered Principal, Remsenburg, New York)** was named as a respondent in an NASD complaint alleging that he agreed in advance to artificially manipulate the market price and demand for securities involved in IPOs as soon as aftermarket trading began by engaging in unlawful schemes designed to allow others, including other brokerage firms, and his member firm to profit from aftermarket sales of securities in the IPOs while concealing their beneficial ownership and control over substantial quantities of such securities. The complaint also alleges that Drescher and others

entered into secret, undisclosed arrangements, including sham "lock-up" agreements and undisclosed agreements, to purchase securities from bridge lenders and other insiders affiliated with the issuers, which allowed his member firm and others to obtain substantial quantities of securities at below-market prices once aftermarket trading began.

The complaint further alleges that Drescher and his co-conspirators, directly or indirectly, by the use of any means or instrumentalities of interstate commerce or the mails, or of any facility of any national securities exchange, employed artifices, devices, or schemes to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the 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 or would operate as a fraud or deceit upon persons in connection with the purchase of securities. Moreover, the complaint alleges that Drescher and others unlawfully, willfully, and knowingly devised and intended to devise a scheme and artifice to defraud; and, to obtain money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit by means of wire communication in interstate and foreign commerce, signs, signals, and sounds. (NASD Case #CAF020029)

**Todd Mitchell Eberhard (CRD #1636538, Registered Principal, New York, New York)** was named as a respondent in an NASD complaint alleging that he settled customer complaints away from his member firms without the knowledge and consent of the firms and failed to report settlements in excess of \$15,000 to his member firm. The complaint also alleges that Eberhard included improper confidentiality provisions in settlement agreements with public customers that effectively prohibited the customers from disclosing the underlying facts of their complaints and the settlement terms to NASD. The complaint further alleges that Eberhard willfully failed to disclose and/or misrepresent, amend, and timely amend his Forms U-4 to disclose material information. In addition, the complaint alleges that Eberhard effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. The complaint further alleges that Eberhard exercised discretion in the accounts of public customers without having written agreements with the customers authorizing Eberhard to exercise discretion and without having obtained his member firm's prior written acceptance of the accounts as discretionary.

The NASD complaint also alleges that Eberhard, in connection with the purchase, sale, and/or offer of mutual fund shares, directly or indirectly, by the use of any means or instrumentalities of interstate commerce or the mails, or of any facility of any national securities exchange, employed artifices, devices, or schemes to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit; and/or effected transactions in, or induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. Moreover, the complaint alleges that Eberhard failed to disclose material information to public customers in connection with the purchase and sales of mutual funds, purchased mutual fund shares that deprived the customers of volume discounts available, and/or deprived the customers of the lower and shorter-term contingent deferred sales charges that had the effect of increasing Eberhard's commission revenue. The complaint also alleges that Eberhard employed a pattern of short-term trading of mutual funds and effected transactions in the accounts of public customers without having reasonable grounds for believing the transactions were suitable for the customers on the basis of their financial situations and needs. Furthermore, the complaint alleges that Eberhard intentionally created false account statements with inflated valuations to induce a public customer to maintain accounts with him. In addition, the complaint alleges that Eberhard provided false, misleading and/or evasive testimony during an on-the-record interview with NASD. (NASD Case #C10020072)

**Theodora Kenneybrew (CRD #2660317, Registered Representative, Chino, California)** was named as a respondent in an NASD complaint alleging that she received \$75,474.73 in checks for investment purposes, failed and neglected to invest the funds as instructed, and, instead, without the knowledge or consent of the customers, endorsed and deposited the checks into a bank account over which she had control and used the funds for her own personal benefit or for some purpose other than the benefit of the customers. The complaint also alleges that Kenneybrew, without her member firm's knowledge or consent, authored and signed, under the name of a fictitious person (a purported firm supervisor), a letter on firm letterhead through which she misrepresented to a public customer that a back office error had resulted in her deposit being credited to another customer's account and that the error was being corrected. In addition, the complaint alleges that Kenneybrew misrepresented that the customer's next monthly statement would accurately reflect the deposit with interest. (NASD Case #C02020041)

**Jon Kwan Lee (CRD #2538075, Registered Principal, Bayside, New York)** was named as a respondent in an NASD complaint alleging that he created and supported a procedure at his member firm to improperly delay customers' ability to transfer their securities holdings or monies to another broker/dealer via the Automated Account Transfer Service (ACATS) process. Specifically, the complaint alleges that Lee directed the change of customer account numbers and the transfer of securities positions and money balances into the newly created accounts, without customer authorization for the purpose of delaying customer ACATS requests. (NASD Case #C3A020032)



Jerry Stephen Lund (CRD #2201043, Registered Representative, Longmont, Colorado) was named as a respondent in an NASD complaint alleging that he caused the execution of sell transactions in the account of public customers when he knew, or should have known, that the transactions were unauthorized in that he knew, or should have known, that his authorization to effect transactions in the customers' accounts had been revoked, and that the transactions were inconsistent with the stated intentions of the customers. (NASD Case #C3A020036)

Thomas Michael Rossi (CRD #2333282, Registered Representative, Bayside, New York) was named as a respondent in an NASD complaint alleging that he entered unauthorized trades in the accounts of public customers. In addition, the complaint alleges that Rossi failed to preserve the books and records of his member firm in a readily accessible place pursuant to SEC Rule 17a-4, and failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C3A020031)

