

Special Notice to Members

APRIL 2003

SUGGESTED ROUTING

Legal & Compliance
Senior Management

KEY TOPICS

National Adjudicatory Council

INFORMATIONAL

NAC Nominations

NASD Announces Nomination Procedures for Regional Industry Member Vacancies on the National Adjudicatory Council; **Nomination Deadline: May 9, 2003**

Executive Summary

The purpose of this *Special Notice to Members* is to advise members of the nomination procedures to fill two upcoming vacancies on the National Adjudicatory Council (NAC). The three-year terms of the NAC regional Industry members from the West and New York Regions expire in January 2004.

Exhibit I contains information regarding the NAC regional Industry members whose terms expire in January 2004. Exhibit II contains a list of all NAC members. The procedures to fill the NAC regional Industry vacancies are outlined in Exhibit III. Also, a Candidate Profile Sheet is included in Exhibit IV.

Nomination Process

Members are encouraged to submit nominations for the upcoming NAC vacancies. To nominate a candidate, members should submit a cover letter and the Candidate Profile Sheet (Exhibit IV) to the appropriate Regional Nominating Committee Chair, the NASD District Director, or NASD Corporate Secretary (listed in Exhibit I) by **May 9, 2003**.

The completed Candidate Profile Sheets will be provided to all Regional Nominating Committee members for review. On or about **May 20, 2003**, the Regional Nominating Committee will provide NASD members with written notice of the NAC candidates that the Committee proposes for nomination to the National Nominating Committee. Pursuant to Article V, Section 5.3(a) of the NASD Regulation By-Laws, the NASD National Nominating Committee shall nominate all candidates for the NAC for subsequent appointment by the Board.

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Questions/Further Information

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

National Adjudicatory Council Membership and Function

Membership

The NAC consists of 14 members—seven Industry members and seven Non-Industry members. Exhibit II contains a list of all current NAC members. Two Industry members are appointed by the NASD Regulation Board of Directors as at-large members. Five Industry members each represent one of the following geographic regions:

West Region: Hawaii, California, Nevada, Arizona, Colorado, New Mexico, Utah, Wyoming, Alaska, Idaho, Montana, Oregon, and Washington.

South Region: Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, Florida, Georgia, North Carolina, South Carolina, Puerto Rico, Virginia, Canal Zone, and the Virgin Islands.

Central Region: Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Illinois, Indiana, Michigan, Western New York state, and Wisconsin.

North Region: Delaware, Maryland, Pennsylvania, West Virginia, District of Columbia, New Jersey, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for New York City, Long Island, and Western New York state).

New York: New York City and Long Island.

We are seeking nominations for the West and New York Regions.

Function

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

- ◆ appeals or reviews of disciplinary proceedings, statutory disqualification proceedings, or membership proceedings;
- ◆ the exercise of exemptive authority; and
- ◆ other proceedings or actions authorized by NASD rules.

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

EXHIBIT I

NAC Industry Member With A Term Expiring In January 2004

West Region (Districts 1, 2 and 3)

NAC Incumbent: William A. Svoboda

If you are interested in nominating yourself or a colleague to represent the West Region for a three-year term on the NAC, please submit a cover letter and a completed Candidate Profile Sheet (Exhibit IV) to any of the following individuals by May 9, 2003.

Kathryn A. Supko

Regional Committee Chair

Northwestern Mutual Investment Services, LLC
1555 Shoreline Drive, Suite 210
Boise, ID 83702

Elisabeth P. Owens

District 1 Director

NASD
525 Market Street, Suite 300
San Francisco, CA 94105-2711
(415) 882-1200

Lani M. Sen Woltmann

District 2 Director

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

Joseph M. McCarthy

District 3 Director

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

James G. Dawson

District 3 Director

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

Barbara Z. Sweeney

*Senior Vice President and
Corporate Secretary*

NASD
1735 K Street NW
Washington, DC 20006
(202) 728-8062

NAC Industry Member With A Term Expiring In January 2004

New York Region (District 10)

NAC Incumbent: Philip V. Oppenheimer

If you are interested in nominating yourself or a colleague to represent the New York Region for a three-year term on the NAC, please submit a cover letter and a completed Candidate Profile Sheet (Exhibit IV) to any of the following individuals by May 9, 2003.

