

# Notice to Members

NOVEMBER 2002

## SUGGESTED ROUTING

Compliance  
Legal  
Operations  
Senior Management

## KEY TOPICS

NASD By-Laws  
Trading Activity Fee  
Section 8(a) Regulatory Fees

## INFORMATIONAL

### Trading Activity Fee

NASD Provides Additional Information on the Trading Activity Fee

#### Executive Summary

As announced in *Notice to Members 02-41* and *Special Notice to Members 02-63*, NASD has amended Section 8(a) of Schedule A to NASD's 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>

#### 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(a) 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. The Trading Activity Fee does not fund Market Regulation activities which are funded solely through contracts with NASDAQ and other exchanges.

These changes were originally submitted to the Securities and Exchange Commission (SEC) for immediate effectiveness. On Friday, October 18, 2002, NASD filed with the SEC two subsequent but related rule filings. The first is a proposed rule change<sup>2</sup> filed with the SEC for immediate effectiveness that established a sunset provision that terminates on December 31, 2002 the proposed

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changes made to Schedule A to NASD's By-Laws. The second rule filing<sup>3</sup> contains substantially the same rule language as originally proposed, but was submitted pursuant to Section 19(b)(1) of the Act<sup>4</sup> to allow for an additional notice and comment period. NASD filed this in response to comments made by NASD's members that the Trading Activity Fee should not be filed as immediately effective, but instead should be given a full notice and comment period. In addition, this subsequent comment period allows NASD to further examine the impact of the Trading Activity Fee rates effective upon implementation and ensure they are consistent with NASD's overall intention that amendments to its pricing structure be revenue neutral.<sup>5</sup>

### Trading Activity Fee Initial Rate Structure

NASD previously announced the initial rate structure for the Trading Activity Fee effective October 1, 2002. Based on further analysis of trading volumes and feedback from member firms, the rate structure has been further adjusted, retroactively effective to October 1, 2002. Adjustments to the rate structure are: 1) the initial rate of \$0.0001 for covered equity securities has been reduced to \$0.00005, 2) the maximum on covered equity securities has been reduced to \$5.00, 3) the initial rate of \$0.08 for security futures has been reduced to \$0.04, and 4) the minimum exclusion has been extended to cover options and futures. The adjusted rate structure is as follows:

- ◆ Each member shall pay to NASD \$0.002 per contract for each sale of an option.
- ◆ Each member shall pay to NASD \$0.04 for each round turn transaction of a security future.

Additionally, if the execution price for a covered security is less than the Trading Activity Fee rate (\$0.00005 for covered equity securities, \$0.002 for covered option contracts, or \$0.04 for a security future) on a per share, per contract, or round turn transaction basis then no fee will be assessed.

NASD is filing the above initial rate structure with the SEC for immediate effectiveness. Additionally, NASD intends to file any further modifications to the Trading Activity Fee rate structure with the SEC.

### Submission/Payment Information

Traditionally, the Section 8(a) 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.

In consideration of programming constraints and due to the further refinement of the initial rate structure, NASD has extended the submission and payment date for the October 1, 2002 through December 31, 2002 time period. Firms may self-report and remit payment to NASD for this time period no later than January 15, 2003.

- ◆ Each member shall pay to NASD \$0.00005 per share for each sale of a covered equity security, with a maximum charge of \$5 per trade.

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The prescribed form of the monthly report is available on the NASD Web Site at [www.nasd.com](http://www.nasd.com). Firms will be required to self-report to NASD the aggregate shares for stocks, aggregate number of contracts for options, and/or aggregate number of contracts traded on a round turn basis for security futures products at the clearing firm level only. For the October 1, 2002 through December 31, 2002 time period, a separate form for each month must be submitted.

The monthly report and payment may be submitted to NASD by either US mail or overnight Express mail as follows:

**For US mail delivery:**

NASD  
P.O. Box 7777-W8555  
Philadelphia, PA 19175-8555

Note: This P.O. Box will not accept courier or overnight deliveries.

**For courier & overnight deliveries:**

NASD  
W8555 c/o Mellon Bank, Rm 3490  
701 Market Street  
Philadelphia, PA 19106  
Phone number: 215-553-0697

(if required for the recipient)

If other payment methods are required, please call NASD Finance, at 240-386-5394.

## Questions and Answers

**Question 1:** The answer to Question 4 in the Question and Answer Section of *Special Notice to Members 02-63*, stated that although the general model is to assess the Trading Activity Fee on the sell side of

member transactions, the Trading Activity Fee would be assessed on the buy side of member transactions where the counter party is not a broker/dealer. The answer further stated that 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., internalized trade). Since the rule states that each member shall pay a fee for each sale of a covered security, does this mean that for a transaction in which the sell-side is a customer and the buy-side is a member, two fees will be charged?

No. More simply stated, a fee will be assessed on all sell side transactions. This includes both transactions where the sale is for the account of a customer and transactions where the sale is for the member itself.

**Question 2:** If a member effects a sale for a customer on an agency basis, will the member be assessed a fee?

Yes. If a member acts as agent for a non-broker/dealer customer in the sale of a covered security, the member will be assessed a fee for that transaction.

**Question 3:** If a member effects a sale for another NASD member on an agency basis, will the member acting as agent be assessed a fee?

No. If a member acts as agent on behalf of another NASD member in the sale of a covered security, the fee will be assessed to the member who is the ultimate seller of the security, not the member acting as agent.

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**Question 4: How is the Trading Activity Fee calculated when a member uses an average price model to effect transactions on an agency basis for its customers?**

A member may choose to calculate the Trading Activity Fee on either the individual street side executions or on the account level average price confirmation if that member can link the street side executions to the account level average price confirmation(s). However, the methodology chosen by the member to calculate the fee assessment must be consistently applied to all average price transactions and must be documented by the member.

**Example 1.** A customer places an order to sell one million shares of a covered security and the member executes ten 100,000 share trades that are then allocated to the customer on an average price basis. If the member can link the ten street side trades to the one million share average price confirmation to the customer, the member may calculate the fee based on either the ten street side trades (ten sales at \$5) or on the account level average price confirmation to the customer (one sale at \$5).

**Example 2.** An investment advisor places an order to sell one million shares of a covered security. The member then executes ten 100,000 share trades to fill the investment advisor's order. The investment advisor subsequently allocates the one million shares to four separate customers. If the member can link the ten street side trades to the four account level average price confirmations, the member may calculate the fee based

on either the ten street side trades (ten sales at \$5) or on the account level average price confirmations (four sales at \$5). The member may not calculate the fee based on the million share order from the investment advisor (one sale at \$5) because it is comprised of multiple customer accounts.

**Question 5: Schedule A to NASD's By-Laws, Section 2(b)(3)(iii) states "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". Does this mean that the fee will be assessed on a per contract basis?**

Yes. Example: A member opens a position (long or short) of 100 contracts. No fee is assessed when the position is opened because the fee assessment is based on a round turn transaction. The member later closes half of its original 100 contract position. When the member closes out the 50 contracts, it will be assessed a fee of \$0.04 x 50 contracts, totaling \$2.

**Question 6: Will the Trading Activity Fee be assessed on transactions for non-member broker-dealers who clear through an NASD member broker-dealer.**

No. The Trading Activity Fee only applies to NASD member firms. However, if the NASD member clearing firm also acts as the executing broker in a transaction, then the NASD clearing member will be assessed a fee for that transaction.

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**Question 7:** The rate structure includes a maximum charge per trade of \$5 for covered securities. Does this apply to options and security futures?

No. The maximum charge was established for equity securities, particularly for the very low priced over-the-counter securities that often trade in large share quantities.

## 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 SR-NASD-2002-147.
  - 3 See SR-NASD-2002-148.
  - 4 15 U.S.C. 78s(b)(1).
  - 5 This proposed rule filing is to be read in conjunction with SR-NASD-2002-99. The two separate yet related rule filings are the result of a review of the overall NASD pricing structure and will be used to fund NASD's member regulatory activities.
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# Notice to Members

NOVEMBER 2002

## SUGGESTED ROUTING

Corporate Finance  
Legal and Compliance  
Operations  
Senior Management  
Technology  
Trading and Market Making  
Training

## KEY TOPICS

Debt Securities  
Dissemination  
Operations  
Rule 6200 Series  
Transaction Reporting

## INFORMATIONAL

### Corporate Debt Securities Transactions Subject to Reporting and Dissemination

NASD Issues Interpretive Guidance to the Trade  
Reporting and Compliance Engine Rules (TRACE Rules)

#### Executive Summary

NASD requires members to report corporate debt securities transactions to NASD and subjects transaction information of certain categories of securities to dissemination pursuant to the Trade Reporting and Compliance Engine (TRACE) rules (TRACE Rules). On June 28, 2002, the Securities and Exchange Commission (SEC) approved amendments to the TRACE Rules (the Rule 6200 Series).<sup>1</sup> On July 1, reporting and dissemination under TRACE began and the TRACE Rules, as amended on June 28, 2002, became effective.<sup>2</sup> In this *Notice to Members (NtM)*, NASD addresses a number of interpretive issues that have arisen since TRACE began. In addition, the revised TRACE Rules are set forth in Attachment A.

#### Questions/Further Information

Questions concerning this *Notice* may be directed to [tracefeedback@nasd.com](mailto:tracefeedback@nasd.com).

#### Interpretive Matters: Questions and Answers

The following interpretive Questions and Answers address a variety of interpretive issues that have arisen since the TRACE Rules took effect. They also respond to specific questions NASD has received since TRACE began. The staff will continue to address open interpretive issues under the TRACE Rules in subsequent *NtMs*.

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1. **How much time does a member have to resubmit a trade report that was rejected?**

NASD staff understands that in the initial phase of TRACE reporting, there may be incidences of trade reports being rejected by the TRACE System while members become familiar with TRACE reporting requirements and systems.<sup>3</sup> The staff also understands that certain members are relying on technology that reports transactions to and receives verification of accepted reports back from TRACE via a "batch" process. This "batch" process may add time to the identification and correction of trade reports initially rejected by the TRACE System. Therefore, initially, the staff expects that members will correct and resubmit rejected trade reports that are "high priority reports," as defined below, as soon as practicable but not later than 2<sup>1</sup>/<sub>2</sub> hours after execution. For "low priority reports," as defined below, the staff expects that members will correct and resubmit rejected reports as soon as practicable, but not later than the end of the reporting day on the day of execution (or the first business day following the day of execution, if the transaction occurs on a non-business day).

**High and Low Priority Reports.** If a report details a transaction in a debt security that is listed in TRACE Rule 6250(a) as eligible for dissemination, the report is a "high priority report." Currently, only certain very large issues of Investment Grade<sup>4</sup> securities, and approximately 50 Non-Investment Grade securities<sup>5</sup> are listed in Rule 6250(a).<sup>6</sup> If a report concerns a transaction in a debt security that is not subject to dissemination under Rule 6250(a), the report is a "low priority report."

Regardless of the reporting mechanism used by the member (e.g., batch submission, Computer-to-Computer Interface (CTCI), Web browser, or third party intermediary reporting systems), any rejected trade reports should be

corrected and resubmitted to TRACE as soon as possible by the reporting member. NASD will be monitoring members' reporting to ensure that members have procedures in place that are reasonably designed to ensure that rejected trade reports are identified, corrected, and resubmitted in a timely manner. Patterns and practices of late submissions due to rejections may be considered a violation of the TRACE Rules and Rule 2110.

2. **Do the clock synchronization rules that apply in OATS apply to TRACE?**

Yes. Under NASD Rule 6953, "Synchronization of Member Business Clocks," all members with an obligation under any NASD rule to record the date and time of any event (such as the time of execution of a transaction under TRACE Rule 6210(d) and Rule 6230(c)) must synchronize their business clocks, including computer system clocks and mechanical clocks. The clock synchronization requirements apply to all members with a time-reporting obligation under any NASD Rule, and therefore apply to all members in reporting under the TRACE Rules. For more information about clock synchronization requirements and frequently asked questions, refer to "The NASD Provides Guidance On OATS Clock Synchronization," RCA (December 1998), [http://www.nasdr.com/3050\\_9812.htm](http://www.nasdr.com/3050_9812.htm).

3. **How does a member report the date and time of execution of a transaction executed on a weekend or a holiday?**

The TRACE Rules recognize that transactions in TRACE-eligible securities may occur at any time. In Rule 6230(a)(1)-(4), NASD established specific reporting periods. In Rule 6230(a)(4), NASD describes how to report when a transaction is executed during a weekend or on a holiday. Initially,

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the TRACE System is not able to recognize, and will reject, a transaction report that includes a calendar date that is a Saturday, Sunday, or a federal or religious holiday on which the TRACE System is closed. In addition, the TRACE System will reject a date in the "as/of" field for the same reason. Therefore, the actual date of transactions that are executed on a non-business day cannot be captured electronically at this time. Until the TRACE System is revised, Rule 6230(a)(4) requires members to report transactions that are executed on a non-business day as follows. A member must report the transaction on the first business day following the actual date of the transaction within one hour and fifteen minutes of the opening of the TRACE System. The transaction date must be reported as the first business day after which the transaction occurred (the same day of the report). The time of execution must be reported as "00:01:00" (military time for 12:01:00 a.m., Eastern Time). This will distinguish the limited number of weekend and holiday transactions from transactions actually occurring on the business day. The modifier, "special price," must be selected. In addition, when the reporting method chosen provides a "special price memo" field, the member must enter the actual date and time that the transaction occurred.<sup>7</sup>

**4. If a member executes a transaction overseas, what time (and day) should the member use to report?**

Time of execution must be reported in military time based on Eastern Time (e.g., a transaction that occurs at 3:30:30 p.m., Eastern Time would be reported as "15:30:30"). Since the TRACE System is based upon Eastern Time, all trade reports must be submitted based on the time the transaction occurred, converted to Eastern Time, even if the local date and time of the

reporting party and other parties to the transaction are not Eastern Time.<sup>8</sup>

**5. How should a member report a transaction when the market and the TRACE System close early and a transaction is executed after the market closes?**

When NASD announces an early market closing (or follows the early market closing announced by another self-regulatory organization), transactions that occur after the TRACE System closes on that business day should be reported according to Rule 6230(a)(2), which describes how to report "after system hours" for transactions that occur on a business day. Thus, the transaction report will include the day of execution (using the as/of feature) and the actual time of execution. The report must be filed within one hour and 15 minutes on the next business day that the TRACE System is open. For example, if NASD announces that the TRACE System will be open from 8:00 a.m. to 2:00 p.m., and that day a member executes a trade between 2:00 p.m. and 6:29:59 p.m., Eastern Time (e.g., 2:45 p.m., Eastern Time), the member will correctly and timely report the transaction if the member reports it the next TRACE business day, within one hour and 15 minutes after the TRACE System opens, reporting the transaction "as/of (month/day/year)," with time of execution (e.g., 14:45:00 p.m., Eastern Time).