#### **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.

**Blackwood Securities, LLC**  
New York, New York  
(July 15, 2002)

**Growthstocks.Com**  
Richardson, Texas  
(July 15, 2002)

#### **Suspension Lifted**

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

**Fieldstone Services Corp.**  
New York, New York  
(July 19, 2002)

#### **Firms Expelled for Failing to Pay Fines and/or Costs in Accordance With NASD Rule 8320**

**C.B. Hill & Associates Inc.,**  
Jacksonville, Florida  
(July 31, 2002)

**Fletcher and Faraday, Inc.**  
Hempstead, New York  
(July 31, 2002)

**Growthstock.com**  
Richardson, Texas  
(July 31, 2002)

**Key Star Securities, Inc.**  
Indianapolis, Indiana  
(July 31, 2002)

**LCP Capital Corp.**  
Staten Island, New York  
(July 31, 2002)

**New World Securities, Inc.**  
Garden City, New York  
(July 31, 2002)

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

**Branstetter, Todd Robert**  
Boca Raton, Florida  
(July 17, 2002)

**Elmore, Dwann S.**  
San Diego, California  
(July 17, 2002)

**Frain, Michael W.**  
St. Louis, Missouri  
(July 17, 2002)

**Hentschel, III, Frederick J.**  
Manhasset, New York  
(July 16, 2002)

**Macaluso, Susan**  
McAllen Texas  
(July 11, 2002)

**Marcotte, Lori M.**  
Jefferson, Louisiana  
(July 16, 2002)

**Pierre, Petruce**  
Spring Valley, New York  
(June 28, 2002)

**Russo, Thomas A.**  
Staten Island, New York  
(July 17, 2002)

**Tirovolas, Dimos S.**  
Lindenhurst, New York  
(July 15, 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.)**

**Beaucond, III, Charles A.**  
Kapolei, Hawaii  
(July 10, 2002)

**Fiscus, Johnny Joe**  
Plymouth, Indianapolis  
(July 11, 2002)

**Harris, Michael O., W.**  
Los Angeles, California  
(July 22, 2002)

**Hernandez, Ulisses R.**  
Queens, New York  
(July 12, 2002)

**Karahalios, Perry P.**  
Des Plaines, Illinois  
(June 28, 2002)

**Kimes, Kody Frederick**  
Cottage Grove, Oregon  
(July 24, 2002)

**Lee, Jon Kwan**  
Bayside, New York  
(July 5, 2002)

**McCarthy, Edward P.**  
Chicago, Illinois  
(July 12, 2002)

**Merced, Carlos E.**  
Victorville, California  
(July 5, 2002)

**Silverberg, Jay Steven**  
Los Angeles, California  
(July 30, 2002)

**Stapleton, Bill L.**  
Weilerbach, Germany  
(July 11, 2002)

**Visbal, Michael A.**  
Pacific Palisades, California  
(July 5, 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.

**Leahy, Curtis Franklin**  
Costa Mesa, California  
(July 8, 2002)

**Individuals Whose Registrations Were Revoked for Failing to Pay Fines and/or Costs in Accordance With NASD Rule 8320**

**Barres, Philip F.**  
Old Westbury, New York  
(July 31, 2002)

**Bronfman, Jeffrey**  
Aventura, Florida  
(July 31, 2002)

**Cole, Jr., Terry P.**  
Indianapolis, Indiana  
(July 31, 2002)

**DeCarlo, Anthony F.**  
Woodbridge, New Jersey  
(July 31, 2002)

**DiGiacomo, John Philip**  
New York, New York  
(July 31, 2002)

**Halverson, James D.**  
Las Vegas, Nevada  
(July 31, 2002)

**Jawitz, Michael B.**  
Hallandale Beach, Florida  
(July 31, 2002)

**Kapoor, Avinash**  
Dallas, Texas  
(July 31, 2002)

**Malagon, George H.**  
Fresh Meadow, New York  
(July 31, 2002)

**Margiotta, John J.**  
Larchmont, New York  
(July 31, 2002)

**McDonough, John M.**  
Las Vegas, Nevada  
(July 31, 2002)

**Sapir, Yury**  
Staten Island, New York  
(July 31, 2002)

**Smith, Kevin M.**  
New York, New York  
(July 31, 2002)

**Socci, Anthony S.**  
Trumbull, Connecticut  
(July 31, 2002)

**Stern, Ira S.**  
Columbus, Ohio  
(July 31, 2002)

**VonFeldt, DeWayne R.**  
Oklahoma City, Oklahoma  
(July 31, 2002)

**Vu, Tanya N.**  
Houston, Texas  
(July 31, 2002)

### **NASD Fines and Suspends Two CSFB Execs for Failing to Prevent IPO Profit Sharing Paybacks**

NASD fined and suspended two Credit Suisse First Boston (CSFB) executives for failing to supervise and prevent the firm from receiving excessive commissions in exchange for allocations of "hot" IPOs. J. Anthony Ehinger, Global Head of Equity Sales, and George W. Coleman, the firm's Institutional Listed Sales Trading Head, were fined \$200,000 each, and both were suspended for 60 days—30 days in all capacities and 30 days as supervisors.

This case is related to the January 2002 enforcement actions in which NASD and the SEC fined CSFB \$100 million for extracting tens of millions of dollars from customers in inflated commissions that amounted to a "profit sharing" arrangement for allocations of "hot" IPOs ([www.nasdr.com/news/pr2002/release\\_02\\_005.html](http://www.nasdr.com/news/pr2002/release_02_005.html)). NASD determined that CSFB's IPO profit sharing practice was widespread, affecting more than 300 accounts serviced by the firm's Institutional Sales Trading Desk,

its Private Client Services (PCS) Group and its PCS Technology Group. Ehinger supervised all three units and Coleman, who reported to Ehinger, supervised the Institutional Listed Sales Trading Desk.

Separately, NASD also suspended four former CSFB employees for one year and fined them \$30,000 each for failing to provide NASD with timely testimony in this matter. They are Scott M. Brown, Richard Scott Bushley, Michael S. Grunwald, and John E. Schmidt. All of these individuals were employed in the firm's PCS Technology Group in San Francisco.

In this action against Ehinger and Coleman, NASD found that the departments under their supervision executed thousands of transactions with excessive commissions, influenced CSFB's IPO allocations to customers who paid excessive commissions, and developed reports tracking both the amount of commissions paid by customers and as well as their IPO profits. Ehinger and Coleman created a tracking document they called the New Issue Performance Report (NIPR) to track the commissions paid by certain accounts, and the profit that each such account would have made if it sold its IPO shares on certain dates. Using this report, Ehinger and Coleman and some of their subordinates encouraged customers to increase their commission payments if they believed the customers' IPO profits were too high in relation to the commissions paid to the firm. Ehinger and Coleman both discussed with their subordinates their goal to have certain accounts pay commissions amounting to as much as one-third of their profits. They also discussed ratios of profits to commissions with CSFB's Syndicate Desk in connection with efforts to increase commission revenue and to influence IPO allocation decisions.

Although Ehinger and Coleman communicated with CSFB's Legal and Compliance Department about whether, in general, high commissions could be accepted by CSFB, Legal and Compliance was not informed of the magnitude and scope of excessive commission rates being paid to the firm, or the existence of the NIPR. While Ehinger's and Coleman's contacts with the department are a mitigating factor, those contacts were insufficient to discharge their supervisory responsibilities.

In settling these matters, all respondents neither admitted nor denied the allegations.

NASD acknowledges the assistance and cooperation of the SEC's Northeast Regional Office in this matter.

# Special Notice to Members

SEPTEMBER 2002

## SUGGESTED ROUTING

Legal & Compliance  
Senior Management

## KEY TOPICS

National Adjudicatory Council

## INFORMATIONAL

### NAC Nominees

NASD Announces Nominees for Regional Industry Member Vacancies on the National Adjudicatory Council

#### Executive Summary

The purpose of this *Special Notice to Members* is to announce the nominee for the National Adjudicatory Council (NAC) for the North Region. The nominee, nominated for a three-year term beginning in January 2003, is listed in Exhibit I. This nominee will be proposed to the NASD National Nominating Committee in 14 calendar days, unless the election is contested.

We appreciate the interest shown by many members in expressing their desire to serve on the NAC and thank everyone for their continuing support of the self-regulatory process. The Regional Nominating Committee thoroughly reviewed the background of every candidate before selecting its nominee in an effort to secure appropriate and fair representation of the region.

#### Contested Election Procedures

If an officer, director, or employee of an NASD member in the North Region has not been proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she should send a written notice to Barbara Z. Sweeney, Corporate Secretary, at the address below within 14 calendar days after the publishing date (September 19) of this *Special Notice*.