Jennifer A. Connors
Regional Committee Chair

ITG, Inc.
380 Madison Avenue, 4th Floor
New York, NY 10017

Cathleen Shine
District 10 Director

NASD
One Liberty Plaza
New York, NY 10006

(212) 858-4000

Barbara Z. Sweeney
*Senior Vice President and
Corporate Secretary*

NASD
1735 K Street NW
Washington, DC 20006

(202) 728-8062

EXHIBIT II

2003 National Adjudicatory Council

Geoffrey F. Aronow	Arnold & Porter
A. Louis Denton	Philadelphia Corporation for Investment Services
Amy Bowerman Freed	Hogan & Hartson, L.L.P.
Douglas L. Kelly	A.G. Edwards & Sons, Inc.
David A. Lipton	Catholic University of America
Philip R. Lochner	Director of Public Companies
Mark Madoff	Bernard L. Madoff
Paul J. Mason	Dechert
Philip V. Oppenheimer	Oppenheimer & Close, Inc.
Mark A. Sargent	Villanova University School of Law
Richard O. Scribner	Recording for the Blind & Dyslexic
Brian T. Shea	Donaldson, Lufkin & Jenrette Securities Corporation
William A. Svoboda	Morgan Stanley
Barbara L. Weaver	Legg Mason Wood Walker, Inc.

EXHIBIT III

National Adjudicatory Council Nomination Procedures

1. NASD maintains Regional Nominating Committees in the manner specified in Article VI of the By-Laws of NASD Regulation, Inc.
2. Members located in the West and New York Regions are hereby notified of the upcoming election of members to the National Adjudicatory Council and are encouraged to submit names of potential candidates to their respective Chair of the Regional Nominating Committee, District Director, or to NASD Corporate Secretary Barbara Z. Sweeney (see Exhibit I) by **May 9, 2003**.
3. Nominees will be asked to complete a Candidate Profile Sheet which will be reviewed by the Regional Nominating Committee.
4. The Regional Nominating Committee shall review the background of the candidates and the description of the NASD membership provided by NASD staff and shall propose one or more candidates for nomination to the National Nominating Committee. In proposing a candidate for nomination, the Regional Nominating Committee shall endeavor to secure appropriate and fair representation of the region.
5. On or about **May 20, 2003**, the Regional Nominating Committee shall notify in writing the Executive Representatives and branch offices of the NASD members in the region of the name of the candidate it will propose to the National Nominating Committee for nomination to the National Adjudicatory Council.
6. If an officer, director, or employee of an NASD member in the region is not proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she shall send a written notice to the Regional Nominating Committee Chair or the Secretary of NASD within 14 calendar days after the mailing date of the Regional Nominating Committee's notice (#5 above) and proceed in accordance with the Contested Nomination Procedures found in Article VI of the NASDR By-Laws.
7. If no additional candidate comes forward within 14 calendar days, the Regional Nominating Committees shall certify their candidates to the National Nominating Committee.

Additional information pertaining to the National Adjudicatory Council Election Procedures can be found in Article VI of the By-Laws of NASD Regulation. The By-Laws can be found in the online NASD Manual at www.nasd.com.

EXHIBIT IV Candidate Profile Sheet

Current Employment

Name: _____ CRD#: _____
 Firm: _____ #RRs at Firm: _____
 Title/Primary Responsibility: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone: _____ Fax: _____
 E-mail: _____

Prior Employment (List the most recent first. Feel free to include extra pages if necessary.)

Firm: _____
 Title/Primary Responsibility: _____
 Firm: _____
 Title/Primary Responsibility: _____

General Areas of Expertise (please check all that apply)

- Compliance/Legal
- Corporate Finance
- Financial/Operational
- Institutional Sales
- Investment Advisory
- Retail Sales
- Trading/Market Making
- Other

Product Expertise (please check all that apply)

- Corporate Bonds
- Direct Participation Programs
- Equity Securities
- Municipal/Government Securities
- Investment Company
- Options
- Variable Contracts Securities
- Other

Memberships/Positions Held in Trade or Business Organizations

Past NASD Experience and Dates of Service (please check all that apply)