**6. Has NASD staff identified specific instances, other than those identified in Rule 6230(c)(13), when yield is not required to be reported?**

Yield is a required element in reporting a debt securities transaction. However, paragraph (c)(13) of Rule 6230 sets forth specific exceptions from the requirement. In addition, the rule provides that yield is not



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required to be reported "where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable, or any other security that NASD designates if NASD determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security."

NASD does not believe it is possible to identify, before each occurrence, all the instances in which it is not appropriate or useful to report yield. Instead, NASD has clarified that in those instances where the reported yield would provide inaccurate or misleading information concerning the price of, or trading in, the security, NASD will designate additional types or specific securities where yield is not required to be reported.

**Security In Default.** Under one of the exceptions in Rule 6230(c)(13), a member is not required to report yield for a transaction in a security in default. Members have asked how default is interpreted under the Rule, or when it occurs. Under Rule 6230(c)(13), when market participants have begun to trade a bond "flat" in anticipation of a formal announcement (e.g., of a default, a bankruptcy, a filing seeking reorganization under Chapter XI, 11 U.S.C. §§1101 et seq. (2002), or any other official announcement that the company will not meet its financial obligations), but the official announcement has not occurred, a broker/dealer must indicate in its report that it is trading the bond "flat" using the "special price" indicator and, if available, the "special price memo" field. In such cases, yield is not required to be reported. When a formal announcement, made on behalf of and authorized by the issuer, has been disseminated in the market, yield is not

required to be reported, *and* the special price indicator and the "special price memo" field would not be used.

**7. May a member report a yield on which the security is priced and sold, rather than the lower of yield to maturity or yield to call under Rule 6230(c)(13)?**

As modified, a member must report the lower of yield to call or yield to maturity under Rule 6230(c)(13). A member may not report yield that is calculated on a basis other than yield to call or yield to maturity. Thus, even if a member sells or buys a security at a yield other than the yield to call or yield to maturity, the member is required to report the transaction with the yield calculated using the applicable standard(s), so that yield in different transactions may be meaningfully compared.

**8. Which of the modifiers has priority over other modifiers described in Rule 6230(d)(4)?**

If the price of a transaction is determined using a weighted average price method, a member must indicate this with the modifier ".w." The member is required to select the modifier ".w" and may not select the "special price" modifier. In addition, the weighted average price modifier, ".w," has priority over modifiers used to indicate settlement other than "regular way." If the weighted average price modifier, ".w," and one of the settlement term modifiers are applicable to the transaction, ".w" must be selected when reporting the transaction. Rule 6230(d)(4)(C). (Modifiers indicating special terms of settlement are set forth in Rule 6230(d)(4)(B).)

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**9. Has NASD identified instances where the "special price" modifier must be used in a transaction report?**

Under Rule 6230(c)(4)(A), a member must indicate that certain transactions have been executed at a "special price." In addition, the reporting party must explain in the "special price memo" field, when available, why the transaction was executed at other than a current market price.

The special price modifier should be used, for example, when a TRACE-eligible security is traded in the current market with a due bill or warrant attached, with the price reflecting the special conditions of the trade. In addition, when market participants perceive that an issuer is about to go into default on a security and begin trading a security "flat" before a formal announcement, the "special price" modifier should be used. (See Q. & A. No. 6. above.) Finally, there may be instances where a transaction done pursuant to an issuer's plan to repurchase some or all of its outstanding debt ("issuer open market repurchases") would require using the "special price" modifier. (See Q. & A. No. 13. below.)

**10. Are there instances when the special price modifier should not be used?**

Yes. The "special price" modifier should not be used when the transaction is priced by using a "weighted average price." "Weighted average price" is indicated using the "weighted average price" modifier, ".w," and should be used instead of the more general modifier, "special price."

**11. How does a member determine "time of execution" as required under Rule 6210(d) when a security is priced based on a yield of another security and that yield is not available at the time the parties decide to engage in a transaction?**

NASD amended Rule 6210(d) to clarify the term, "time of execution," when the yield in a transaction in a TRACE-eligible security will be established by determining the yield of a "benchmark" security. Under Rule 6210(d), "time of execution" means "the time when the parties to the transaction agree to all the terms of the transaction that are sufficient to calculate the dollar price of the trade." When a benchmark security is a reference for determining yield, the time of execution is deemed to occur when the parties to the transaction may identify and agree upon the yield for the security. For example, if the parties agree to determine the specific yield of Security A based upon a spread that is 150 points "off" (above) or "through" (below) the yield of a comparable U.S. Treasury security, and agree to measure the yield of the comparable U.S. Treasury security at 3:30 p.m. on the day of the transaction, the parties will be expected to agree upon the yield of Security A at 3:30 p.m. when the information becomes available. As of that time, the parties have knowledge of all of the elements of the transaction necessary to calculate the dollar price of the transaction, must identify them, and are obligated to report the transaction within one hour and 15 minutes.

**12. How does a member report a commission?**

If a member charges a commission in an agency transaction, the commission is reported separately under Rule 6230(c). Report the commission, stated in points per bond, with 1 point (1.00) equal to \$10.00 per bond. (The bond is assumed to be a

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conventional bond having a \$1000 par value.) If the commission is stated as a flat fee per transaction (e.g., \$100 to execute a 10 bond odd lot transaction), the member must convert the commission to points per bond to report correctly.

Ex. 1: If a "sixteenth" commission were charged (i.e., 1/16 point per bond), the commission reported would be 0.0625. If an "eighth" commission were charged (i.e., 1/8 point per bond), the commission reported would be 0.125.

Ex. 2: If a \$100 commission were charged to execute an odd lot transaction of 10 bonds, the commission reported would be 1.0 (point). If a \$100 commission were charged to execute 20 bonds, the commission reported would be 0.5 (points).

**13. When may a member rely on the exception in Rule 6230(e)(3) that a transaction executed at a price "substantially unrelated to the current market for the TRACE-eligible security" is not required to be reported?**

Rule 6230(e)(3) provides that a member is not required to report a transaction if the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security. NASD interprets Rule 6230(e)(3) very narrowly. Generally, any one or more transactions executed in furtherance of an investment, commercial, or trading purpose will not fall within the exception of Rule 6230(e)(3). (NASD's example of a transaction (i.e., a gift) in the rule that is subject to the exception is a limited, one-time execution that occurs without reference to current market pricing and investment, commercial, or trading considerations.)

When considering if a member is excepted from reporting under Rule 6230(e)(3), a member should consider the following: (1) NASD interprets the Rule 6230(e)(3) exception very narrowly; (2) the general requirement to report any transaction in a TRACE-eligible security under Rule 6230 is interpreted broadly in furtherance of the underlying policy goals of TRACE; and, (3) in furtherance of the policy goals, paragraph (d)(4)(A) of Rule 6230 provides that transactions in TRACE-eligible securities that do not reflect current market pricing must be reported using a "special price" modifier. Thus, with few exceptions, when a transaction in a TRACE-eligible security is executed, a member is required to report the transaction. If special conditions or circumstances affect the price, when in doubt, the member should report the transaction and append the "special price" modifier described in Rule 6230(d)(4)(A).<sup>9</sup>

**Issuer Open Market Repurchase Transactions.** An issuer of debt may determine to repurchase a portion or all of an outstanding issue of debt. When an issuer engages, directly or indirectly, in repurchasing its debt in the open market, the transaction must be reported and is not subject to the exception in Rule 6230(e)(3). Generally, in such purchases and sales, market participants negotiate the price and other terms of the transaction (or multiple transactions) based on investment, commercial or trading considerations, and execute the transaction in furtherance of investment, commercial, or trading purposes. Even where an issuer, or a market participant on behalf of an issuer, determines to price and purchase a significant amount of a debt security, the price established for the transaction is determined substantially by the current market price of the security and current market conditions. Thus, regardless of the issuer's ultimate motivation, NASD interprets Rule 6230 as requiring the reporting of the

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transaction. If the exception in Rule 6230(e)(3) were interpreted to apply, NASD's surveillance of the debt markets may be hampered by incomplete information relating to significant trading activity. In addition, if such transactions were subject to dissemination, the market may be deprived of significant, relevant, current price information.<sup>10</sup>

**14. When a member uses a broker's broker or an inter-dealer broker to execute a TRACE-eligible transaction, what are the reporting requirements?**

Generally when one member ("B/D X") contacts a broker's broker or an inter-dealer broker ("IDB") and executes a transaction through IDB, B/D X will be required to report and IDB, which is also a member, will be required to report. (In addition, the member ("B/D Y") on the other side of IDB is required to report.) In total, in most transactions involving an IDB, a total of four transaction reports must be filed.

Ex: B/D X contacts IDB to buy N Bond.  
IDB contacts B/D Y to sell N Bond to IDB.

Report 1. IDB reports a BUY from B/D Y of N Bond

Report 2. B/D Y reports a SELL to IDB of N Bond

Report 3. IDB reports a SELL to B/D X of N Bond

Report 4. B/D X reports a BUY from IDB of N Bond

IDB is acting in either an agency or a principal capacity. IDB buys the N Bond at a price including its mark-down (or charges a commission) and sells the N Bond at a different price, which includes a mark-up (or a commission).

**15. What is a member's obligation under the TRACE Rules to identify new TRACE-eligible securities?**

NASD amended Rule 6260 to require an underwriter to make a good faith determination of TRACE eligibility. If in doubt, the underwriter should submit the information regarding a new debt security to NASD's TRACE Operations Center. NASD then will make the final determination if a debt security is a TRACE-eligible security.

**16. When a member that is required to notify NASD of a new TRACE-eligible security under Rule 6260 has not finalized all the information, such as coupon rate and maturity, required to be submitted prior to the deadline for notification, what should the member do?**

Rule 6260(b) provides that a member that is the lead underwriter of any newly issued TRACE-eligible security shall provide to the TRACE Operations Center the following information concerning a new TRACE-eligible security: (1) the CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; and (6) a brief description of the issue. The information may be provided by e-mail, facsimile, or telephone. The specific contact information is set forth in two places on the TRACE Web page, "TRACE FAQs" and "TRACE Contacts," at [www.nasd.com/mkt\\_sys/trace\\_info.asp](http://www.nasd.com/mkt_sys/trace_info.asp).

If all of the information has not been determined by the deadline for notification, the issuer may file "such other information as the NASD deems necessary" to properly identify the new issue for inclusion in the TRACE System. For example, an underwriter may notify the NASD of a new issue by providing the CUSIP number (Item 1) and Items, 2, 5, and 6 (which are, respectively,

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issuer name, whether Rule 144A applies, and a brief description of the issue), in those instances where the coupon rate and the maturity have not been established. A CUSIP number, however, must always be provided.<sup>11</sup> In addition, the underwriter is required to provide the missing information, such as coupon rate and maturity, as soon as it becomes available.

**17. For a new issue, when does the primary distribution end? When does secondary market trading begin?**

Rule 6230(e)(1) provides that transactions that are part of a primary distribution are not required to be reported. Primary market distribution efforts cease when the underwriters of the offering (e.g., members of the underwriting syndicate) terminate the offering, and indicate that the issue is "free to trade."<sup>12</sup> (Usually, the termination of an offering is announced over various wire services and other instantaneous means of communication that provide immediate notification to market participants.) For purposes of reporting under TRACE, all transactions that occur as of or after the termination of the offering are secondary market transactions and must be reported.

## Endnotes

- 1 See Exchange Act Release No. 46144 (June 28, 2002), 67 Fed. Reg. 44907 (July 5, 2002) (File No. SR-NASD-2002-46). The amendments, among other things:
  - (1) extended the period to report a transaction from 1 hour to 75 minutes;
  - (2) incorporated standards in Rule 6250 for designating additional Non-Investment Grade securities for dissemination, if fewer than 50 such securities are subject to dissemination;
  - (3) required managing underwriters to provide to NASD the CUSIP number and additional identifying information about a new issue of a TRACE-eligible debt security prior to trading in the secondary market, with special provisions for issues offered on an intra-day basis;
  - (4) clarified that securities of a government-sponsored entity (GSE) are not TRACE-eligible securities;
  - (5) clarified definitions, including "time of execution," "reportable TRACE transaction," "parties to the transaction," and "money market instrument";
  - (6) clarified how to report transactions occurring before, during and after TRACE system ("TRACE System") operation hours on a business day, and on holidays and weekends;
  - (7) described various trade reporting modifiers;
  - (8) clarified how to report yield and when yield is not required; and
  - (9) required that two transaction reports be filed for "crosses."
- 2 Before the June 28, 2002 action, the SEC had approved three other rule filings in 2001 containing TRACE Rules. However, none of the TRACE Rules took effect until July 1, 2002. See Exchange Act Release No. 43873 (Jan. 23, 2001), 66 Fed. Reg. 8131 (Jan. 29, 2001) (File No. SR-NASD-99-65) (approval order); Exchange Act Release No. 44039 (Mar. 5, 2001), 66 Fed. Reg. 14234 (Mar. 9, 2001) (File No. SR-NASD-2001-04) (approval order); and Exchange Act Release No. 45229 (Jan. 3, 2002), 67 Fed. Reg. 1255 (Jan. 9, 2002) (File No. SR-NASD-2001-91) (notice of

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proposed rule and immediate effectiveness upon filing on December 13, 2001, and approval order). See NtM 01-18 (March 2001).

Because the TRACE Rules became effective less than 72 hours after the SEC approved the amendments, NASD published a complete set of TRACE Rules on the NASD Web site on June 28, 2002, to provide members notice of the revised TRACE Rules prior to the start of TRACE on July 1, 2002.