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

02-62

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The Contested Nomination Procedures can be found in Article VI of the NASD Regulation By-Laws. If no additional candidate comes forward within 14 calendar days, the Regional Nominating Committee shall certify its candidate to the National Nominating Committee.

### Questions/Further Information

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

### National Adjudicatory Council Membership and Function

#### *Membership*

The NAC consists of 14 members—seven Industry members and seven Non-Industry members. Two Industry members are nominated by the NASD National Nominating Committee and are appointed by the Board of Directors of NASD Regulation, Inc. as at-large members. Five Industry members each represent one of the following geographic regions:

#### **West Region:**

Hawaii, California, Nevada, Arizona, Colorado, New Mexico, Utah, Wyoming, Alaska, Idaho, Montana, Oregon, and Washington (*Districts 1, 2, and 3*)

#### **South Region:**

Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, Florida, Georgia, North Carolina, South Carolina, Puerto Rico, Virginia, Canal Zone, and the Virgin Islands (*Districts 5, 6, and 7*)

#### **Central Region:**

Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Illinois, Indiana, Michigan, part of Western New York state, and Wisconsin (*Districts 4 and 8*)

#### **North Region:**

Delaware, Maryland, Pennsylvania, West Virginia, District of Columbia, New Jersey, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for New York City, Long Island, and Western New York state) (*Districts 9 and 11*)

#### **New York:**

New York City and Long Island (*District 10*)

Only one region (North) has a vacancy for this election. NAC members for the other four regions (West, South, Central, and New York) are indicated in Exhibit II, along with the year in which their terms expire.<sup>1</sup>

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## Function

According to the NASD Regulation By-Laws, the NAC is authorized to act for the NASD Board of Governors in matters concerning:

- \* appeals or reviews of disciplinary proceedings, statutory disqualification proceedings, or membership proceedings;
- \* the review of offers of settlement; letters of acceptance, waiver, and consent; and minor rule violation plan letters;
- \* the exercise of exemptive authority; and
- \* other proceedings or actions authorized by the Rules of the Association.

The NAC also considers and makes recommendations to the Board on enforcement policy and rule changes relating to the business and sales practices of NASD members and associated persons.

## Endnote

- 1 On September 20, 2001, the NASD Board of Governors approved an amendment to Article V, Section 5.4 of the NASD Regulation By-Laws changing the term of office of NAC members from two years, with the opportunity to serve consecutive terms, to a single three-year term. This By-Law amendment was approved by the SEC on October 17, 2001. To effect the change from two-year to three-year terms, NASD divided the NAC seats into three transitional classes, as nearly equal in number and as evenly divided between industry and non-industry seats as possible. The purpose of this division is to assure appropriate continuity and orderly turnover during the transitional period. The transitional period will end in January 2004, at which time all members of the NAC will be elected to a single three-year term.

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## Exhibit I

### Nominee for NAC Industry Member Vacancy

#### North Region (Districts 9 and 10)

A. Louis Denton

Philadelphia Corporation for Investment Services  
Philadelphia, PA

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## Exhibit II

### **NAC Members with Terms Expiring in January 2004**

#### **Philip Oppenheimer (New York Region)**

Oppenheimer & Close, Inc.  
New York, NY

#### **William Svoboda (West Region)**

Morgan Stanley  
Palo Alto, CA

### **NAC Members with Terms Expiring in January 2005**

#### **Douglas Kelly (Central Region)**

A.G. Edwards & Sons, Inc.  
St. Louis, MO

#### **Barbara Weaver (South Region)**

Legg Mason Wood Walker, Inc.  
New Orleans, LA

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*Notices to Members* (December 1996 to current) are also available on the Internet at [www.nasdr.com](http://www.nasdr.com).

02-62

# Special Notice to Members

SEPTEMBER 2002

## SUGGESTED ROUTING

Compliance  
Legal  
Senior Management

## KEY TOPICS

NASD By-Laws  
Regulatory Fee

## INFORMATIONAL

### Regulatory Fees

NASD Provides Additional Information on Amendments to Section 8 of Schedule A to NASD's By-Laws to Eliminate the Regulatory Fee and to Implement a New Transaction-Based Trading Activity Fee as Announced in *Notice to Members 02-41*; **Implementation Date: October 1, 2002**

#### Executive Summary

As announced in *Notice to Members 02-41*, NASD has amended Section 8 of Schedule A to the NASD By-Laws, eliminating the Regulatory Fee and instituting a new transaction-based Trading Activity Fee which funds NASD's member regulatory activities.<sup>1</sup> NASD will implement these changes on October 1, 2002.

Included with this *Notice* is Attachment A, the text of the amendments to Schedule A to the NASD By-Laws.

#### Questions/Further Information

Questions concerning this *Notice* should be directed to NASD Finance, at (240) 386-5397, or NASD Regulatory Policy and Oversight, Office of General Counsel, at (202) 728-8071.

#### Discussion

NASD has amended Section 8 of Schedule A to NASD's By-Laws to eliminate the Regulatory Fee and to institute a new transaction-based Trading Activity Fee. This fee is used by NASD solely 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. As further detailed below, NASD will implement this rule change and assess the new Trading Activity Fee effective October 1, 2002.

# 02-63



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 service (ACT). There is a 400 share minimum and 7,500 share maximum per transaction. The Regulatory Fee is assessed only against Nasdaq and other off-exchange transactions, although the revenues are used to support member regulatory activities across all markets. The amendment eliminates the existing Nasdaq market-based Regulatory Fee and institutes a transaction-based Trading Activity Fee applied across all markets. The Trading Activity Fee will be assessed on the sell-side of all member transactions in all covered securities regardless of where the trade is executed, with the exception that the fee will be assessed on the buy-side of member transactions in the case of transactions where the counterparty is not a broker/dealer (e.g., internalized customer trades).<sup>2</sup> Specifically, covered securities are: 1) all exchange-registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness); 2) all other equity securities traded other than on an exchange; and 3) all security futures wherever executed.

NASD anticipates that changes in the rate structure will ultimately reduce the revenue from the collection of the Trading Activity Fee by approximately 50%. This change in conjunction with the proposed amendments to the Gross Income Assessment and Personnel Assessment will be revenue neutral to NASD.<sup>3</sup> To minimize the impact on member firms, the restructuring of fees will be phased in over a three-year period. Specifically, for the Trading Activity Fee, since the revenue generated from this fee will be reduced by approximately 50%, the fee reduction will be

phased in at a rate of 33% in Year 1 (16.5% reduction), 67% in Year 2 (33.5% reduction) and 100% in Year 3 (50% reduction).

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. NASD will publish the applicable rate no later than the implementation date, October 1, 2002.