Committee Member (Identify committee: _____) Approx. Dates: _____
 Arbitrator Approx. Dates: _____
 Mediator Approx. Dates: _____
 Expert Witness (arbitrations; disciplinary proceedings): _____ Approx. Dates: _____
 Other: _____ Approx. Dates: _____

ducational Background

School: _____ Degree: _____
 School: _____ Degree: _____

Notice to Members

APRIL 2003

SUGGESTED ROUTING

Institutional
Legal & Compliance
Options
Senior Management
Trading
Training

KEY TOPICS

Exercise Limits
Options
Position Limits

Equity Option Hedge Exemption

NASD Expands Equity Option Hedge Exemption

Executive Summary

On February 3, 2003, the Securities and Exchange Commission (SEC) approved amendments to NASD's option position and exercise limits for positions established pursuant to certain qualified hedge strategies.¹ These amendments conform NASD's standardized equity option position and exercise limits to recent changes adopted by the Options Exchanges. These amendments also establish new option position and exercise limits for hedged positions involving conventional equity options. The rules, as amended, are set forth in Attachment A.

The amendments are effective immediately.

Questions/Further Information

Questions concerning this *Notice* may be directed to Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8104.

03-19

Background and Discussion

On February 3, 2003, the SEC approved changes to NASD's option position and exercise limits.² These changes conform NASD's standardized equity option³ position and exercise limits to recent changes adopted by the Options Exchanges.⁴ In particular, the rule change expands NASD's Equity Option Hedge Exemption to establish six qualified hedge strategies. These qualified hedge strategies are:

1. Where each option contract is "hedged" or "covered" by 100 shares of the underlying security or securities convertible into the underlying security, or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.
2. **Reverse Conversions**—A long call position accompanied by a short put position, where the long call expires with the short put, and the strike price of the long call and short put is equal, and where each long call and short put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.
3. **Conversions**—A short call position accompanied by a long put position where the short call expires with the long put, and the strike price of the short call and long put is equal, and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.
4. **Collars**—A short call position accompanied by a long put position, where the short call expires at the same time as the long put and the strike price of the short call equals or exceeds the strike price of the long put position and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security. Neither side of the short call/long put position can be in-the-money at the time the position is established.
5. **Box Spreads**—A long call position accompanied by a short put position, where both the long call and short put have the same strike price, and a short call position accompanied by a long put position, where the short call and long put have the same strike price as each other, but a different strike price than the long call/short put.
6. **Back-to-Back Options**—A listed option position hedged on a one-for-one basis with an OTC option position on the same underlying security. The strike price of the listed option position and corresponding OTC option position must be within one strike price interval of each other and no more than one expiration month apart.

Under the rule change, position and exercise limits for standardized equity options are eliminated for qualified hedge strategies that are established solely with standardized options. In addition, the rule change establishes standardized equity option position and exercise limits of five times the standard limit when one component of a qualified hedge strategy is a conventional equity option.⁵

The rule change also modifies NASD's conventional equity option position and exercise limits. Specifically, conventional equity options position and exercise limits under the Equity Option Hedge Exemption are increased to five times the standard limits. The rule change also continues to provide that conventional equity options positions under the Equity Option Hedge Exemption will not be aggregated with standardized equity option and non-hedged conventional equity option positions for position and exercise limit purposes.⁶

Application of the increased limits or exemption is automatic (*i.e.*, it does not require pre-approval from NASD) to the extent that a member identifies that a pre-existing qualified strategy is in place or is employed from the point that an account's position reaches the standard limit and provides the required supporting documentation to NASD.⁷ The increased limits or exemption shall remain in effect to the extent that the exempted position remains intact and NASD is provided with any required supporting documentation.

Finally, the rule change does not change the standard position and exercise limits for unhedged equity options positions. These remain at 13,500, 22,500, 31,500, 60,000 or 75,000, depending on the trading activity of the underlying security.