- 3 The term "reject" here refers to a TRACE report that is not accepted by the TRACE System. Therefore, no control number has been assigned to the report by the TRACE System. This differs from the situation in which a report is submitted to and accepted by the TRACE System and, therefore, a control number is assigned to the transaction report. If, for a transaction report accepted by the TRACE System, a member subsequently determines that one or more of the reported elements were submitted incorrectly, the trade report must be either corrected or "reversed." If "reversed," a new trade report is submitted to TRACE in its place.
- 4 "Investment Grade" is defined in TRACE Rule 6210(h).
- 5 "Non-Investment Grade" is defined in TRACE Rule 6210(i).
- 6 Over time, NASD expects to increase the type and number of securities for which transaction information will be disseminated.
- 7 NASD expects to modify the TRACE System so that it will accept, on a business day, transactions reported as executed on a weekend day or holiday that the TRACE System is not open (i.e., the member will submit the report on a business day during TRACE System hours, and TRACE will accept the report if the execution date states, for example, "as/of 12/25/02," as the holiday date on which the transaction was executed).
- 8 The requirement in Rule 6230 to use Eastern Time applies to reporting and records regarding reporting. Members are not required to confirm transactions to customers in Eastern Time.
- 9 Rule 6230(d)(4)(A) requires a member to select the special price modifier when a transaction "is not executed at a price that reflects the current market price."
- 10 There may be circumstances in which a member reports a transaction done pursuant to an issuer open market repurchase, and appropriately appends the "special price modifier" described in Rule 6230(d)(4)(A). In most cases, however, it appears that such issuer repurchase transactions may establish pricing in the current market for that security, rather than deviate from current market pricing.
- 11 The CUSIP number must be in the TRACE System in order for reporting to occur electronically using the System. If the appropriate CUSIP number has not been entered into the TRACE System, it will reject the transaction report, even if the security is a TRACE-eligible security.
- 12 The SEC defines "distribution" in Regulation M. "'Distribution' means an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods." Regulation M, Rule 100; 17 C.F.R. 242.100. A "primary distribution" or "primary offering" is the sale of a new issue of a debt or equity security.

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## ATTACHMENT A

### 6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

#### 6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified.

(a) The term "TRACE-eligible security" shall mean all United States dollar denominated debt securities that are depository eligible securities under Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private corporations; and: (1) registered with the Securities and Exchange Commission; or (2) issued pursuant to Section 4(2) of the Securities Act of 1933 and purchased or sold pursuant to Rule 144A of the Securities Act of 1933. The term "TRACE-eligible security" excludes debt issued by government-sponsored entities, mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. For purposes of the Rule 6200 Series, the term "money market instrument" means a debt security that at issuance has a maturity of one year or less.

(b) The term "Trade Reporting and Compliance Engine" or "TRACE" shall mean the automated system developed by the NASD that, among other things, accommodates reporting and dissemination of transaction reports where applicable in TRACE-eligible securities.

(c) The term "reportable TRACE transaction" shall mean any secondary market transaction in a TRACE-eligible security except transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the transaction information is disseminated publicly, or transactions in convertible debt securities that are listed and quoted on the Nasdaq Stock Market, Inc. (Nasdaq), when such transactions are reported to Nasdaq and the transaction information is disseminated publicly.

(d) The term "time of execution" for a transaction in a TRACE-eligible security shall be the time when the parties to the transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade. The time of execution for transactions involving TRACE-eligible securities that are trading "when issued" on a yield basis shall be when the yield for the transaction has been agreed to by the parties to the transaction. For a transaction in a TRACE-eligible security in which the actual yield for the transaction is established by determining the yield from one or more designated securities (e.g., a

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“benchmark security” such as a U.S. Treasury security maturing in 5 years, or a combination of such “benchmark securities”) and adding the agreed upon “yield spread” (e.g., 150 basis points above the benchmark security), the “time of execution” occurs when the yield has been agreed to by the parties to the transaction.

(e) The term “parties to the transaction” shall mean the introducing broker-dealer, if any, and the executing broker-dealer.

(f) The term “TRACE Participant” shall mean any NASD member that reports transactions to the TRACE system, directly or indirectly.

(g) The term “Introducing Broker” shall mean the NASD member that has been identified in the TRACE system as a party to the transaction, but does not execute or clear the transaction.

(h) The term “Investment Grade” shall mean any TRACE-eligible security rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

(i) The term “Non-Investment Grade” shall mean any TRACE-eligible security that is unrated, non-rated, split-rated (where one rating falls below Investment Grade), or otherwise does not meet the definition of Investment Grade in paragraph (h) above.

[Adopted by SR-NASD-99-65 eff. July 1, 2002; amended by SR-NASD-2001-91 eff. July 1, 2002; amended by SR-NASD-2002-46 eff. July 1, 2002.]

## **6220. Participation in TRACE**

### **(a) Mandatory Member Participation**

(1) Member participation in TRACE for trade reporting purposes is mandatory. Such mandatory participation obligates members to submit transaction reports in TRACE-eligible securities in conformity with the Rule 6200 Series.

(2) Participation in TRACE shall be conditioned upon the TRACE Participant’s initial and continuing compliance with the following requirements:

(A) Execution of, and continuing compliance with, a TRACE Participant application agreement and all applicable rules and operating procedures of the Association and the Commission; and



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(B) Maintenance of the physical security of the equipment located on the premises of the TRACE Participant to prevent unauthorized entry of information into TRACE.

(3) Each TRACE Participant shall be obligated to inform the Association of non-compliance with, or changes to, any of the participation requirements set forth above.

**(b) Participant Obligations in TRACE**

Upon execution and receipt by the Association of the TRACE Participant application agreement, a TRACE Participant may commence input of trade information in TRACE-eligible securities. TRACE Participants may access the service via an NASD-approved facility during the hours of operation.

[Adopted by SR-NASD-99-65 eff. July 1, 2002; amended by SR-NASD-2002-46 eff. July 1, 2002.]

**6230. Transaction Reporting**

**(a) When and How Transactions are Reported**

A member that is required to report transaction information pursuant to paragraph (b) below must report such transaction information within one hour and fifteen minutes of the time of execution, except as otherwise provided below, or the transaction report will be "late." The member must transmit the report to TRACE during the hours the TRACE system is open ("TRACE system hours"), which are 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time. Specific trade reporting obligations during a 24-hour cycle are set forth below.

**(1) Transactions Executed During TRACE System Hours**

Transactions in TRACE-eligible securities executed on a business day at or after 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time must be reported within one hour and fifteen minutes of the time of execution. If a transaction is executed on a business day less than one hour and fifteen minutes before 6:30 p.m. Eastern Time, a member may report the transaction the next business day within one hour and fifteen minutes after the TRACE system opens. If reporting the next business day, the member must indicate "as/of" and provide the actual transaction date.

**(2) Transactions Executed At or After 6:30 P.M. Through 11:59:59 P.M. Eastern Time**

Transactions in TRACE-eligible securities executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time must be reported the next

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business day within one hour and fifteen minutes after the TRACE system opens. The member must indicate "as/of" and provide the actual transaction date.

**(3) Transactions Executed At or After 12:00 A.M. Through 7:59:59 A.M. Eastern Time**

Transactions in TRACE-eligible securities executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day within one hour and 15 minutes after the TRACE system opens.

**(4) Transactions Executed on a Non-Business Day**

Transactions in TRACE-eligible securities executed on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed, at any time during that day (determined using Eastern Time), must be reported the next business day within one hour and fifteen minutes after the TRACE system opens. The transaction must be reported as follows: the date of execution must be the first business day (the same day the report must be made); the execution time must be "12:01:00 a.m. Eastern Time" (stated in military time as "00:01:00"); and the modifier, "special price," must be selected. In addition, the transaction must not be designated "as/of". When the reporting method chosen provides a "special price memo" field, the member must enter the actual date and time of the transaction in the field.

(5) Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information; however, the primary responsibility for the timely, accurate, and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.

(6) A member may be required to report as soon as practicable to the Market Regulation Department on a paper form, the transaction information required under Rule 6230 if electronic submission into TRACE is not possible. Transactions that can be reported into TRACE, including transactions executed on a Saturday, Sunday or holiday as provided in (a)(4) above, and trades that can be submitted on the trade date or on a subsequent date on an "as/of" basis, shall not be reported on a paper form.

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**(b) Which Party Reports Transaction**

Trade data input obligations are as follows:

- (1) In transactions between two members, both members shall submit a trade report to TRACE;
- (2) In transactions involving a member and a non-member, including a customer, the member shall be required to submit a trade report to TRACE.

**(c) Transaction Information To Be Reported**

Each TRACE trade report shall contain the following information:

- (1) CUSIP number or NASD symbol;
- (2) Number of bonds as required by paragraph (d) below;
- (3) Price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) as required by paragraph (d) below;
- (4) A symbol indicating whether the transaction is a buy or a sell;
- (5) Date of Trade Execution(as/of trades only);
- (6) Contra-party's identifier;
- (7) Capacity - Principal or Agent (with riskless principal reported as principal) as required by paragraph (d) below;
- (8) Time of trade execution;
- (9) Reporting side executing broker as "give-up" (if any);
- (10) Contra side Introducing Broker in case of "give-up" trade;
- (11) Stated commission;
- (12) Such trade modifiers as required by either the TRACE rules or the TRACE users guide; and
- (13) The lower of yield to call or yield to maturity. A member is not required to report yield when the TRACE-eligible security is a security that is in default; a security for which the interest rate is floating; a security for which the interest rate will be or may be increased (e.g., certain "step-up bonds") or decreased (e.g., certain

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“step-down bonds”) and the amount of increase or decrease is an unknown variable; a pay-in-kind security (“PIK”); any other security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable, or any other security that the Association designates if the Association determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security.

**(d) Procedures for Reporting Price, Capacity, Volume**

(1) For principal transactions, report the price, which must include the mark-up or mark-down. (However, if a price field is not available, report the contract amount and the accrued interest.) For agency transactions, report the price, which must exclude the commission. (However, if a price field is not available, report the contract amount and the accrued interest.) Then, report the commission, stated in points per bond, with 1 point equal to \$10.00 per bond.

(2) For agency and principal transactions, report the actual number of bonds traded, with \$1,000 par value equal to 1 bond. If a bond has a par value of less than \$1,000 (“baby bond”) or the par value is not an even multiple of \$1,000, report the fractional portion of \$1,000 in decimals.

(3) For in-house cross transactions, a member must report two transactions, which are the member’s purchase transaction and the member’s sale transaction.

**(4) (A) Special Price Modifier**

If a transaction is not executed at a price that reflects the current market price, select the modifier, “special price.” When the reporting method chosen provides a “special price memo” field, state why the transaction was executed at other than the current market price in the “special price memo” field (e.g., when a debt security is traded conventionally and in the current market does not have a due bill and/or a warrant attached, but in the transaction to be reported is traded with a due bill and/or warrant attached, the price of the transaction is a “special price”). Do not select the modifier, “special price,” where the transaction price is determined using a weighted average price.

**(B) Settlement Modifiers**

If a transaction is to be settled other than the regular way, report the settlement terms by selecting the appropriate modifier. If the parties agree to

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settlement on the same day the transaction is executed (*i.e.*, cash settlement), select the modifier, “.c.” If a trade will be settled the next day, select the modifier, “.nd.” If a trade will be settled other than on the date of trade, the next day, or T+3, select the modifier, “.sNN,” and enter the appropriate number of days (*e.g.*, if a trade will be settled in 5 business days, the reporting party will enter “.s05” in the data field).

(C) Weighted Average Price Modifier

If the price of the transaction is determined using a weighted average price method, select the modifier, “.w.” If one of the settlement modifiers and the weighted average price modifier apply to the transaction, select the modifier, “.w” for weighted average price and do not report the applicable settlement modifier.

**(e) Transactions Not Required To Be Reported**

The following types of transactions shall not be reported:

- (1) Transactions that are part of a primary distribution by an issuer;
- (2) Transactions in securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly, and transactions in convertible debt securities that are listed and quoted on Nasdaq, when such transactions are reported to Nasdaq and the transaction information is disseminated publicly; and
- (3) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security (*e.g.*, to allow the seller to make a gift).

**(f) Compliance With Reporting Obligations**

A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

[Adopted by SR-NASD-99-65 eff. July 1, 2002; amended by SR-NASD-2001-04 eff. July 1, 2002; amended by SR-NASD-2002-46 eff. July 1, 2002.]

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#### **6240. Termination of TRACE Service**

The Association may, upon notice, terminate TRACE service to a member in the event that a member fails to abide by any of the rules or operating procedures of the TRACE service or the Association, or fails to honor contractual agreements entered into with the Association or its subsidiaries, or fails to pay promptly for services rendered by the TRACE service.

[Adopted by SR-NASD-99-65 eff. July 1, 2002.]

#### **6250. Dissemination of Corporate Bond Trade Information**

##### **(a) General Dissemination Standard**

Immediately upon receipt of transaction reports received at or after 8:00 a.m. through 6:29:59 p.m. Eastern Time, the Association will disseminate transaction information (except that market aggregate information and last sale information will not be updated after 5:15 p.m. Eastern Time) relating to transactions in:

- (1) a TRACE-eligible security having an initial issuance size of \$1 billion or greater that is Investment Grade at the time of receipt of the transaction report; and
- (2) a TRACE-eligible security that is designated for dissemination according to the following criteria and is Non-Investment Grade at the time of receipt of the transaction report.

(A) The staff of NASD will designate fifty of the most actively traded Non-Investment Grade securities that are TRACE-eligible securities for dissemination under this rule, based on (i) the security's volume; (ii) the security's price; (iii) the security's name recognition; (iv) the research following of the security; (v) the security having a minimum number of bonds outstanding; (vi) the security being traded routinely by at least two dealers; and (vii) the security contributing to a representation of diverse industry groups in the group of securities designated for dissemination.

(B) A Non-Investment Grade security will not be designated, and may be immediately withdrawn from designation, for dissemination under this rule if the security: (i) has matured; (ii) has been called; (iii) has been upgraded to Investment Grade; or (iv) has been downgraded to an extent that the security's trading characteristics do not warrant designation for dissemination.

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**(b) Transactions Excluded From Market Aggregate, Last Sale**

All trade reports in TRACE-eligible securities that are approved for dissemination and submitted to TRACE at or after 8:00 a.m. Eastern Time and prior to 5:15 p.m. Eastern Time will be included in the calculation of market aggregates and last sale except:

- (1) trades reported on an "as of" basis,
- (2) "when issued" trades executed on a yield basis,
- (3) trades in baby bonds with a par value of less than \$1,000,
- (4) trades in which the price is determined by a weighted average price; and
- (5) trades in which the price is a "special price," as indicated by the use of the special price modifier.

**(c) Dissemination of Certain Trades Executed on A Business Day**

(1) Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time, and are reported pursuant to Rule 6230(a)(2) on the next business day and designated "as/of" will be disseminated beginning at 8:00 a.m. Eastern Time on the day of receipt. The reported information will not be included in the calculation of the day's market aggregates.

(2) Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time, and are reported pursuant to Rule 6230(a)(3) on the same day beginning at 8:00 a.m. Eastern Time will be disseminated upon receipt. The reported information will be included in the calculation of the day's market aggregates, except as otherwise provided in Rule 6250(b)(1) through (5).