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 will continue to be assessed directly to the clearing firms responsible for clearing the transaction on behalf of the member firm. Clearing firms will be required to self-report to NASD on a monthly basis the aggregate shares for stocks, aggregate number of contracts for options, and/or aggregate number of round turn transactions for security future products at the clearing firm level. Submission segregated by exchange is optional and will not be required by NASD. Clearing firms will be required to self-report to NASD the required data and submit payment 10 business days following the end of the month. For example, for October 2002 transactions, clearing firms will be required to self-report and remit payment by November 14, 2002. The prescribed form of the monthly report will be published prior to the filing deadline.

### Implementation Date

NASD will implement this amendment beginning on October 1, 2002. The first self-reporting and payment will be due November 14, 2002.

## Questions and Answers

**Question 1:** Are transactions effected on a national securities exchange by a dually registered specialist or floor based market maker, covered by the Trading Activity Fee?

No. Proprietary transactions by a jointly registered NASD member, in its capacity as an exchange specialist or market maker, that are subject to SEC Section 11(a) and SEC Rule 11a1-1(T)(a) thereunder, are excluded from the scope of the Trading Activity Fee. However, any other transactions permitted by SEC Section 11(a), such as bona fide arbitrage or hedge transactions involving a long or short position in an equity security, will be subject to the Trading Activity Fee.<sup>4</sup>

**Question 2:** Are transactions executed by floor based brokers who are dually registered with NASD and a national securities exchange exempt from the Trading Activity Fee?

Yes. If the floor based broker qualifies for exemption from NASD registration under SEC Rule 15b9-1, then any transactions effected by that broker will be exempt from the Trading Activity Fee.

**Question 3:** If a non-NASD member floor broker executes a trade on an NASD member's behalf on the floor of a national securities exchange, will a fee be assessed on the floorbroker?

No. Non-NASD member floor brokers acting as agent on an NASD member's behalf will not be assessed the Trading Activity Fee. However, the NASD

member, the seller of the security, will be assessed the Trading Activity Fee on the transaction.

**Question 4:** If an NASD member purchases a covered security from a non-NASD member broker/dealer, will the NASD member's transaction be assessed a fee even though the rule provides for a fee assessment only on sales of covered securities?

No. As noted above in the text of the *Notice*, although the general model is to assess the Trading Activity Fee on the sell side of the member transactions, the Trading Activity Fee will be assessed on the buy side of member transactions in transactions where the counterparty is not a broker/dealer. Because clearing firms have significant operational constraints that prevent them from efficiently identifying transactions with non-NASD member broker/dealers, no fee will be assessed on NASD member's transactions for purchases of covered securities from non-NASD member broker/dealers. In contrast, NASD members will be charged a Trading Activity Fee when they are on the buy- side of a transaction with a non broker/dealer (e.g., an internalized trade).

**Question 5:** Schedule A to NASD's By-Laws, Section 2(b)(3), states that "each member shall pay to NASD a fee per share for each sale of a covered security." Will Electronic Communication Networks (ECN) that employ so called "facilitation" accounts to maintain the anonymity of their subscribers, be assessed a fee on transactions flowing through these facilitation accounts.

No. In transactions where an ECN is acting as a counterparty for the purpose of maintaining the anonymity of its subscribers, the Trading Activity Fee will be assessed as if the two subscribers had engaged in the transaction directly.

**Question 6: Are debt securities excluded from the scope of the Trading Activity Fee?**

Yes. Consistent with SEC Section 31 Fees, debt securities including convertible debt are not included in the scope of the Trading Activity Fee.

**Question 7: Are conventional options traded over the counter excluded from the scope of the Trading Activity Fee?**

Yes. However, while the initial sale of a conventional option contract is excluded from the Trading Activity Fee, any resulting exercise will be subject to the Trading Activity Fee if the exercise results in the physical delivery of the underlying securities. See also Question 10.

**Question 8: How does NASD interpret the term "round turn" as it relates to assessing the Trading Activity Fee on security futures products?**

For purposes of applying the Trading Activity Fee to security futures products, a round turn transaction is defined as a purchase and subsequent liquidating sale, or a sale followed by a subsequent covering purchase, of a contract for future delivery by a single market participant.

**Question 9: The Trading Activity Fee includes in its definition of a covered security "all security futures wherever executed." An NASD member firm can be both a Futures Commission Merchant (FCM) and an NASD registered broker/dealer and therefore, can hold both futures accounts, which are regulated by the National Futures Association (NFA), and securities accounts, which are regulated by NASD. Does the Trading Activity Fee apply to transactions in the futures accounts held by an NASD member and regulated by the NFA?**

No. The Trading Activity Fee will only be assessed on transactions held in securities accounts regulated by NASD.

**Question 10: Will the Trading Activity Fee be assessed on the settlement or exercise of options or security futures products?**

Yes. If settlement results in the physical delivery of the underlying security or securities, the Trading Activity Fee will be assessed on the sale of the underlying security. However, options or security futures that are cash-settled and do not result in the sale of the underlying security or securities, do not result in a Trading Activity Fee assessment.

**Question 11: Are options and futures involving narrow and broad based indexes exempt from the Trading Activity Fee?**

Yes. As with the SEC Section 31 Fee, both options and futures on both narrow and broad based indexes are excluded from the Trading Activity Fee.

**Question 12: Are American Depository Receipts (ADRs) included in the scope of the Trading Activity Fee?**

Yes. Secondary market transactions in ADRs are subject to the Trading Activity Fee. However, conversions of ADRs to foreign ordinary shares are not subject to the Trading Activity Fee.

**Question 13: Are Exchange Traded Funds ("ETF") and other structured products included in the scope of the Trading Activity Fee?**

Yes. If an ETF or other structured product is subject to the SEC's Section 31 Fee, it will also be subject to the Trading Activity Fee. However, any transfer of underlying securities to create or redeem an ETF is not subject to the Trading Activity Fee.

**Question 14: If a firm executes a trade on a riskless principal basis, will a fee be assessed on both the initial leg of the transaction and the offsetting transaction with the customer?**

No. Riskless principal transactions reported correctly will be viewed as one transaction for purposes of assessing the Trading Activity Fee.

**Question 15: Will a Trading Activity Fee be assessed on clearing related transactions such as Prime Broker, Step Outs, CNS "flips", CMTA trades, "GUS give-ups", etc.?**

No. The scope of the Trading Activity Fee was designed to include only the initial execution of a transaction. Therefore, any back office or clearing

related transactions that serve only to facilitate the clearance and settlement of a previously executed transaction will not be assessed a Trading Activity Fee.

**Question 16: Should the data be submitted to NASD by the clearing firm for the Trading Activity Fee?**

Yes. Data should be submitted as monthly aggregates at the clearing firm level.

**Question 17: Should the data be submitted on a trade by trade basis for the Trading Activity Fee?**

No. Monthly aggregate data should be submitted to NASD by the 10th business day following the end of the month. This should include aggregate number of shares for stocks, aggregate number of contracts for options and aggregate number of round turn transactions for security future products.

**Question 18: Should the data be calculated from the trade date?**

Yes. The data should be calculated from the trade date (as opposed to the settlement date).

**Question 19: Is the rate for the Trading Activity Fee based on principal value like the SEC Section 31 Fee?**

No. The rate for the Trading Activity Fee is based on aggregate volumes. There will be a separate rate for share volume for stocks, contract volume for options and round turn transaction volume for futures.

**Question 20:** Will there be a minimum and maximum for the Trading Activity Fee similar to the Section 8 fee?

No. There will not be a minimum and maximum. The transactions are to be reported in aggregate not per trade.

**Question 21:** Will SEC Section 31 rounding rules apply for the Trading Activity Fee?

No. Rounding rules will not apply because the Trading Activity Fee is calculated and reported in aggregate.

**Question 22:** How will NASD verify the accuracy of members' self-reporting to ensure fair assessment of the Trading Activity Fee?

As part of NASD's regular cycle examinations of members, the monthly Trading Activity Fee reports will be audited against the books and records to ensure the accuracy of the reports. Discrepancies may result in disciplinary action, depending on the facts and circumstances.

## Endnotes

1. These changes were submitted to the SEC (for immediate effectiveness) on July 23, 2002 and amended on August 21, 2002. See Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR-NASD-2002-98).
2. See Question 3 in the text of this *Notice* regarding transactions with non-NASD member broker/dealers.
3. See Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893 (August 30, 2002) (SR-NASD-2002-99).
4. This is true as long as the underlying security is subject to the Trading Activity Fee.

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## ATTACHMENT A

New language is underlined; deletions are in brackets.

### Schedule A to [the] NASD By-Laws

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

#### Section [8] 2 – Member Regulation [Transaction] Fees

(a) NASD fee on cleared transactions. Each member shall be assessed a transaction charge of \$.0625 per 1,000 shares, with a minimum charge per side of \$.025 and a maximum charge per side of \$.46875 for each over-the-counter transaction with another member of the Association reportable through ACT in which the member acts either as an agent or a principal for the purchase and/or sale of equity securities.]

[(b) 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.]

(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.

### **Section 3 – SEC Transaction Fee**

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

## Section [2] 4 – Fees

(a) Each member shall be assessed a fee of \$75.00 for the registration of each branch office, as defined in the By-Laws. Each member shall be assessed an annual fee for each branch office in an amount equal to the lesser of (1) \$75.00 per registered branch, or (2) the product of \$75.00 and the number of registered representatives and registered principals associated with the member at the end of [the Association] NASD's fiscal year.

(b) [The] NASD shall assess each member a fee of:

(1) \$85.00 for each initial Form U-4 filed by the member with [the] NASD for the registration of a representative or principal, except that the following discounts shall apply to the filing of Forms U-4 to transfer the registration of representatives or principals in connection with acquisition of all or a part of a member's business by another member:

Number of Registered Personnel Transferred	Discount
1,000—1,999	10%
2,000—2,999	20%
3,000—3,999	30%
4,000—4,999	40%
5,000 and over	50%

(2) \$40.00 for each initial Form U-5 filed by the member with [the] NASD for the termination of a registered representative or registered principal, plus a late filing fee of \$80.00 if the member fails to file the initial Form U-5 within 30 days after the date of termination;

(3) \$20.00 for each amended Form U-4 or Form U-5 filed by the member with [the] NASD;

(4) No change.

(5) \$10.00 for each fingerprint card submitted by the member to [the] NASD, plus any other charge that may be imposed by the United States Department of Justice for processing such fingerprint card; and

(6) No Change.

(c) through (k) No Change.



(l)(1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to [the Association] NASD at least three business days prior to the due date; and

(2) through (3) No Change.

### **Section [3] 5 – Elimination of Duplicate Assessments and Fees**

No Change to rule language.

### **Section [4] 6 – Assessments and Fees for New Members, Resigning Members and Successor Organizations**

(a) The assessment of a firm, which is not a member throughout [the Association] NASD's full calendar year from January 1 to December 31, shall be based upon the number of quarter years of membership. The proration for a new member shall include the quarter year in which the member is admitted to membership. The proration for a member which resigns shall include the quarter year in which the member's letter of resignation is received in [the Association] NASD's Executive Office.

(b) A member [which] that is a successor organization to a previous member or members shall assume the unpaid balance of the assessments of its predecessor or predecessors and its next assessment shall be determined, if applicable, upon the assessment data of its predecessors. Such successor member shall not be required to re-register branch offices and personnel of predecessor members or pay registration fees therefor. Whether a member is the successor organization to a previous member or members shall be determined by [the Association] NASD upon a consideration of the terms and conditions of the particular merger, consolidation, reorganization, or succession. A member [which] that has simply acquired the personnel and offices of another member under circumstances [which] that do not constitute the member a successor organization shall not be required to assume the unpaid assessments of the other member. Such non-successor member shall be required to re-register the branch offices and personnel acquired from the other member and pay applicable registration fees.

### **Section [5] 7 – Gross Revenue for Assessment Purposes**

No Change to rule language.

**Section [6] 8 —Fees for Filing Documents Pursuant to the Corporate Financing Rule**

(a) There shall be a fee imposed for the filing of initial documents relating to any offering filed with [the] NASD pursuant to the Corporate Financing Rule equal to \$500 plus .01% of the proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not exceed \$30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) There shall be an additional fee imposed for the filing of any amendment or other change to the documents initially filed with [the] NASD pursuant to the Corporate Financing Rule equal to .01% of the net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not exceed \$30,500.

**Section [7] 9 —Service Charge for Processing Extension of Time Requests**

(a) No Change.

(b) The service charge for processing each initial extension of time request and for all subsequent extension of time requests (1) involving the same transaction under Regulation T and/or (2) involving an extension of time previously granted pursuant to Rule 15c3-3(n) shall be \$2.00; provided, however, that the service charge shall be \$1.00 for extension of time requests filed electronically by members using [the Association] NASD's Automated Regulatory Reporting System.

**Section [9] 10 – Subscription Charges for Firm Access Query System (FAQS)**

No Change to rule language.

**Section [10] 11 – Request for Data and Publications**

No Change to rule language.

**Section [11] 12 – Reserved**

No Change to rule language.

**Section [12] 13 – Application and Annual Fees for Member Firms with Statutorily Disqualified Individuals**

(a) Any member firm seeking to employ or continuing to employ as an associated person any individual who is subject to a disqualification from association with a member as set forth in Article III, Section 4 of [the Association] NASD's By-Laws shall, upon the filing of an application pursuant to Article III, Section 3, paragraph (d) of [the Association] NASD's By-Laws, pay to [the Association] NASD a fee of \$1,500.00. Any member firm whose application filed pursuant to Article III, Section 3, paragraph (d) of [the Association] NASD's By-Laws results in a full hearing for eligibility in [the Association] NASD pursuant to the Rule 9640 Series, shall pay to [the Association] NASD an additional fee of \$2,500.00.

(b) Any member firm continuing to employ as an associated person any individual subject to disqualification from association with a member as set forth in Article III, Section 4 of [the Association] NASD's By-Laws shall pay annually to [the Association] NASD a fee of \$1,500.00 when such person or individual is classified as a Tier 1 statutorily disqualified individual, and a fee of \$1,000.00 when such person or individual is classified as a Tier 2 statutorily disqualified individual.