**(d) Dissemination of Trades Executed on Non-Business Days**

Reports of transactions in TRACE-eligible securities that are subject to dissemination, are executed on a non-business day at any time during the day, and are reported pursuant to Rule 6230(a)(4) on the next business day will be disseminated upon receipt. The reported information will not be included in the calculation of the day's market aggregates.

[Adopted by SR-NASD-99-65 eff. July 1, 2002; amended by SR-NASD-2002-46 eff. July 1, 2002.]

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## **6260. Managing Underwriter Obligation To Obtain CUSIP**

(a) In order to facilitate trade reporting of secondary transactions in TRACE-eligible securities, the member that is the managing underwriter of any newly issued TRACE-eligible security must obtain and provide information to the TRACE Operations Center as required under paragraph (b). If a managing underwriter is not appointed, the group of underwriters must comply with paragraph (b).

(b) For such TRACE-eligible securities, the managing underwriter must provide to the TRACE Operations Center: (1) the CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Rule 144A applies; and (6) a brief description of the issue (e.g., senior subordinated note, senior note), or if such information has not been determined, such other information as the NASD deems necessary. The managing underwriter must obtain the CUSIP number and provide it and the information listed as (2) through (6) not later than 5:00 p.m. on the business day preceding the day that the registration statement becomes effective, or, if registration is not required, the day before the securities will be priced. If an issuer notifies an underwriter, or the issuer and the underwriter determine, that the TRACE-eligible securities of the issuer shall be priced, offered and sold the same business day in an intra-day offering under Rule 415 of the Securities Act of 1933 or Rule 144A of the Securities Act of 1933, the member shall provide the information not later than 5:00 p.m. on the day that the securities are priced and offered, provided that if such securities are priced and offered on or after 5:00 p.m., the member shall provide the information not later than 5:00 p.m. on the next business day. A member must make a good faith determination that the security is a TRACE-eligible security before submitting the information to the TRACE Operations Center.

[Adopted by SR-NASD-99-65 eff. July 1, 2002; amended by SR-NASD-2002-46 eff. July 1, 2002.]



# Notice to Members

NOVEMBER 2002

## SUGGESTED ROUTING

Continuing Education  
Legal and Compliance  
Registration  
Senior Management

## KEY TOPICS

Regulatory Element

## Regulatory Element

### SEC Approves Rule Establishing New Registration Category for Proctors of In-Firm Delivery of the Regulatory Element

#### Executive Summary

On September 24, 2002, the Securities and Exchange Commission (SEC) approved NASD Rule 1043, a new registration category for proctors of in-firm delivery of the Regulatory Element of NASD's continuing education requirements. The Rule permits registration by an associated person as a proctor without taking a qualification exam. A person may obtain designation as a proctor upon approval of an Application for Registration pursuant to Article V, Section 2 of NASD's By-Laws.

A person registered only as a proctor may not function in any other capacity that requires registration. However, the Rule does not prohibit a person who is registered with NASD in any other capacity from also serving as a proctor without being designated as such under the Rule.

Included with this *Notice* is Attachment A, the text of the rule.

Questions concerning this *Notice* should be directed to Philip Shaikun, Assistant General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8451.

#### Background and Discussion

NASD Rule 1043 establishes a new registration category for proctors of in-firm delivery of the Regulatory Element of NASD's continuing education requirements. The Regulatory Element requires all registered persons to participate in a prescribed computer-based training session within 120 days of their second registration

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anniversary date and every three years thereafter. The Regulatory Element focuses on compliance, regulatory and ethical standards.

NASD Rule 1120(a)(6) permits each member to administer the Regulatory Element to their registered persons through a program delivered on the member's premises, provided that the member adheres to certain technology, administrative and regulatory standards. Among the requirements for in-firm delivery of the Regulatory Element is that the program sessions be proctored by an individual registered with a self-regulatory organization and supervised by a designated principal.

NASD believes the new registration category will make in-firm delivery a more attractive and efficient option for members while maintaining the integrity of the program. It will obviate the current need for members to either use a registered person who also has other day-to-day responsibilities or to commit resources needed to prepare a proctor for an exam-based registration.

Importantly, while the rule permits proctors to be registered without an exam, it still requires proctors to submit an application for registration in accordance with NASD By-Laws. As such, proctors will be required to file a Form U-4, which provides detailed employment and disciplinary history so that NASD can monitor the fitness of individuals to serve in that capacity. Any person whose sole registration is as a proctor under new NASD Rule 1043 will not be permitted to engage in any other activities requiring registration with NASD. The proposal will not prohibit a person who is registered with NASD in any other capacity from also serving as a proctor, as is permitted under existing rules.

## Effective Date

The Rule becomes effective on December 2, 2002. Members should note that Web CRD Release 4.2, which became available on October 21, 2002, contains an updated Form U-4 that includes a new category "IF" for the in-firm delivery proctor registration.

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## ATTACHMENT A

New language is underlined; deletions in brackets.

### 1040. Registration of Assistant Representatives [-Order Processing] and Proctors

### 1041. Registration Requirements for Assistant Representatives

(a) through (c) No change.

### 1042. Restrictions for Assistant Representatives

(a) through (c) No change.

### 1043. Proctors of In-Firm Delivery of Regulatory Element

(a) Any person associated with a member seeking to be designated as a Proctor under Rule 1120(a)(6)(E) for the purposes of in-firm delivery of the Regulatory Element shall be required to be registered pursuant to Rule 1120(a)(6)(E)(iii), but shall not be required to pass a Qualification Examination.

(b) Any person associated with a member may be designated as a Proctor upon approval of an Application for Registration pursuant to Article V, Section 2 of NASD's By-Laws. Any person whose sole registration is as a Proctor pursuant to this Rule 1043 shall not be qualified to function in any other area requiring registration with NASD.

(c) Nothing in this Rule 1043 shall prohibit a person who is registered with NASD in any other capacity from also serving as a Proctor without being designated as such under these provisions.

# Notice to Members

NOVEMBER 2002

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Registration  
Senior Management

## KEY TOPICS

Compliance Programs  
Money Laundering

INFORMATIONAL

EFFECTIVE DATE: DECEMBER 31, 2002

## Anti-Money Laundering Compliance Programs

NASD Adopts Amendments to Rule 3011 to Require Members to Provide to NASD Contact Information for an Anti-Money Laundering Compliance Person(s)

### Executive Summary

NASD has adopted amendments to NASD Rule 3011 (Anti-Money Laundering Compliance Program) to require each member to provide to NASD contact information for the individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the member's anti-money laundering (AML) compliance program (AML Program) and to update the contact information as necessary. The rule change became effective immediately upon filing with the Securities and Exchange Commission on October 21, 2002 and will become operative on December 31, 2002. Attachment A contains the text of the amendments.

### Questions/Further Information

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

### Discussion

The USA PATRIOT Act of 2001 (PATRIOT Act),<sup>1</sup> which was signed into law on October 26, 2001, recognizes that effective identification of money laundering and terrorist activities requires the expedited sharing and reporting of information among governmental and law enforcement authorities and financial institutions. In furtherance of this goal, Section 314(a) of the PATRIOT Act requires the Department of Treasury (Treasury) to adopt regulations to encourage cooperation and information sharing among financial institutions, their regulatory authorities, and law enforcement

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authorities. In particular, the regulations should be designed to facilitate law enforcement authorities' ability to share information with financial institutions and to request information from financial institutions about persons suspected of engaging in money laundering or terrorist activities. Section 314(a) further provides that the regulations adopted by Treasury may require that each financial institution designate one or more contact persons to receive information concerning, and to monitor accounts of, identified individuals or entities.

On September 18, 2002, Treasury issued a final rule implementing Section 314 of the PATRIOT Act. Consistent with Section 314(a), the rule creates a system for the efficient communication of potential money laundering and terrorist information. Upon receiving a request for information by the Financial Crimes Enforcement Network (FinCEN), a bureau of Treasury, the rule requires financial institutions to identify a contact person to handle the request and to receive future information requests. When requested by FinCEN, the financial institution is required to provide the name, title, mailing address, e-mail address, telephone number, and facsimile number of the designated contact person. The financial institution must also promptly notify FinCEN of any changes to the contact information.

NASD Rule 3011 requires each member to designate an individual or individuals responsible for implementing and monitoring the day-to-day operations of the firm's AML Program. To facilitate Treasury's efforts in collecting the AML contact information set forth in Treasury's final rule, NASD has amended Rule 3011 to require that members provide to NASD contact information concerning the members' designated AML compliance person(s). The information will be used by Treasury in connection with its regulatory obligations set forth in Section 314(a) of the PATRIOT Act and the implementing regulations promulgated thereunder. Consistent with Treasury's final rule, members will be required to provide to NASD the name, title, mailing address, e-mail address, telephone number, and facsimile number of the contact person. Members also will be required to promptly notify NASD of any changes to the information.<sup>2</sup> In addition, NASD anticipates requiring members periodically to review and confirm the accuracy of the contact information. Additional information will be provided in future.

NASD intends to initially collect the contact information through the Member Firm Contact Questionnaire on the NASD Web site. NASD anticipates that form and system changes necessary to collect the contact information will be completed by November 15, 2002. Members will have until December 31, 2002 to provide NASD with the necessary contact information.<sup>3</sup>

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## Endnotes

- 1 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).
  - 2 The amendments to Rule 3011 are consistent with New York Stock Exchange (NYSE) Rule 445 (AML Compliance Program) requirements that NYSE member organizations provide to the NYSE contact information identifying the member organization's designated AML compliance person and promptly notify the NYSE of any changes to the information.
  - 3 New member applicants will be required to provide the contact information during the application process.
- © 2002. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

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## ATTACHMENT A

New language is underlined.

### 3011. Anti-Money Laundering Compliance Program

On or before April 24, 2002, each member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member organization's anti-money laundering program must be approved, in writing, by a member of senior management. The anti-money laundering programs required by this Rule shall, at a minimum,

- (a) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;
- (b) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;
- (c) Provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party;
- (d) Designate, and identify to NASD (by name, title, mailing address, e-mail address, telephone number, and facsimile number) an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to NASD regarding any change in such designation(s); and
- (e) Provide ongoing training for appropriate personnel.

# Notice to Members

NOVEMBER 2002

## SUGGESTED ROUTING

Executive Representatives

## Board Elections

NASD Notice of Meeting and Proxy

## KEY TOPICS

Board Elections

The Annual Meeting of Members of NASD will be held on December 5, 2002, at 11:00 am, at the NASD Visitors Center, 1735 K Street, NW, in Washington, DC. The purpose of the meeting is to conduct the election of Governors to the NASD Board. Members can raise other topics for discussion by properly notifying NASD of these topics.<sup>1</sup> The record date for the Annual Meeting is the close of business on November 1, 2002.

It is important that all members be represented at the Annual Meeting. Members are urged to vote in the election of Board members using one of the methods described below.

### Board of Governors Election

There are eight vacancies to be filled at this meeting—four Industry governorships, three Non-Industry governorships, and one Public governorship. The nominees for the vacancies are listed in Attachment A. The nominees elected will serve for terms specified in Attachment A.

Attachment B includes the biographies of the nominees of the NASD National Nominating Committee (NNC). Attachment C contains the names of the current Board of Governors.

### Voting Methods

Members will be able to vote using one of the following three methods:

- ◆ U.S. Mail
- ◆ Internet
- ◆ Phone

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The enclosed proxy contains detailed instructions on the voting procedures.

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

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

**Endnote**

- 1 Pursuant to Sections 1 and 3(b) of Article XXI of the NASD By-Laws, an NASD member may properly bring any other business before the Annual Meeting by giving timely notice in writing to the Secretary of NASD. In addition, the member must be an NASD member at the time of the delivery of such notice, and the other business must be a proper matter for member action. To be timely, a member's notice must be delivered to the Secretary at NASD's principal executive offices (the address is listed above) within 25 days of the date of this notice. The member's notice must offer a brief description of the other business, any material interest of the member in such business, and the reasons for conducting such business at the Annual Meeting.

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## ATTACHMENT A

### NASD Board of Governors Nominees

The following three persons 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	Chairman, 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 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	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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## ATTACHMENT B

### 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 Chairman 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 Cisqua 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.

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## 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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## ATTACHMENT C

### Current Board of Governors Governors with Terms Expiring in 2002

#### Industry

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

#### Non-Industry

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

#### Public

Kenneth M. Duberstein	Chairman and CEO, The Duberstein Group, Inc.
Donald J. Kirk*	
John D. Markese*	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.
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#### Non-Industry

Arvind Sodhani*	Vice President and Treasurer, Intel Corporation
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#### Public

Brian T. Borders, Esq.	Mayer, Brown, Rowe & Maw
Sharon P. Smith	Dean, College of Business Administration, Fordham University

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## 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
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### 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

# Disciplinary Actions

## REPORTED FOR NOVEMBER

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 October 2002.

### Firm Fined, Individual Sanctioned

**Blake Street Securities, LLC (CRD #44905, Denver, Colorado) and Brad Allen Dowell (CRD #1308189, Registered Principal, Denver, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Dowell was fined \$2,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with Section 17(b) of the Securities Act of 1933 and NASD Conduct Rule 2210(b). The findings stated that the firm and Dowell failed to conduct the required reviews, and thereby failed to prevent a registered representative of the firm from publishing information about stocks on his Web site without fully disclosing the amounts of compensation he received for doing so.