**Section [13] 14 – Review Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted**

There shall be a review charge for each and every item of advertisement, sales literature, and other such material, whether in printed, video or other form, filed with or submitted to [the Association] NASD, except for items that are filed or submitted in response to a written request from [the Association] NASD's Advertising Regulation Department issued pursuant to the spot check procedures set forth in [the Association] NASD's Rules as follows: (1) for printed material reviewed, \$75.00, plus \$10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, \$75.00, plus \$10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation Department there shall be a review charge of \$500.00 per item plus \$25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

# Special Notice to Members

SEPTEMBER 2002

## SUGGESTED ROUTING

Corporate Finance  
Legal & Compliance  
Senior Management

REQUEST FOR COMMENT

ACTION REQUESTED BY OCTOBER 21, 2002

## Prohibition of Certain Bank Tying Arrangements

**NASD Advises Members that Participation in Tying Arrangements that Violate Federal Statutes Also Violate Just and Equitable Principles of Trade; Requests Information Concerning Such Practices; Comment Period Expires October 21, 2002**

## KEY TOPICS

Investment Banking  
Just and Equitable Principles of Trade  
NASD Rule 2110

### Discussion

NASD is concerned that the practice of tying commercial credit to investment banking is becoming increasingly widespread. For example, a recent survey of 3,500 corporate financial officers by the Association of Financial Professionals found that 48% believed that "if they did not award other business to short-term lenders, the amount of short-term credit provided would be reduced" and 39% would expect no credit to be offered if they did not award other business to lenders.<sup>1</sup>

Section 1972(1) of the Bank Holding Company Act Amendments of 1970 ("BHCA") provides that a bank shall not extend credit to a borrower on the condition that a borrower obtain some other service from the bank or an affiliate of the bank.<sup>2</sup> Congress enacted the anti-tying provisions of the BHCA "to provide specific statutory assurance that the use of the economic power of the bank will not lead to a lessening of competition or unfair competitive practices."<sup>3</sup> In light of the unique economic role that banks play by virtue of their control over a company's credit, Congress perceived tying transactions involving credit as "inherently anti-competitive, operating to the detriment of banking and non-banking competitors alike; thus the anti-tying provisions were intended to regulate conditional transactions in the extension of credit by bank more stringently than had the Supreme Court under the general antitrust statutes."<sup>4</sup> Accordingly, Congress dispensed with the need to prove the economic power of banks or to prove the anticompetitive effects of tying arrangements under the BHCA.<sup>5</sup> In addition, the

02-64

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statute permits customers or competitors who believe that they have suffered injury to their business or property due to illegal tying to pursue treble damages in a civil suit.

NASD's investigations into bank tying arrangements indicate that tying commercial loans to investment banking services usually arises in the following three commercial banking contexts: (1) bridge loans in which the loan is intended to be repaid out of the proceeds of a bond offering; (2) backup credit facilities that support a company's issuance of commercial paper; and (3) syndicated loans.<sup>6</sup> Access to these types of credit at commercial rates is critical to many companies and may provide a bank with the opportunity to require a company to purchase tied investment banking services, such as investment grade debt underwriting. In addition, illegal tying arrangements may involve structuring commercial credit transactions to support investment banking activities, such as providing federally insured bridge loans to support a merger or acquisition transaction managed by the investment bank.

NASD cautions members that it would violate Rule 2110, which requires members to conduct business in accordance with just and equitable principles of trade, for any member to aid and abet a violation of the BHCA by an affiliated bank.<sup>7</sup> A member would be deemed to have aided and abetted a violation of the BHCA if the member charged a company for investment banking services when it knew or had reason to know that the purchase of those services had been tied to the provision of commercial credit, in violation of the federal banking laws.

NASD also is concerned that tying may occur with respect to other services, such as pension management services. For example, any arrangement that ties the pricing of a company's investment banking services to services the investment bank or its affiliates provide to the company's employee pension plan could violate the company's fiduciary duties under the Employee Retirement and Income Security Act ("ERISA").<sup>8</sup> NASD cautions members that it would violate Rule 2110 for any member to aid and abet a violation of ERISA.

### Action Requested

NASD encourages all interested parties to provide information concerning any arrangement in which commercial lending or pension plan services have been tied to investment banking services. NASD encourages commenters to provide specific examples of such arrangements. This information should be provided by October 21, 2002 to:

Corporate Financing Department  
NASD

9509 Key West Avenue  
Rockville, MD 20850

Or

e-mailed to [nasdrcorpfin@nasdr.com](mailto:nasdrcorpfin@nasdr.com)

### Questions/Further Information

Questions concerning this *Notice to Members* may be directed to Joseph E. Price, Director, Corporate Financing Department, at (240) 386-4623.

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## Endnotes

- 1 See *also*, Letter from Rep. John D. Dingell, Ranking Member, Committee on Energy and Commerce to Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System and John D. Hawke, Jr., Comptroller of the Currency, dated July 11, 2002 (tying “has become a central feature of the strategy of a number of large ‘universal’ banks”).
  - 2 The prohibition is subject to certain exemptions for traditional commercial banking services. 12 U.S.C.A. @ 1971 et seq.
  - 3 S. Rep. No. 1084, 91st Cong., 2d Sess. 16, reprinted in 1970 U.S. Code Cong. & Admin. News 5519, 5535.
  - 4 *Dibidale v. American Bank and Trust Co.*, 916 F. 2d 300, 306 (5th Cir. 1990) (“Dibidale”), quoting S. Rep. No. 1084, 1970 U.S. Code Cong. & Admin. News 5558 (Letter of Assistant Attorney General Richard McLaren).
  - 5 *Id.*
  - 6 *Cf.*, The Association of the Bar of the City of New York to Ms. Jennifer Johnson, Secretary, Board of Governors of the Federal Reserve System (May 8, 2001).
  - 7 Section 23B of the Federal Reserve Act also prohibits an insured bank from extending credit to a company if the bank would not extend credit but for investment banking services provided to that company by an affiliate. A bank that under prices credit facilities as a loss leader in order to commit a company to purchase the bank’s affiliated investment banking services would violate the Federal Reserve Act.
  - 8 H.R. Rep. No. 1280, 93rd Cong., 2d Session 302.
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# Special Notice to Members

SEPTEMBER 2002

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Registration  
Senior Management

## KEY TOPICS

District Elections

## INFORMATIONAL

### District Elections

Nominees for District Committee and District Nominating Committee

### Executive Summary

The purpose of this *Special Notice to Members* is to announce the nominees for the District Committees and the District Nominating Committees. The individuals identified in this *Special Notice to Members* (see Attachment A) have been nominated for three-year terms<sup>1</sup> on the District Committees and for one-year terms on the District Nominating Committees starting in January 2003. These nominees will be considered duly elected on **October 11, 2002**, unless an election is contested in accordance with the procedures summarized below.

We appreciate the interest shown by many of you in participating in the District Committees and thank everyone for their continuing support of the self-regulatory process. We look forward to your participation in the matters of the Districts during the coming year, as well as hope that those who were not selected this year may wish to revisit this process next year.

### Contested Election Procedures

If an officer, director, or employee of a NASD member is interested in being considered as an additional candidate, he/she must indicate his/her interest to the District Director by **October 11, 2002**. If an additional candidate(s) comes forward by that date, the candidate has until **November 10, 2002** to submit a petition to the District Nominating Committee with signatures from at least 10 percent of Executive Representatives of members eligible to vote in the District.

If no additional candidates submit petitions by **November 10, 2002**, then the candidates nominated by the District Nominating Committee shall be considered elected, and the District Committee shall certify the election to the Board of Directors of NASD Regulation.

02-65

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

### Questions/Further Information

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

### Endnote

1 Some nominees are filling existing vacancies and therefore may serve less than a three-year term, as indicated on Attachment A.

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## ATTACHMENT A

### District Committee and District Nominating Committee Nominees

#### District 1

##### Elisabeth P. Owens, District Director

525 Market Street, Suite 300, San Francisco, CA 94105  
(415) 882-1200

Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii

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##### 2002 District Nominating Committee Chair

Stephen R. Adams      Wells Fargo Investments LLC      San Francisco, CA

##### District 1 Nominees

Steven R. Aaron	J.P. Morgan Securities <b>(one-year term)</b>	San Francisco, CA
Gerard P. Gloisten	GBS Financial Corporation <b>(two-year term)</b>	Santa Rosa, CA
Warren E. Gordon	Charles Schwab & Co., Inc.	San Francisco, CA
William P. Hayes	Wells Fargo Investments LLC	San Francisco, CA
Francis X. Roche, II	RBC Dain Rauscher, Inc.	San Francisco, CA

##### District 1 Nominating Committee Nominees

Sally G. Aelion	Emmett A. Larkin Company, Inc.	San Francisco, CA
John H. Chung	Alliant Partners	Santa Clara, CA
Glenn M. Colacurci	Salomon Smith Barney	San Francisco, CA
James D. Klein	UBS PaineWebber, Inc.	San Francisco, CA
Jerry D. Phillips	RBC Dain Rauscher, Inc.	San Francisco, CA

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## District Committee And District Nominating Committee Nominees

### District 2

#### Lani M. Sen Woltmann, District Director

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071  
(213) 627-2122

Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust Territories

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#### 2002 District Nominating Committee Chair

George H. Casey	Crowell Weedon & Co.	Los Angeles, CA
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#### District 2 Nominees

A. William Cohen	Integrated Trading and Investments, Inc.	Las Vegas, NV
Don S. Dalis	USB PaineWebber Inc.	Newport Beach, CA
Donna Bartlett Lawson	First Allied Securities, Inc.	San Diego, CA

#### District 2 Nominating Committee Nominees

Margaret M. Black	Morgan Stanley Dean Witter	Los Angeles, CA
George H. Casey	Crowell Weedon & Co.	Los Angeles, CA
Miles Z. Gordon	Financial Network Investment Corporation	Torrance, CA
Dean A. Holmes	Valic Financial Advisors, Inc.	Glendale, CA
Robert L. Winston	American Funds Distributors, Inc.	Los Angeles, CA

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## District Committee And District Nominating Committee Nominees

### District 3

#### Joseph M. McCarthy, District Director

Republic Plaza Building, 370 17th Street, Suite 2900, Denver, CO 80202-5629  
(303) 446-3100

Arizona, Colorado, New Mexico, Utah, and Wyoming

#### James G. Dawson, District Director

Two Union Square, 601 Union, Suite 1616, Seattle, WA 98101-2327  
(206) 624-0790

Alaska, Idaho, Montana, Oregon, and Washington

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### 2002 District Nominating Committee Chair

Thomas Petrie	Petrie Parkman & Co., Inc.	Denver, CO
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### District 3 Nominees

Gene G. Branson	Partners Investment Network, Inc.	Spokane, WA
Bridget Gaughan	SunAmerica Securities, Inc.	Phoenix, AZ
John W. Goodwin	Goodwin Browning & Luna Securities Inc.	Albuquerque, NM

### District 3 Nominating Committee Nominees

L. Hoyt DeMers	Wells Fargo Investments LLC	Seattle, WA
J. David Griswold	Frank Russell Securities, Inc.	Tacoma, WA
Martin Nelson, Jr.	Martin Nelson & Co., Inc.	Seattle, WA
William G. Papesh	WM Funds Distributor, Inc.	Seattle, WA
Anthony Petrelli	Neidiger, Tucker, Bruner, Inc.	Denver, CO

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## District Committee And District Nominating Committee Nominees

### District 4

#### Thomas D. Clough, District Director

120 W. 12th Street, Suite 900, Kansas City, MO 64105  
(816) 421-5700

Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

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#### 2002 District Nominating Committee Chair

Cheryl Cook-Schneider      Edward Jones      St. Louis, MO

#### District 4 Nominees

Deborah M. Castiglioni	Cutter & Company, Inc.	Chesterfield, MO
Terry L. Lister	Cambridge Investment Research, Inc.	Fairfield, IA
Richard J. Miller	Walnut Street Securities, Inc.	St. Louis, MO

#### District 4 Nominating Committee Nominees

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

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## District Committee And District Nominating Committee Nominees

### District 5

#### Warren A. Butler, Jr., District Director

1100 Poydras Street, Energy Centre, Suite 850, New Orleans, LA 70163-0802  
(504) 522-6527

Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee

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#### 2002 District Nominating Committee Chair

Dene R. Shipp                      SunTrust Equitable Securities, Inc.                      Nashville, TN

#### District 5 Nominees

Victor E. Blaylock                      BancorpSouth Investment Services, Inc.                      Jackson, MS  
Carolyn R. May                      Benchmark Investments, Inc.                      Arkadelphia, AR  
F. Eugene Woodham                      Sterne, Agee & Leach, Inc.                      Birmingham, AL

#### District 5 Nominating Committee Nominees

Carl W. Busch                      Prudential Securities Incorporated                      Oklahoma City, OK  
E. Douglas Johnson, Jr.                      Johnson Rice & Company                      New Orleans, LA  
James M. Rogers                      J.J.B. Hilliard, L.L. Lyons, Inc.                      Louisville, KY  
William L. Tedford, Jr.                      Stephens Inc.                      Little Rock, AR  
Duncan F. Williams                      Duncan-Williams, Inc.                      Memphis, TN

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## District Committee And District Nominating Committee Nominees

### District 6

#### **Bernerd E. Young, District Director**

12801 N. Central Expressway, Suite 1050, Dallas, TX 75243  
(972) 701-8554

Texas

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#### **2002 District Nominating Committee Chair**

Daniel C. Dooley	Maplewood Investment Advisors, Inc.	Dallas, TX
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#### **District 6 Nominees**

Brent T. Johnson	IFG Network Securities, Inc.	Houston, TX
John R. Muschalek	First Southwest Company	Dallas, TX
Robert L. Nash	SWS Securities, Inc.	Dallas, TX