Dowell's suspension began November 4, 2002, and will conclude at the close of business November 8, 2002. (NASD Case #CMS020171)

### Firms and Individuals Fined

**CyBerBroker, Inc. n/k/a CyberTrader, Inc. (CRD #44523, Austin, Texas), and Mark Kurt Stryker (CRD #2740097, Registered Principal, Austin, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which they were each censured and fined \$15,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm placed an advertisement on its Web site and on the Web sites of other parties that said it was the "#1 Electronic Broker For Active Online Traders" and included a disclaimer that the statement was based on "industry research" conducted by an independent financial services firm when, in fact, the firm internally utilized a different analysis to determine that it was the highest-ranked firm and failed to disclose in its communications with the public its analysis or the basis for its determination, causing the statement to be misleading. The findings also stated that Stryker conceived and approved the internal analysis done by the firm and approved the "global" use of the phrase, providing the firm's compliance staff with evidence sufficient to support the statement. (NASD Case #CAF020040)

**PCI\* Trade Securities (CRD #40650, Fremont, California) and Shixiong Liu (CRD #2217632, Registered Principal, Fremont, California)** submitted an Offer of Settlement in which they were censured and fined \$11,454.46, jointly and severally. The fine included disgorgement of \$3,954.46 in commissions paid to Liu. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Liu performed activities as a registered person and performed duties in a capacity requiring registration, and the firm permitted him to perform such activities, duties, and functions, when Liu was deemed inactive for failure to complete the Regulatory Element of Continuing Education. NASD found that the firm, acting through Liu, failed to comply with the Firm Element of the Continuing Education Requirement for the firm's covered personnel in that it failed to perform a written needs analysis and create a written training plan as set forth in NASD Membership and Registration Rule 1120(b). **(NASD Case #C01020010)**

## Firms Fined

**ABN AMRO Incorporated (CRD #15776, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to take reasonable steps to ensure that the executing brokers clearing trades through the firm completely and accurately reported transactions in municipal securities effected with other broker/dealers or municipal securities dealers. NASD also found that the firm failed to provide accurate and timely information regarding municipal securities trades to the National Securities Clearing Corporation (NSCC), which caused the firm's T-Input Percentage to be consistently below the industry average. **(NASD Case #C8A020065)**

**Allmerica Investments, Inc. (CRD #3960, Worcester, Massachusetts)** 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 failed to establish an adequate supervisory system reasonably designed to prevent and detect unsuitable mutual fund transactions in customer accounts. The findings also stated that the firm failed to establish reasonable written supervisory procedures for identifying the process the firm used in reviewing and detecting unsuitable mutual fund transactions, and to the extent the firm had written supervisory procedures related to mutual fund transactions, the firm failed to take steps to ensure that the procedures were followed. **(NASD Case #C11020036)**

**Conseco Equity Sales, Inc. (CRD #4125, Carmel, Indiana)** 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 allowed representatives to act in a capacity requiring registration without being so registered due to a failure to complete the Regulatory Element of Continuing Education. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures to ensure compliance with the Regulatory Element of Continuing Education. **(NASD Case #C8A020073)**

**First Institutional Securities, LLC (CRD #23910, West Paterson, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to pay \$1,840 in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it incorrectly reported to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) the capacity in which it had acted and failed to report trades properly. The findings also stated that the firm failed to display immediately customer limit orders in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, and failed to contemporaneously or partially execute customer limit orders after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order. In addition, NASD found that the firm incorrectly notified a customer that the trade had been executed on an agency basis, when, in fact, the trade had been effected on a principal basis and failed to maintain an order ticket for transactions and the order tickets failed to reflect the correct execution or entry time. **(NASD Cases #C9B020072 and C9B020073)**

**First Montauk Securities Corp. (CRD #13755, Red Bank, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it 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. The findings also stated that the firm failed to report to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>) transactions in FIPS securities within five minutes after execution. **(NASD Case #CMS020178)**

**KBC Financial Products USA, Inc. (CRD #46709, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to



transmit through ACT last-sale reports of transactions in NASDAQ National Market® (NNM®), NASDAQ SmallCap<sup>SM</sup> (SC<sup>SM</sup>), and Consolidated Quotation Service (CQS) securities. NASD also found that the firm incorrectly designated as “.SLD” through ACT last-sale reports of transactions in NNM securities and CQS securities reported to ACT within 90 seconds of execution. The findings stated that the firm failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution. (NASD Case #CMS020163)

**Northeast Securities, Inc. (CRD #25996, Mitchelfield, New York)** 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, during the contingency period of a private placement offering in which the firm served as placement agent for a best efforts “part-or-none” private placement self-offering of interests in the firm, it failed to ensure that the money or other considerations received were promptly transferred to a bank that had agreed in writing to hold all such funds in escrow for the persons who had the beneficial interests therein, and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency had occurred. (NASD Case #CLI020008)

**Spencer Trask Ventures, Inc. (CRD #28373, New York, New York)** was censured and fined \$41,636, of which \$1,000 was jointly and severally. The sanctions were based on findings that the firm, in violation of the Free-Riding Withholding Interpretation, sold “hot issues” to prohibited accounts and failed to exercise reasonable supervision and to establish and maintain supervisory procedures reasonably designed to achieve compliance with NASD Rule IM-2110-1. (NASD Case #C8A020010)

**SWS Securities, Inc. f/k/a Southwest Securities, Inc. (CRD #6220, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to revise its written supervisory procedures as they relate to the review of approval of letters of authorization and the firm’s credit restrictions and trading parameters. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to enforce written supervisory procedures addressing the handling, approval, and processing of customer letters of authorization (LOA) received from its correspondent firms participating in day-trading activities. The findings also stated that the firm failed to reflect in its written supervisory procedures its procedures to address the setting of trading parameters for correspondent firms and the monitoring of correspondent transactions away from the firm. (NASD Case #C05020047)

**Worldco, L.L.C. (CRD #24673, 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 it reported proprietary and customer short-sale transactions through ACT without a short-sale modifier, and long-sale transactions were incorrectly reported as short. The findings also stated that the firm executed proprietary short-sale transactions in NASDAQ National Market Securities (NMS) at the current inside bid, when the current inside bid was below the preceding inside bid in the security. (NASD Case #C05020049)

## Individuals Barred or Suspended

**Richard Ralph Avis (CRD #2490874, Registered Representative, Tampa, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, including disgorgement of earned commissions of \$7,560, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Avis consented to the described sanctions and to the entry of findings that he participated in an outside business activity for compensation without providing prompt written notice to his member firm.

Avis’ suspension began November 4, 2002, and will conclude May 3, 2003. (NASD Case #C07020074)

**Michael Baldo a/k/a Miguel Baldo Lozano (CRD #2620455, Registered Representative, Long Island City, New York)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Baldo consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent.

Baldo’s suspension began October 21, 2002, and will conclude at the close of business January 20, 2003. (NASD Case #C10020062)

**Donald Jeffrey Barker (CRD #4476980, Associated Person, Aurora, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Barker reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Barker consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Uniform Application for Securities Industry Registration or Transfer (Form U-4).

Barker’s suspension began October 21, 2002, and will conclude July 20, 2003. (NASD Case #C8A020069)

**Bruce Douglas Berry (CRD #2846046, Registered Representative, Livonia, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Berry consented to the described sanctions and to the entry of findings that he removed an IRA rollover check that a public customer submitted to his office, brought the check to the customer's home, and suggested that the customer transfer the rollover to a company affiliated with his soon-to-be new employer. The findings also stated that after the customer completed a new account form, Berry crossed out and substituted the payee on the rollover check, placed the customer's initials next to the payee line, and submitted the check to the new company, but the check was rejected.

Berry's suspension began November 4, 2002, and will conclude at the close of business December 3, 2002. (NASD Case #C8A020063)

**Douglas Scott Bingaman (CRD #1611958, Registered Representative, South Bend, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bingaman consented to the described sanction and to the entry of findings that he received \$37,553 from public customers for investments, deposited the funds into his own account, and then converted the funds to his own use without the knowledge or consent of the customers. (NASD Case #C8A020066)

**Anthony Brian John Black (CRD #1582391, Registered Supervisor, San Diego, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Black consented to the described sanction and to the entry of findings that, without public customers' knowledge or consent, he affixed the customers' and other necessary signatures on multiple letters of authorization (LOAs), withdrew \$140,000 in customer funds from a variable annuity contract, transferred these funds to a bank account under his ownership and control, and used the funds for his personal use. (NASD Case #C02020051)

**Ronald James Blekicki (CRD #2615061, Registered Representative, Boulder, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Blekicki reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Blekicki consented to the described sanctions and to the entry of findings that he failed to disclose fully the amounts of compensation he received in exchange for publishing favorable information about stocks on

his Internet Web site. The findings also stated that Blekicki failed to have a registered principal of his member firm review and pre-approve his Internet publications. In addition, NASD found that Blekicki maintained a securities account at another broker/dealer without notifying his member firm, and without notifying the firm where the account was opened when he became associated with another member firm.

Blekicki's suspension began November 4, 2002, and will conclude at the close of business November 3, 2003. (NASD Case #CMS020170)

**Robert Loal Boeke, Sr. (CRD #2515281, Registered Representative, Rockford, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$43,000, including the disgorgement of financial benefits received, and barred from association with any NASD member in any capacity. The fine must be paid before Boeke reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Boeke consented to the described sanctions and to the entry of findings that he converted a public customer's funds totaling \$100,000 to his own use and deposited the funds into his personal brokerage account held at another member firm without the knowledge or consent of the customer. The findings also stated that Boeke failed to disclose to his member firm that he maintained a brokerage account at another member firm. (NASD Case #C8A020067)

**Jason Phillip Bronston (CRD #2635605, Registered Representative, West Hills, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bronston consented to the described sanction and to the entry of findings that he received and converted \$77,000 in customer funds intended for investment purposes. The findings also stated that Bronston failed to respond to NASD requests for information. (NASD Case #C02020047)

**Paul Raymond Brunner (CRD #3178981, Registered Representative, O'Fallon, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, including \$5,000, plus interest, in disgorgement of commissions to customers, and suspended from association with any NASD member in any capacity for 60 days. The fine and disgorgement must be paid before Brunner reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Brunner consented to the described sanctions and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his firm with detailed written notice of the transactions and his role therein, and to receive permission from his member firm to engage in the transactions. The findings also

stated that Brunner acted in capacities requiring registration as a general securities representative without being properly registered with NASD.

Brunner's suspension began November 4, 2002, and will conclude at the close of business January 2, 2003. (NASD Case #C04020034)

**Harvey Lee Bunker, Jr. (CRD #3015864, Registered Representative, Nashville, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Bunker reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bunker consented to the described sanctions and to the entry of findings that he misappropriated \$11,974 in insurance premium payments that he received from public customers of his member firm by borrowing such funds to meet his business expenses, without the knowledge or the express or implied consent of the customers or his member firm.

Bunker's suspension began October 21, 2002, and will conclude at the close of business October 20, 2003. (NASD Case #C8A020070)

**Salvatore Carrizzo, Jr. (CRD #2276381, Registered Representative, Massapequa Park, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for one year. In light of the financial status of Carrizzo, no monetary sanctions have been imposed. Without admitting or denying the allegations, Carrizzo 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.

Carrizzo's suspension began October 21, 2002, and will conclude at the close of business October 20, 2003. (NASD Case #C9B020067)

**Timothy Roderick Chamberlain (CRD #2693994, Registered Principal, Costa Mesa, California)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. In light of the financial status of Chamberlain, no monetary sanctions have been imposed. Without admitting or denying the allegations, Chamberlain consented to the described sanction and to the entry of findings that he participated in a scheme to manipulate the share price of a common stock in exchange for guaranteed profits for stocks that he bought and sold at the direction of two individuals. The findings stated that Chamberlain also accepted compensation in the form of shares of stock, which he received in nominee accounts. In addition, the findings stated that Chamberlain failed to notify his member firm and the executing member firm at which he traded his shares of stock, in writing, of his association with the other member firm prior to opening

his trading account or placing an initial order for the purchase or sale of sales of stock. (NASD Case #CAF010021)

**Brian Francis Colby (CRD #1896649, Registered Representative, Boston, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Colby consented to the described sanction and to the entry of findings that he engaged in Free-Riding by purchasing shares in the "hot issue" offerings (where shares traded at a premium in the aftermarket) through the account of a public customer while registered with his member firm. The findings also stated that Colby provided false and/or misleading responses to NASD during an on-the-record interview. (NASD Case #C9B020064)

**Jeffrey Paul Couper (CRD #1111013, Registered Representative, Iron Mountain, Michigan)** 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 Couper reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Couper consented to the described sanctions and to the entry of findings that he mishandled customer funds when he accepted and held monthly cash payments intended for life insurance premiums from a public customer. NASD found that the funds were not applied to the insurance policies, and, as a result, the policies lapsed. The findings also stated that Couper mishandled public customer funds when he accepted \$135 from the customer for payment of a variable life product, but failed to promptly apply the funds to the product.

Couper's suspension began November 4, 2002, and will conclude May 3, 2003. (NASD Case #C8A020045)

**Lucretia Pamela Davis (CRD #3276421, Registered Representative, Columbus, Ohio)** 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, Davis consented to the described sanction and to the entry of findings that she forged the signatures of members of the public on savings account withdrawal slips for accounts maintained at a bank affiliate of her member firm, presented the withdrawal slips, obtained proceeds totaling \$41,700, and used the proceeds for her own benefit, without their knowledge, consent, or authorization. (NASD Case #C8B020019)

**Marlon Francisco Delgado (CRD #2531325, Registered Representative, Franklin Square, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 18 months, and required to requalify by exam as a general securities representative. If Delgado fails to requalify within 60 days after conclusion of the suspension, he

shall not associate with any NASD member in any capacity until he requalifies. The fine must be paid before Delgado reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Delgado consented to the described sanctions and to the entry of findings that he effected the sale of securities in at least three states in which he was not yet registered, and attempted to conceal it by placing the trades under another broker's name. The findings stated that Delgado solicited public customers to purchase securities, downplayed the attendant investment risks, and made unwarranted price predictions, causing the customers to authorize and pay for the transactions. NASD also found that Delgado effected transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent.

Delgado's suspension began October 21, 2002, and will conclude at the close of business April 20, 2004. (NASD Case #C10020093)

**Donald Francis Dupont (CRD #2581848, Registered Representative, Averill Park, 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 six months. The fine must be paid before Dupont reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dupont consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts by failing to amend his Form U-4.

Dupont's suspension began November 4, 2002, and will conclude May 3, 2003. (NASD Case #C11020040)

**Walter William Durchhalter (CRD #1428989, Registered Principal, Middle Village, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Durchhalter reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Durchhalter consented to the described sanctions and to the entry of findings that, as head trader of his member firm, he caused his firm to bid for, purchase, and induce others to purchase warrants while the firm was engaged in a distribution of the warrants. The findings stated that Durchhalter posted the firm's bid and ask price quotations at prices intended to induce others to purchase warrants from, and sell warrants to, his member firm in the aftermarket during these periods and executed purchases of warrants on behalf of his member firm.

Durchhalter's suspension began October 21, 2002, and will conclude at the close of business October 20, 2003. (NASD Case #CAF020034)

**Nancy Katherine Evans (CRD #2422682, Registered Representative, Marshfield, Massachusetts)** 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, Evans consented to the described sanction and to the entry of findings that, without the knowledge or consent of a public customer, she prepared and signed the customer's signature on Letters of Authorization that authorized wire transfers totaling \$24,254.13 from the customer's account, which were misappropriated by Evans for her own personal use. (NASD Case #C11020038)

**Kevin Thomas Ferguson (CRD #4143905, Registered Representative, Boston, Massachusetts)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Ferguson issued annuitant checks totaling \$26,040 without the consent or authorization of the annuitants, and converted the funds to his own use and benefit. In addition, Ferguson failed to respond to NASD requests for information. (NASD Case #C11020017)

**Gary Andrew Finly (CRD #2776637, Registered Representative, North Port, 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, Finly consented to the described sanction and to the entry of findings that, without authorization or consent, he forged the signatures of public customers on account transfer paperwork in order to cause their accounts to be transferred from his former member firm to his new member firm. (NASD Case #C07020072)

**Frederic James Folino (CRD #1210850, Registered Representative, Camarillo, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, ordered to disgorge \$22,200 in commissions received to be paid as restitution to public customers, and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Folino consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm.

Folino's suspension began October 21, 2002, and will conclude at the close of business January 20, 2003. (NASD Case #C06020014)

**William Walton Glauser (CRD #3250733, Registered Representative, Huntsville, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Glauser reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Glauser consented to the described sanctions and to the entry of findings that, in connection with a Series 65 examination, he

committed an act of misconduct by removing scratch paper from the test center without authorization, and, as a result, his testing session was terminated. The findings also stated that Glauser willfully failed to disclose material facts on his Form U-4.

Glauser's suspension began October 21, 2002, and will conclude at the close of business April 20, 2004. (NASD Case #C06020012)

**David William Haburjak (CRD #2233093, Registered Representative, W. Gastonia, North Carolina)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 20 business days. The sanctions are based on findings that Haburjak exercised discretionary power in the accounts of public customers without written discretionary authority from the customers or his member firm's acceptance of the accounts as discretionary.

Haburjak's suspension began October 7, 2002, and concluded at the close of business November 1, 2002. (NASD Case #C07010100)

**Peter Van Hamm (CRD #2530393, Registered Representative, Dunellen, New Jersey)** was fined \$25,000 and suspended from association with any NASD member in any capacity for one year. The fine is due and payable upon Hamm's re-entry into the securities industry. The sanctions are based on findings that Hamm executed unauthorized transactions in the accounts of public customers.

Hamm's suspension began November 4, 2002, and will conclude at the close of business November 3, 2003. (NASD Case #C10010082)

**Glen S. Hancock (CRD #1461959, Registered Representative, Cedar Park, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, ordered to pay \$4,875, plus interest, in restitution to public customers, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Hancock consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm.

Hancock's suspension began November 4, 2002, and will conclude at the close of business December 16, 2002. (NASD Case #C05020048)

**Kevin Jay Hayes (CRD #4435512, Associated Person, St. Louis, Missouri)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Hayes failed to respond to NASD requests for information. Hayes also failed to disclose a material fact on his Form U-4. (NASD Case #C04020014)

**Herbert Clarence Hearne (CRD #2462835, Registered Principal, Cotuit, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one month. The fine must be paid before Hearne reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hearne consented to the described sanctions and to the entry of findings that he agreed to process the paperwork to open accounts and purchase transactions, effect the transactions, and pay the commissions to a registered representative of another member firm once the representative became registered with his member firm. NASD found that Hearne paid the representative commissions for transactions that occurred prior to the representative becoming registered with his member firm. In addition, NASD determined that Hearne failed to take appropriate action to supervise a registered representative who recommended unsuitable transactions in customer accounts, which was reasonably designed to prevent the violations by the representative and achieve compliance with applicable securities laws, regulations, and NASD rules.

Hearne's suspension began October 21, 2002, and will conclude at the close of business November 20, 2002. (NASD Case #C11020035)

**Wayne William Hoffman (CRD #1097848, Registered Principal, Fogelsville, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hoffman consented to the described sanction and to the entry of findings that he participated in private securities transactions outside the scope of his employment with his member firm and failed to provide prior written notice of his proposed participation in the transactions to his member firm. (NASD Case #C9A020042)

**John Allen Jones, IV (CRD #2351720, Registered Representative, Montgomery, Alabama)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Jones consented to the described sanction and to the entry of findings that he recommended purchase and sale transactions in various securities to public customers without having reasonable grounds for believing that they were suitable for the customers in view of the frequency and nature of the recommended transactions and the customers' financial situation, objectives, circumstances, and needs.

Jones' suspension began November 4, 2002, and will conclude at the close of business November 3, 2003. (NASD Case #C05020006)

**Eugene Michael Kingman (CRD #1995746, Registered Representative, Holmdel, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Kingman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kingman consented to the described sanctions and to the entry of findings that in sworn testimony before NASD, he falsely testified that presented order tickets represented actual orders for stock and later admitted that he had given false testimony.

Kingman's suspension began October 21, 2002, and will conclude April 20, 2003. (NASD Case #CMS020165)

**William Francis Kirincich (CRD #1388826, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any principal or supervisory capacity for 30 days. The fine must be paid before Kirincich reassociates with any NASD member. Without admitting or denying the allegations, Kirincich consented to the described sanctions and to the entry of findings that he permitted persons associated with his member firm to engage in the securities business of the firm as general securities representatives and/or assistant representatives—order processing while they were not registered with the NASD in any capacity.

Kirincich's suspension began October 7, 2002, and concluded at the close of business November 5, 2002. (NASD Case #C10020097)

**Gary Charles Klein (CRD #1731164, Registered Representative, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Klein consented to the described sanction and to the entry of findings that he opened, or caused to be opened, a securities brokerage account at another member firm and executed transactions in the account without providing written notification to his member firm of his intentions to execute these transactions, and failed to advise the other firm of his association with his member firm. The findings stated that Klein opened the account pursuant to an oral understanding he had with a public customer at his firm through which Klein and the customer agreed to treat the account as a partnership account and that they would share equally in any profits in the account. NASD found that Klein opened the account in his name only and never received written authorization from the firm to share in the profits in the account with the customer. The findings also stated that Klein exercised discretionary authority in the account by executing all equity transactions without obtaining the customer's prior written

authorization and his member firm's written acceptance of the account as discretionary. In addition, NASD found that Klein received \$68,032.83 in customer funds intended to be deposited in the account, did not apply all the funds as directed by the customer, and instead, without the customer's knowledge or consent, misused \$4,532.82, which he did not deposit until after six months of receipt. (NASD Case #C02020043)

**Lawrence John LaSala (CRD #2237835, Registered Representative, Oak Ridge, 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, LaSala 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. (NASD Case #C9B020065)

**Christopher John Lester (CRD #2875370, Registered Representative, Somerset, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for two years. In light of the financial status of Lester, no monetary sanctions have been imposed. Without admitting or denying the allegations, Lester 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.

Lester's suspension began October 21, 2002, and will conclude at the close of business October 20, 2004. (NASD Case #C9B020066)

**Troy Anthony Litle (CRD #1364827, Registered Representative, Fresno, 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 10 business days. Without admitting or denying the allegations, Litle consented to the described sanctions and to the entry of findings that, without prior approval of his member firm, he distributed sales literature in the form of a letter to public customers concerning a variable annuity that was an incomplete description of the product's features and therefore contained unwarranted, exaggerated, and misleading statements.

Litle's suspension is deemed served based on a suspension imposed by his member firm. (NASD Case #C01020015)

**James Lopresti (CRD #3236682, Associated Person, Staten Island, 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 one year. The fine must be paid before Lopresti reassociates with any NASD member following the suspension or before requesting

relief from any statutory disqualification. Without admitting or denying the allegations, Lopresti consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD request for information.

Lopresti's suspension began October 21, 2002, and will conclude at the close of business October 20, 2003. (NASD Case #C9B020061)

**Tina Sue Lounsbury (CRD #2817864, Registered Principal, Jacksonville, Florida)** 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, Lounsbury consented to the described sanction and to the entry of findings that she obtained \$105,430.67 from the accounts of public customers, without their authorization or consent, and used the funds for her own purposes. The findings also stated that Lounsbury failed to respond to NASD requests for information. (NASD Case #C07020076)

**Richard Scott Madden (CRD #2112496, Registered Representative, Houston, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Madden consented to the described sanction and to the entry of findings that he changed the addresses for joint accounts belonging to public customers to that of a third party and effected transactions in the accounts without the customers' authorization, knowledge, or consent. In addition, NASD found that Madden sent the customers computer-generated reports that contained some information about the account but failed to reflect any of Madden's unauthorized trading activity. The findings also stated that Madden failed to respond to NASD requests for information. (NASD Case #C06020013)

**Imran A. Maniar (CRD #2953812, Registered Representative, Houston, 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 15 days. The fine must be paid before Maniar reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Maniar consented to the described sanctions and to the entry of findings that he exercised discretionary transactions in the account of a public customer without having obtained prior written authorization from the customer and written acceptance of the account as discretionary by his member firm.

Maniar's suspension began November 4, 2002, and will conclude at the close of business November 18, 2002. (NASD Case #C05020050)

**Consuelo Velasco Marcelino (CRD #2832189, Registered Representative, Glendale, California)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Marcelino reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Marcelino consented to the described sanctions and to the entry of findings that, in an attempt to expedite the opening of a public customer's account, she affixed the customer's signature on a new account application without the customer's knowledge or consent.

Marcelino's suspension began November 4, 2002, and will conclude at the close of business December 3, 2002. (NASD Case #C02020050)

**Ken Marks (CRD #2192323, Registered Representative, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for eight weeks. The fine must be paid before Marks reassociates with any NASD member following the suspension. Without admitting or denying the allegations, Marks consented to the described sanctions and to the entry of findings that he sent, 19 seconds prior to the close of normal business hours, a SelectNet® order to buy shares from another firm, causing his member firm to send the order without first accessing the inside market. The findings also stated that when Marks sent the SelectNet order to purchase shares, he caused the last trade price of shares to be artificially increased, and as a result, he was able to sell the orders at an advantageous price gain.

Marks' suspension began October 21, 2002, and will conclude at the close of business December 13, 2002. (NASD Case #CMS020162)

**Amy Lynn Martin (CRD #3204695, Registered Representative, Memphis, Tennessee)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Martin transferred \$128,000 from the accounts of public customers to the checking account of another public customer. The transfer of funds was done for a purpose not directed by the customers and without their knowledge or consent. (NASD Case #C05020018)

**Wayne Paul Messner (CRD #2170398, Registered Representative, St. Charles, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Messner consented to the described sanction and to the entry of findings that he received a \$5,000 check from a public customer for the purpose of investing in mutual funds. NASD found that Messner then deposited the check into his business checking account and converted the funds to his own use or for some purpose other

than the benefit of the customer without the knowledge or consent of the customer. The findings also stated that Messner failed to respond completely to NASD requests for information. (NASD Case #C8A020072)

**Aaron Simon Morris (CRD #2691021, Registered Representative, Hollywood, Florida)** was fined \$45,313, suspended from association with any NASD member in any capacity for nine months, and required to pay \$22,668, plus interest, in restitution to public customers. The sanctions were based on findings that Morris made fraudulent omissions of material fact in connection with the offer and sale of a security.

Morris' suspension began October 7, 2002, and will conclude at the close of business July 7, 2003. (NASD Case #C3A020006)

**James Steven Neumeier (CRD #2097359, Registered Representative, High Ridge, 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, without the knowledge or consent of a public customer, he caused a \$25,000 loan to be made from the customer's fixed insurance contract, instructed the customer to deposit the check into his personal checking account, and to write Neumeier a personal check payable to him for \$25,000. NASD found that Neumeier represented to the customer that he would repay his member firm with his funds and instead of repaying, he endorsed and deposited the check into an account under his control, thereby converting the funds to his own use and benefit. The findings also stated that Neumeier failed to respond completely to NASD requests for information. (NASD Case #C04020033)

**Bryan Dominic Orjuela (CRD #1865605, Registered Representative, Long Beach, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Orjuela consented to the described sanction and to the entry of findings that in sworn testimony before NASD, he falsely testified that presented order tickets represented actual orders for stock and admitted that he had given false testimony.

Orjuela's suspension began October 21, 2002, and will conclude at the close of business October 20, 2003. (NASD Case #CMS020164)

**Leland Keith Ozawa, Jr. (CRD #2119830, Registered Representative, Las Vegas, Nevada)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Ozawa 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.

Ozawa's suspension began October 21, 2002, and will conclude at the close of business December 20, 2002. (NASD Case #C02020046)

**Joseph John Papeo (CRD #2476778, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Papeo consented to the described sanction and to the entry of findings that he effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. The findings also stated that Papeo, in an exercise of discretion, effected transactions in the joint account of public customers without their prior written authorization and his member firm's written acceptance of the account as discretionary. In addition, NASD found that Papeo exercised discretion in the account of public customers and effected a purchase transaction without having reasonable grounds for believing that the transaction was reasonable based on the customers' financial situation, investment objectives, and financial needs. NASD also found that Papeo effected transactions in his joint trading account at his member firm without paying for the transactions, transferred at least \$8,000 to his joint personal bank account, and wrote a \$20,000 check from his personal bank account to his member firm's clearing firm to pay for transactions effected in his joint trading account that was returned for insufficient funds, causing his firm to be left with a \$21,874.30 debit balance. Furthermore, NASD found that Papeo failed to respond truthfully during an NASD on-the-record interview, failed to respond to NASD requests for documents, and failed to respond to NASD requests to appear for a follow-up on-the-record interview. (NASD Case #C10020094)

**Joseph Eugene Rahm (CRD #3212003, Registered Representative, Overland Park, Kansas)** 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, Rahm consented to the described sanction and to the entry of findings that, while employed with a member firm, he converted \$490 to his own use and benefit from a Christmas tree lot at which he was volunteering. (NASD Case #C04020035)

**James Anthony Ross (CRD #718008, Registered Representative, Pitcairn, Pennsylvania)** submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for four months, and required to disgorge \$11,800, plus interest, in partial restitution to public customers. The fine and restitution must be paid before Ross reassociates with any NASD member



following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ross 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.