#### **District 6 Nominating Committee Nominees**

C. Ronald Baker	Williams Financial Group	Lubbock, TX
Robert A. Estrada	Estrada Hinojosa & Company, Inc.	Dallas, TX
Fredrick W. McGinnis	UBS PaineWebber, Inc.	Houston, TX
Edward M. Milkie	Milkie/Ferguson Investments, Inc.	Dallas, TX
Jim G. Rhodes	Rhodes Securities, Inc.	Fort Worth, TX

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## District Committee And District Nominating Committee Nominees

### District 7

#### Alan M. Wolper, District Director

One Securities Centre, Suite 500, 3490 Piedmont Road, N.E., Atlanta, GA 30305  
(404) 239-6100

Florida, Georgia, North Carolina, South Carolina, Virginia, Puerto Rico, the Canal Zone,  
and the Virgin Islands

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#### 2002 District Nominating Committee Chair

M. Anthony Greene      Raymond James Financial Services, Inc.      Atlanta, GA

#### District 7 Nominees

Joseph B. Gruber	FSC Securities Corp.	Atlanta, GA
Dennis S. Kaminski	Mutual Service Corporation	West Palm Beach, FL
James A. Klotz	FMS, Inc.	N. Miami Beach, FL

#### District 7 Nominating Committee Nominees

Michael D. Hearn	Attorney	Charlotte, NC
Edward R. Hipp, III	Legg Mason Wood Walker, Inc.	Williamsburg, VA
J. Lee Keiger, III	Davenport & Company LLC	Richmond, VA
John W. Waechter	William R. Hough & Co.	St. Petersburg, FL
Roark A. Young	Young, Stovall & Company	Miami, FL

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## District Committee And District Nominating Committee Nominees

### District 8

#### **Carlotta A. Romano, District Director**

55 West Monroe Street, Suite 2700, Chicago, IL 60603  
(312) 899-4400

Illinois, Indiana, Michigan, and Wisconsin

#### **William H. Jackson, Jr., District Director**

Renaissance on Playhouse Square, 1350 Euclid Avenue, Suite 650, Cleveland, OH 44115  
(216) 592-2950

Ohio and part of upstate New York (the counties of Monroe, Livingston, and Steuben, and the remainder of the state west of such counties)

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### **2002 District Nominating Committee Chair**

David Slavik	Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation	Oak Brook, IL
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### **District 8 Nominees**

Wilbur H. Burch	Merrill Lynch, Pierce, Fenner & Smith Incorporated	Schaumburg, IL
Thomas M. McDonald	McDonald Investments, Inc.	Cleveland, OH
James J. Roth	Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation	Oak Brook, IL

### **District 8 Nominating Committee Nominees**

Wallen L. Crane	Salomon Smith Barney, Inc.	Toledo, OH
Mary D. Esser	Cressman Esser Securities, Inc.	Naperville, IL
Wayne F. Holly	Sage, Ruddy & Co., Inc.	Rochester, NY
L. Gene Tanner	NatCity Investments, Inc.	Indianapolis, IN
Rodney Trautvetter	Harris Direct	Chicago, IL



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## District Committee And District Nominating Committee Nominees

### District 9

#### John P. Nocella, District Director

Eleven Penn Center, 1835 Market Street, Suite 1900, Philadelphia, PA 19103  
(215) 665-1180

Delaware, Pennsylvania, West Virginia, District of Columbia, Maryland, and the southern part of New Jersey in the immediate Philadelphia vicinity

#### Gary K. Liebowitz, District Director

581 Main Street, 7th Floor, Woodbridge, NJ 07905  
(732) 596-2000

New Jersey (except southern New Jersey in the immediate Philadelphia vicinity)

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### 2002 District Nominating Committee Chair

Philip S. Cottone	Rutherford, Brown & Catherwood LLC	Philadelphia, PA
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### District 9 Nominees

Robert M. Berson	Ryan, Beck & Co. LLC	Livingston, NJ
Richard Grobman	Fahnestock & Co. Inc.	Philadelphia, PA
W. Dean Karrash	Rutherford, Brown & Catherwood LLC	Philadelphia, PA
Michael S. Mortensen	PNC Investments, a division of J.J.B. Hilliard, W.L. Lyons, Inc. <b>(two-year term)</b>	Pittsburgh, PA

### District 9 Nominating Committee Nominees

A. Louis Denton	Philadelphia Corporation for Investment Services	Philadelphia, PA
James D. Lamke	Goldman, Sachs & Co.	Jersey City, NJ
Lance A. Reihl	1717 Capital Management Company	Berwyn, PA
Lenda P. Washington	GRW Capital Corporation	Washington, DC
Gregory R. Zappala	RRZ Public Markets, Inc.	Cranberry Township, PA

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## District Committee And District Nominating Committee Nominees

### District 10

#### Robert B. Kaplan, Acting District Director

One Liberty Plaza, New York, NY 10006  
(212) 858-4000

The five boroughs of New York City and Long Island

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#### 2002 District Nominating Committee Chair

Eugene A. Schlanger	Nomura Holding America, Inc.	New York, NY
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#### District 10 Nominees

Raymond C. Holland, Sr.	Triad Securities Corp.	New York, NY
Vicki Z. Holleman	Loeb Partners Corporation	New York, NY
Andrew H. Madoff	Bernard L. Madoff Investment Securities LLC	New York, NY
Richard J. Paley	Fox-Pitt, Kelton Inc.	New York, NY

#### District 10 Nominating Committee Nominees

Kevin J. Browne	Banc of America Securities	New York, NY
Judith R. MacDonald	Rothschild, Inc.	New York, NY
Eugene A. Schlanger	Nomura Holding America, Inc.	New York, NY
Stephen C. Strombelline	Barclays Capital Inc.	New York, NY
Tom M. Wirtshafter	American Portfolios Financial Services, Inc.	Holbrook, NY

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## District Committee And District Nominating Committee Nominees

### District 11

#### Frederick F. McDonald, District Director

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

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Monroe, Livingston, and Steuben; the five boroughs of New York City; and Long Island)

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#### 2002 District Nominating Committee Chair

Arthur F. Grant                      Cadaret, Grant & Co., Inc.                      Syracuse, NY

#### District 11 Nominees

Mark R. Hansen                      State Street Global Markets LLC                      Boston, MA  
Gregg A. Kidd                      Pinnacle Investments, Inc.                      East Syracuse, NY  
Lee G. Kuckro                      Advest, Inc.                      Hartford, CT

#### District 11 Nominating Committee Nominees

Stephen O. Buff                      Fleet Securities, Inc.                      Boston, MA  
Richard DeAgazio                      Boston Capital Services, Inc.                      Boston, MA  
John D. Lane                      Lane Capital Markets LLC                      Fairfield, CT  
Dennis Surprenant                      Cantella & Co., Inc.                      Boston, MA  
Peter T. Wheeler                      Commonwealth Financial Network                      Waltham, MA