Ross' suspension began October 21, 2002, and will conclude at the close of business February 20, 2003. (NASD Case #C9A020032)

**James F. Salata (CRD #1520552, Registered Representative, Amity, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Salata consented to the described sanction and to the entry of findings that he recommended and sold callable Certificates of Deposit (CDs) to public customers and made material misrepresentations during his sales presentations. The findings also stated that Salata misrepresented 15- or 20-year callable CDs as one- or two-year CDs; misrepresented that the CDs would be called within a specific period of time; and informed customers that the callable CDs could be redeemed without penalty at any time with no risk to principal when, in fact, the callable CDs had to be sold on the secondary market to obtain a return of principal prior to maturity with a possible significant loss to principal in such a transaction. In addition, the findings stated that Salata informed customers that they could redeem callable CDs at any time with minimal risk to principal and that any loss would be covered by the interest earned. (NASD Case #CAF020033)

**Ruslan M. Sattarov (CRD #3027779, Registered Representative, Seattle, Washington)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Sattarov reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sattarov consented to the described sanctions and to the entry of findings that he caused the execution of transactions in his mother's securities account at his member firm on an "as of" basis. NASD found that such transactions were entered into the firm's electronic order entry system on a date after the "as of" trade date entered by Sattarov when they should have been entered at the price available on the entry date, not at the more favorable price obtained by entering and executing them on an "as of" basis.

Sattarov's suspension began October 21, 2002, and will conclude at the close of business November 19, 2002. (NASD Case #C3A020026)

**Dennis Patrick Sweenor (CRD #2621311, Registered Representative, Queensbury, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member

in any capacity for six months, and ordered to pay \$2,822.77, plus interest, in restitution to public customers. The fine and restitution must be paid before Sweenor reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sweenor consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in the accounts of public customers without their prior authorization. The findings also stated that Sweenor negligently misrepresented to public customers that they would be charged commissions on profitable trades only or that the commissions would be three percent of the profits from the customers' accounts.

Sweenor's suspension began October 21, 2002, and will conclude April 20, 2003. (NASD Case #C07020075)

**Stephen Michael Telesca (CRD #1021136, Registered Representative, Fairport, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$14,490 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Telesca consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, away from his member firm and failed to provide his firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions. The findings also stated that Telesca engaged in outside business activities for compensation, and failed to provide his member firm with prompt written notice of these activities.

Telesca's suspension began November 4, 2002, and will conclude at the close of business December 3, 2002. (NASD Case #C8B020018)

**James Theodore Wade (CRD #1070305, Registered Representative, Fairlawn, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000, suspended from association with any NASD member in any capacity for two years, and ordered to requalify by exam following the suspension before acting in the securities industry in any capacity. The fine must be paid before Wade reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wade consented to the described sanctions and to the entry of findings that he made material misrepresentations to public customers during the sale of callable CDs. The findings stated that Wade materially misrepresented that the callable CDs were one-year CDs when, in fact, they had 15- or 20-year maturity dates. Wade also misrepresented that the callable CDs could be redeemed without penalty at any time with no risk to principal when, in actuality, the callable CDs must be sold on the secondary market to obtain a return of principal prior to maturity.

Wade's suspension began October 21, 2002, and will conclude at the close of business October 20, 2004. (NASD Case #CAF020044)

**Stanley Walker (CRD #2601447, Registered Representative, Crestwood, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Walker transferred approximately \$35,500 from a public customer's checking account to his own checking account without the customer's knowledge or permission and used the funds for his own benefit. The findings also stated that Walker failed to respond to NASD requests for information. (NASD Case #C10020050)

**James Richard Wamsley (CRD #1149112, Registered Representative, Petaluma, California)** was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Wamsley prepared a letter to a former customer concerning a tax deferred annuity and signed his manager's name to the letter and sent it to the customer without his manager's knowledge and without approval of anyone at his member firm.

Wamsley's suspension began October 7, 2002, and will conclude at the close of business October 6, 2004. (NASD Case #C01010017)

**James Arthur Will (CRD #2701284, Registered Representative, Indianapolis, Indiana)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Will failed to respond to NASD requests for information. The findings also stated that Will engaged in unauthorized transactions. (NASD Case #C8A020026)

**Reinaldo Williams, Jr. (CRD #2419320, Registered Representative, Clifton, 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, Williams consented to the described sanction and to the entry of findings that, without authorization, he effected numerous transactions in his member firm's error account and then transferred some of the transactions into his personal account. (NASD Case #C9B020069)

**Jeri Lynn Winberg (CRD #3177708, Registered Representative, Poway, California)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Winberg reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Winberg consented to the described sanctions and to the entry of findings that, in an attempt to expedite the opening of a public customer's account, she affixed the customer's name on

an account application and signature card without the customer's knowledge or consent.

Winberg's suspension began November 4, 2002, and will conclude at the close of business December 3, 2002. (NASD Case #C02020049)

**Steven Boyle Yamashiro (CRD #1953754, Registered Principal, Pasadena, 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 20 days. Without admitting or denying the allegations, Yamashiro consented to the described sanctions and to the entry of findings that he entered into a written agreement with a public customer in which he guaranteed that he personally would purchase from the customer identified equities in the customer's portfolio, at a pre-determined price, if the price available in the public market did not exceed the customer's acquisition price or a percentage thereof.

Yamashiro's suspension began November 4, 2002, and will conclude November 23, 2002. (NASD Case #C02020048)

## Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the National Adjudicatory Council (NAC) as of October 4, 2002. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

**Anthony Harold Barkate (CRD #1255255, Registered Principal, Bakersfield, California)** was fined \$400,144, to be reduced by any amounts that had been paid in disgorgement of commissions to public customers, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Barkate engaged in private securities transactions without providing prompt written notice to, or receiving approval from, his member firm regarding his activities.

Barkate has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C02010041)

**Investment Management Corp. (CRD #37196, Salt Lake City, Utah) and Kevin Dee Kunz (CRD #1274540, Registered Representative, Fruit Heights, Utah)** were fined \$28,757, jointly and severally, and Kunz was barred from association with any NASD member as a financial and operations principal, suspended from association with any NASD member in any other principal capacity for six months, and required to re-qualify as a principal. The sanctions were based on findings that the firm, acting through Kunz, conducted a securities business while failing to maintain its minimum net capital requirement and had

inaccurate books and records. The findings also stated that the firm, acting through Kunz, filed inaccurate FOCUS reports; submitted an incomplete and materially inaccurate notice of a possible net capital deficiency; failed to file required information concerning an NASD arbitration award and a settlement; and allowed an inactive person to function in a capacity that required him to be actively registered. In addition, NASD determined that the firm, acting through Kunz, failed to have adequate written supervisory procedures with respect to the reporting of arbitration awards.

This action has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C3A010045)

## 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.

**Joseph Abbondante (CRD #1879052, Registered Representative, Freehold, New Jersey) and Daniel Timothy Pszanka (CRD #2499042, Registered Representative, Denver, Colorado)** were named as respondents in an NASD complaint alleging that they engaged in private securities transactions without prior written notice to, or approval from, their member firm. The complaint also alleges that, in connection with customers' investments in a limited partnership, Abbondante and Pszanka, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, employed artifices, devices, or schemes to defraud; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business which 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. The complaint further alleges that Abbondante and Pszanka engaged in an outside business activity without providing written notice to their member firm. Furthermore, the complaint alleges that Abbondante and Pszanka created and provided investment account statements to public customers that contained purported information with respect to each customer's investment in a limited partnership including the amount and location of their principal investments,

the performance of their investments, and their returns on investments that were false, misleading, deceptive, and without a factual basis. (NASD Case #C10020090)

**Vincent Roger Bickler (CRD #2042291, Registered Representative, Toms River, New Jersey)** was named as a respondent in an NASD complaint alleging that he forged the names of public customers on checks totaling \$1,359 issued to the customers by Bickler's member firm, and deposited the checks into his own personal bank account without the customers' knowledge, authorization, or consent, thereby converting the funds for his own use and benefit. The complaint also alleges that Bickler failed to respond to NASD requests for information and documents. (NASD Case #C10020095)

**William Pang Chien (CRD #2251029, Registered Principal, Plantation, Florida)** was named as a respondent in an NASD complaint alleging that he caused \$350,500.87 to be wire transferred from the accounts of public customers at his member firm to various bank accounts, including accounts under his control, without authorization from the customers, thereby converting the funds. The complaint also alleges that Chien caused \$209,900 to be wire transferred from accounts of public customers at his member firm to various bank accounts, including accounts under his control, without authorization from the customers, and ultimately returned the funds to the customers, thereby misusing customer funds. In addition, the complaint alleges that Chien failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C07020077)

**Laura Leigh Cockrell (CRD #2738492, Registered Representative, Spring Hill, Tennessee)** was named as a respondent in an NASD complaint alleging that she generated checks totaling \$77,100 drawn on her member firm's postage account, public customer accounts, and a firm employee account without their knowledge or consent. The complaint alleges that Cockrell made the checks payable to "W. Cockrell" or "Wesley Cockrell," signed the checks, obtained the required counter signatures, and then endorsed them "For Deposit Only" to an account under her control. The complaint also alleges that Cockrell failed to respond to NASD requests for information. (NASD Case #C05020046)

**John Christian Ferraro (CRD #2756017, Registered Representative, Islip, New York)** was named as a respondent in an NASD complaint alleging that he executed transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Ferraro exercised discretion in the accounts of public customers without obtaining their prior authorization or obtaining his member firm's prior written acceptance of the accounts as discretionary. In addition, the complaint alleges that Ferraro executed transactions in the account of a public customer without reasonable grounds for believing that the level

of activity represented by the transactions was suitable for the customer based on his financial situation, investment objectives, and needs. (NASD Case #C10020088)

**Howard Scott Ismark (CRD #2928579, Registered Representative, North Miami Beach, Florida)** was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, transactions in the accounts of public customers without their prior authorization. The complaint also alleges that Ismark participated in a private securities transaction without providing prior written notice to his member firm. In addition, the complaint alleges that Ismark failed to respond to NASD requests for information and documents. (NASD Case # C07020070)

**Barry Alan Kaufman (CRD #2774898, Registered Representative, Boca Raton, Georgia)** was named as a respondent in an NASD complaint alleging that he effected unauthorized trades in the account of a public customer. The complaint also alleges that Kaufman failed to respond to NASD requests for documents and to provide a written statement. (NASD Case #C07020078)

**Richard Anthony Takacs (CRD #2479382, Registered Principal, Holbrook, New York)** was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. The complaint also alleges that Takacs failed to respond truthfully and non-deceptively during an NASD on-the-record interview. In addition, the complaint alleges that Takacs prepared and mailed a letter to public customers and failed to obtain approval of the letter from a designated principal at his member firm prior to mailing the letter. (NASD Case #C10020096)

**Emerson Victor Yang (CRD #2949183, Registered Representative, West New York, New Jersey)** was named as a respondent in an NASD complaint alleging that he engaged in a fraudulent scheme to profit at his customer's expense by secretly placing matched buy and sell orders in the after-hours market between the customer's account at his member firm and a personal account that he maintained secretly at another broker/dealer. The complaint also alleges that Yang, by placing buy and sell orders in a customer account for his personal benefit rather than for the benefit of the customer, made improper use of customer securities and funds. The complaint further alleges that Yang failed to notify his member firm of his outside brokerage account, and failed to notify the broker/dealer holding the account that he was associated with another member firm. In addition, the complaint alleges that Yang failed to respond to NASD requests for information and to appear for testimony. (NASD Case #CMS020159)

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

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

**William & Co. Capital Markets**  
New York, New York  
(October 9, 2002)

## **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.

**International Securities Corporation**  
New York, New York  
(October 8, 2002 - October 11, 2002)

**Kersey, Scillia, Forster and Brooks, Inc.**  
Ft. Lauderdale, Florida  
(October 8, 2002)

**Platinum Investment Corporation**  
Rochester, New York  
(October 7, 2002)

**Webel-Roth Securities, Inc.**  
Boca Raton, Florida  
(October 14, 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.

**Electronic Specialist, LLC**  
New York, New York  
(September 17, 2002)

**Firm Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply With an Arbitration Award, a Settlement Agreement, or Arbitration Fees**

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

**Beckwith & Co., Incorporated**  
Bonita Springs, Florida  
(October 3, 2002 – October 11, 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.)

**Albers, Joseph R.**  
Gig Harbor, Washington  
(September 30, 2002)

**Anonuevo, Noel Mendoza**  
Hercules, California  
(September 30, 2002)

**Fishbein, Michael B.**  
Bronx, New York  
(September 23, 2002)

**Hsu, John S.**  
Alhambra, California  
(September 12, 2002)

**Paulsen, Curtis C.**  
Ballwin, Missouri  
(September 23, 2002)

**Sweidan, Kamil H.**  
Naples, Florida  
(September 30, 2002)

**Weinstock, Jason H.**  
Van Nuys, California  
(September 12, 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. If the suspension has been lifted, the date follows the suspension date.)

**Coleman, Joseph C.**  
Coraopolis, Pennsylvania  
(October 4, 2002)

**Fried, Lanny T.**  
New York, New York  
(September 17, 2002)

**Gates, Frank Jay**  
Roseville, California  
(September 20, 2002)

**George, Audrey Sue**  
Littleton, Colorado  
(September 17, 2002)

**Ko, Benny**  
Walnut, California  
(September 12, 2002)

**Koupas, Harry**  
Dallas, Texas  
(October 4, 2002)

**Lisnoff, Jr., Robert W.**  
Medford, New York  
(September 30, 2002)

**O'Connor, Theresa A.**  
San Francisco, California  
(September 20, 2002)

**Rojas, Ramiro**  
Elk Grove, California  
(September 18, 2002 – September 19, 2002)

**Toyin-Oke, Tajudeen T.**  
Randallstown, Maryland  
(October 4, 2002)

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

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

**Betta, Jr., William**  
Boca Raton, Florida  
(September 10, 2002)

**Brown, James R.**  
Medford, New York  
(September 30, 2002)

**St. John, Kert L.**  
San Diego, California  
(October 3, 2002)

## **Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320**

**Angrisani, Edward D.**  
Skillman, New Jersey  
(October 9, 2002)

**Chien, William P.**  
Plantation, Florida  
(October 9, 2002)

**Goritz, George M.**  
New York, New York  
(October 9, 2002)

**Hanson, Luther A.**  
Charlestown, West Virginia  
(October 9, 2002)

**Nguyen, Hao**  
Houston, Texas  
(October 9, 2002)

**Palermo, John M.**  
Holbrook, New York  
(October 9, 2002)

**Perles, Howard R.**  
Staten Island, New York  
(October 9, 2002)

## **NASD Charges New York Broker Todd M. Eberhard with Numerous Sales and Reporting Violations**

NASD charged Todd M. Eberhard, the majority owner of Park South Securities, LLC, with multiple violations of securities laws and NASD rules. The charges include securities fraud, issuing false account statements, settling customer complaints at three firms where he previously worked without the prior approval of the firms, and numerous Central Registration Depository (CRD) reporting violations.

The complaint alleges that during the last several years, Eberhard committed securities fraud in connection with scores of mutual fund transactions. Among other abuses, Eberhard engaged in a pattern of short-term trading of mutual funds and purchasing large volumes of class B mutual fund shares. NASD's review of the accounts revealed patterns of improper short-term trading of mutual funds in order to maximize commissions.

Through large purchases of class B shares, Eberhard kept his customers from taking advantage of the lower sales charges available through different classes of funds. In one customer's account, a mutual fund position was held for just 10 days. In another customer's accounts, despite a \$250,000 purchase limit on class B shares imposed by the mutual fund distributor, Eberhard effected total purchases of more than \$700,000 of class B shares of the fund.

Many customers eventually complained to Eberhard about the activity in their accounts. Eberhard agreed to settle many of these complaints; however, in 14 instances he did so improperly, without the prior knowledge and consent of his employer brokerage firms. The settlements were often large, with Eberhard agreeing to pay some customers hundreds of thousands of dollars, and in one case, \$2 million.

In at least one instance, Eberhard issued statements that included false valuations intended to induce the customer to keep his accounts with Eberhard.

In many instances, Eberhard failed to report the customer complaints and settlements to NASD on his Form U-4, thus failing to update the CRD system. In some cases, even when Eberhard filed amendments to his Form U-4, he misrepresented the underlying facts of the customer's complaint and settlement.

Eberhard also entered into a number of written settlement agreements with customers that included improper confidentiality clauses. These provisions effectively prohibited the customers from disclosing the facts of their complaints and the settlement terms to NASD.

Under NASD rules, an individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, censure, suspension, or bar from the securities industry, in addition to the request made by NASD in the complaint that the respondent give up any ill-gotten gains and pay restitution.

## **NASD Settles Charges Against Swift Trade Securities for Deceptive Trading and Non-Bona Fide "Wash" Transactions in QQQ**

NASD reached a settlement with Swift Trade Securities USA, Inc. and its President, Peter Beck, for engaging in a deceptive trading scheme involving fictitious "wash" transactions in the NASDAQ-100 Index Tracking Stock (QQQ) in an effort to obtain market data revenue generated from such transactions.

Swift USA and Beck were censured and fined, jointly, \$75,000 and were required to give up \$26,000, the profits from the fictitious wash sales. NASD suspended Beck for 30 business days in all capacities, and censured and fined Joseph Ianni, Vice President of Compliance and Swift USA, jointly, \$25,000 for inadequate supervision.

From April 2002 through May 2002, Swift USA, an NASD-registered brokerage firm based in Toronto, Canada, operated a computer software program that simultaneously routed offsetting limit orders for QQQ to The Island ECN, Inc. The orders were solely for the account of Swift USA's only customer and Canadian-registered counterpart, Swift Trade Securities, Inc. Because Swift USA executed these orders for a single customer at the same price and quantity on both sides of the market,

there was no change in Swift Canada's ownership of QQQ shares. Fictitious and non-bona fide transactions that do not result in a change of ownership are illegal.

NASD found that Swift USA, through Beck, violated NASD rules by executing these "wash" transactions through Island to profit from the market data revenue sharing provided by Island to its subscribers, while not subjecting Swift Canada to the risk of profit or loss from the underlying trading. As a result of this trading strategy, Swift USA received approximately \$26,000 in illegal data revenue.

NASD also found that Swift USA and Joseph Ianni inadequately supervised the trading in Swift USA's proprietary account. In settling this matter, all Respondents neither admitted nor denied NASD's findings.

### **NASD Charges Two Minneapolis Brokers with Insider Trading; Settles with Three Others**

NASD issued a complaint charging two Minneapolis, MN, brokers with insider trading. Thomas D. Krosschell and Joseph A. Geraci II have been charged with buying the common stock of Minnesota American, Inc. (OTCBB: MNAC) while in possession of inside information about a potential reverse merger between MNAC and Berthel Fisher & Co. Financial Services, Inc., an Iowa-based brokerage firm. At the time, Krosschell and Geraci were working at now defunct Maven Securities, which had been retained by MNAC as the company's investment bankers.

In a related action, NASD announced that it has settled insider trading charges with three other former employees of Maven Securities: Daniel J. Shrader, the president of the firm; Troy W. Johnson, a broker; and Michael E. Cain, a sales assistant, for purchasing MNAC stock while in possession of material inside information about the company.

In the complaint, NASD alleges that Krosschell and Shrader presented the idea of a reverse merger to MNAC and Berthel Fisher. As they were negotiating details of the potential merger, Krosschell and Shrader purchased more than 100,000 shares of MNAC stock. The complaint further alleges that they tipped approximately 20 others to purchase the stock including all of the firm's brokers. Shortly after news of the planned merger was announced, Krosschell and Shrader began to sell the stock, generating realized profits of approximately \$90,000. The proposed merger fell through, and MNAC later merged with CorVu Corporation (OTCBB: CRVU).

According to the complaint, Krosschell and Geraci violated federal securities laws and NASD rules by purchasing MNAC stock while in possession of inside information about the company's potential reverse merger with Berthel Fisher. In settling the matter, Shrader and Johnson each consented to a permanent bar from association with any NASD member, while Cain consented to a one-year suspension.

Under NASD rules, the individuals named in the complaint may file a response and request a hearing before a disciplinary panel. Possible sanctions include a fine, disgorgement, suspension or bar from NASD.

### **NASD Hearing Panel Bars Broker for Evading Federal Currency Reporting Requirements**

An NASD Hearing Panel barred Christian W. Baker, a Livonia, MI, registered representative, from the securities industry for structuring currency transactions in an effort to evade currency-reporting requirements and failing to file required Currency Transaction Reports (CTR).

On July 10, 2001, NASD filed a complaint against Baker alleging, among other things, that she violated NASD Rules by structuring currency transactions to evade federal reporting requirements and causing an NASD member firm to fail to file a CTR.

"It is imperative in today's world that the front lines of our industry adhere to procedures that may help identify transactions that may have dubious origins," said Mary L. Schapiro, NASD President of Regulatory Policy and Oversight. "As this action illustrates, we will identify and sanction those in our industry who try to circumvent these procedures."

Financial institutions, including broker/dealers, are required to report cash transactions of more than \$10,000 to the federal government by filing a CTR. Federal law prohibits any person from structuring transactions or assisting in the structuring of transactions to evade reporting requirements. Federal law also prohibits any person from causing or attempting to cause a financial institution to fail to file CTRs.

The Hearing Panel, in its decision, found that Baker accepted \$50,000 in cash from a customer who insisted that the transaction not be reported. After learning from a bank teller that reports were not required for cashier's checks issued in amounts of less than \$3,000, Baker began to periodically exchange the customer's cash for cashier's checks in amounts of less than \$3,000. The Panel found that over a four-month period, Baker purchased 24 separate cashier's checks in amounts of less than \$3,000, eventually depositing the entire \$50,000 that was being held in her desk drawer into the customer's account.

The Hearing Panel also found that Baker did not record the receipt of the \$50,000 in cash, did not notify her employer or the U.S. Department of the Treasury that she had indeed received the cash, and failed to file the required CTR. Baker's failure to inform her employer of the transaction caused the firm, to in turn, fail to file the required CTR. The Panel also found that Baker structured the 24 purchases of cashier's checks for the express purpose of preventing her employer from complying with the reporting requirements.

The Panel noted in its decision that the currency reporting statute protects the taxing power of the U.S. Government, as well as inhibits the flow of cash to terrorist organizations. The Panel found that Baker's conduct undermined those purposes and those of the federal securities laws. In imposing the bar from associating with any NASD member, the Panel found that Baker's conduct was intentional and specifically designed to evade the reporting requirements mandated by federal law.

### **Salomon Smith Barney Fined \$5 Million for Issuing Misleading Research Reports on Winstar; Charges Filed Against Jack Grubman and Christine Gochuico**

NASD fined Salomon Smith Barney \$5 million for issuing materially misleading research reports in 2001 on Winstar Communications, Inc. Separately, NASD announced that it filed a complaint against Jack Grubman, formerly the Managing Director of the firm's Equity Research Department, and Christine Gochuico, a Salomon Vice President and an assistant to Grubman, concerning the same conduct. Grubman and Gochuico authored the reports that were the focus of the inquiry.

The settlement between NASD and Salomon resolves a singular NASD investigation into Salomon's Winstar reports and does not address other, larger Salomon-related research analyst investigations currently underway by NASD and other regulators.

"What occurred in this case was a serious breach of trust between Salomon and its investors," said Mary L. Schapiro, NASD's President of Regulatory Policy and Oversight. "It should go without saying that reports issued for investors' use must be truthful. This case, along with others already filed and those under active investigation, make it clear that strong enforcement action will be taken against brokerage firms and their analysts who issue misleading research."

The settlement against Salomon Smith Barney is NASD's third largest in history.

Winstar was a broadband telecommunications service provider that filed for bankruptcy last year. Salomon's research reports strongly recommended Winstar as a "Buy"—Salomon's top rating—with a 12- to 18-month target price of \$50 even as the stock plummeted from approximately \$20 on January 25, 2001, to 14 cents on April 17 of that year. In the settlement today, Salomon agreed to findings that it did not have a reasonable basis for that target price.

Salomon had a significant investment banking relationship with Winstar. Beginning in February 1999 through July 2001, Salomon helped Winstar raise more than \$5.6 billion, receiving fees of approximately \$24 million for those services. Even as Winstar's prospects were falling and its stock price collapsing, Salomon worked with Winstar to address its funding needs, a relationship that continued even after the company filed for bankruptcy.

Grubman and his assistant worked closely with Winstar's management. They consulted Winstar's management prior to issuing research reports and financial models that purportedly reflected their independent judgment and analysis. For example, they sent Winstar officials the financial model they had created to analyze Winstar, and that yielded the target price, for approval before making it publicly available.

NASD found that Salomon's reports failed adequately to disclose the risks of investing in Winstar, including important risks relating to funding and bankruptcy. The reports contained repeated strong praise for Winstar, while belittling other analysts who were critical of the company. Some of the rebuttals were false and misleading.

The complaint against Grubman and Gochuico charges that e-mails and other internal Salomon documents demonstrate that, while they were publicly recommending Winstar to investors, they expressed contrary views in private. In various private communications, both Grubman and Gochuico highlighted risks of investing in Winstar and expressed doubts about Winstar's ability to obtain funds. Those risks and doubts were never disclosed to the investing public.

Some of the private communications included:

- ◆ Salomon's target price of "\$50 per share is shall we say—extremely aggressive";
- ◆ An unwillingness to change the firm's target price because of "optics"; and
- ◆ Privately telling others to sell at prices far below the \$50 target price.

During this same period, Winstar, which traded on NASDAQ, had suffered significant losses, needed large amounts of capital to operate, and was heavily dependent on external sources for financing. In 2000, it had a net loss of almost \$900 million. In April 2001, it filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code.

Grubman and Gochuico initiated research coverage of Winstar with a Buy rating in January 1998. At that time, Winstar's market capitalization was almost \$1 billion. They maintained a target price of \$50 per share from October 2000, when Winstar's market capitalization was approximately \$2.8 billion, until April 2001. By April 18, Winstar's market capitalization had fallen by more than 99 percent to approximately \$13 million. Grubman acknowledged in an internal e-mail in May 2001, "If anything the record shows we support our banking clients too well and too long."

In settling this matter, Salomon neither admitted nor denied NASD's findings.



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## For Your Information

### Reminder to NASD Members – Transactions with NASD and American Stock Exchange Employees

NASD members who carry brokerage accounts for NASD, NASDAQ, or American Stock Exchange employees are reminded of the need to promptly implement employees' instructions calling for duplicate statements to be provided to NASD. This requirement is set forth in NASD Rule 3090(a), which provides that "[w]hen a member has actual notice that an Association or American Stock Exchange employee has a financial interest in, or controls trading in, an account, the member shall promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the member to the Association."<sup>1</sup>

Rule 3090(a), which became effective on November 17, 2000, plays a vital role in helping NASD monitor whether employees are abiding by trading restrictions imposed by the NASD Code of Conduct. Among other things, employees may not own stock of broker/dealers or companies that derive more than 25 percent of their gross revenues from broker/dealer activities, or stock purchased as part of an initial public offering. NASD reviews duplicate statements for employees' brokerage accounts to ensure that employees have abided by these restrictions.

With respect to new accounts, the information necessary to give members actual notice of an employee's interest in an account is already included on the new account forms used by most broker/dealers, and on a standardized duplicate instruction form that NASD and Amex employees can provide to their broker/dealers. It is not necessary for an NASD official to issue a letter authorizing the opening of each employee account.

With respect to existing accounts, Rule 3090(a) contemplates that NASD and Amex employees will use the above-referenced duplicate instruction form to give NASD members actual notice of their interest in an account. A member receiving such a form must promptly implement the duplicate statement instruction.

Rule 3090(a) applies to accounts opened after the rule became effective on November 17, 2000, and to those pre-existing accounts as to which an NASD member has actual notice that an NASD or Amex employee has financial interest or controls trading. NASD members are not required to review accounts that existed before

continued

## For Your Information

the rule became effective to identify those in which NASD or Amex employees may have an interest or control trading.

NASD members with questions concerning Rule 3090(a) may contact Luley Chow, NASD Code of Conduct Administrator, NASD Office of General Counsel, at [luley.chow@nasd.com](mailto:luley.chow@nasd.com) or (202) 728-8315

<sup>1</sup> NASD Rule 0120(b) defines "Association" as meaning, collectively, NASD, NASD Regulation, NASDAQ, and NASD Dispute Resolution.

### Filing of Annual Attestation Required by Rule 2711 - Research Analysts and Research Reports

On May 10, 2002, the SEC approved new NASD Rule 2711, Research Analysts and Research Reports, which is intended to address conflicts of interest that can arise when securities analysts issue recommendations in research reports and public appearances and provide investors with more objective, reliable, and useful information. Most of the Rule is already in effect; the remaining provisions become effective on November 6, 2002.

Rule 2711(i) requires each member subject to the rule to adopt and implement written supervisory procedures that are reasonably designed to achieve compliance with the rule's provisions. The rule further requires that a senior officer of the member attest annually to NASD that it has adopted and implemented such procedures.

This notice is to advise members that the annual attestation must be received by NASD no later than the last business day of each calendar year. The attestation should be sent to the following address:

Department of Member Regulation  
NASD Division of Regulatory Policy and Oversight  
Attn: Rule 2711 Attestation  
1735 K Street, NW  
Washington, DC 20006

Questions concerning this information should be directed to the Department of Member Regulation, Regulatory Policy and Oversight, at (202) 728-8221.