Endnotes

- 1 See Securities Exchange Act Release No. 47307 (Feb. 3, 2003), 67 Fed. Reg. 6977 (Feb. 11, 2003) (File No. SR-NASD-2002-134) (SEC Approval Order).
- 2 SEC Order Granting Approval of Proposed Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to Exemptions from Options Position and Exercise Limits, Rel. No. 34-42307, 68 Fed. Reg. 6977 (Feb. 11, 2003).
- 3 A standardized equity option is any equity options contract issued, or subject to issuance by, the Options Clearing Corporation that is not a FLEX Equity Option. NASD Rule 2860(b)(2)(VV).
- 4 See 67 Fed. Reg. 14751 (Mar. 27, 2002) (CBOE); 67 Fed. Reg. 15638 (Apr. 2, 2002) (AMEX); 67 Fed. Reg. 18975 (Apr. 17, 2002) (PCX); 67 Fed. Reg. 34980 (May 16, 2002) (PHLX); and 67 Fed. Reg. 48689 (July 25, 2002) (ISE).
- 5 A conventional option is any option contract not issued, or subject to issuance, by the Options Clearing Corporation. NASD Rule 2860(b)(2)(N). The option component of a reversal, a conversion or a collar position will be treated as one contract rather than as two contracts.
- 6 Equity options hedge positions containing both standardized and conventional equity options positions shall be treated as standardized equity options positions for purposes of aggregation.
- 7 The existing reporting procedures that serve to identify and document hedged positions above a certain threshold continue to apply. Paragraph (b)(5) of NASD Rule 2860 requires reporting to NASD of aggregate positions of 200 or more contracts of the put class and the call class on the same side of the market covering the same underlying security.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

2860. Options

(a) No Change

(b) Requirements

(1) and (2) No Change

(3) Position Limits

(A) Stock Options--Except in highly unusual circumstances, and with the prior written approval of [the Association] NASD pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) 13,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

(ii) 22,500 option[s] contracts of the put class and the call class on the same side of the market covering the same underlying security, providing that the 22,500 contract position limit shall only be available for option contracts on securities [which] that underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 22,500 option contracts; or

(iii) 31,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security providing that the 31,500 contract position limit shall only be available for option contracts on securities [which] that underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 31,500 option contracts; or

(iv) 60,000 option[s] contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 60,000 contract position limit shall only be available for option contracts on securities [which] that underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 60,000 option contracts; or

(v) 75,000 option[s] contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 75,000 contract position limit shall only be available for option contracts on securities [which] that underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 75,000 option contracts; or

(vi) such other number of stock option[s] contracts as may be fixed from time to time by [the Association] NASD as the position limit for one or more classes or series of options provided that reasonable notice shall be given of each new position limit fixed by [the Association] NASD.

(vii) Equity Option Hedge Exemptions

a. The following qualified hedge strategies and positions described in subparagraphs 1. through 5. below shall be exempt from the established position limits under this rule for standardized options. Hedge strategies and positions described in subparagraphs 6. and 7. below in which one of the option components consists of a conventional option, shall be subject to a position limit of five times the established position limits contained in subparagraphs (i) through (vi) above. Hedge strategies and positions in conventional options as described in subparagraphs 1. through 5. below shall be subject to a position limit of five times the established limits contained in subparagraphs (i) through (vi) above. Options positions limits established under this subparagraph shall be separate from limits established in other provisions of this rule.

1. Where each option contract is "hedged" or "covered" by 100 shares of the underlying security or securities convertible into the underlying security, or, in the case of an adjusted option, the same number of shares represented by the adjusted contract: (a) long call and short stock; (b) short call and long stock; (c) long put and long stock; or (d) short put and short stock.

2. Reverse Conversions—A long call position accompanied by a short put position, where the long call expires with the short put, and the strike price of the long call and short put is equal, and where each long call and short put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

3. Conversions—A short call position accompanied by a long put position where the short call expires with the long put, and the strike price of the short call and long put is equal, and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security.

4. Collars—A short call position accompanied by a long put position, where the short call expires at the same time as the long put, and the strike price of the short call equals or exceeds the strike price of the long put position and where each short call and long put position is hedged with 100 shares (or other adjusted number of shares) of the underlying security or securities convertible into such underlying security. Neither side of the short call/long put position can be in-the-money at the time the position is established.

5. Box Spreads—A long call position accompanied by a short put position with the same strike price and a short call position accompanied by a long put position with a different strike price.

6. Back-to-Back Options—A listed option position hedged on a one-for-one basis with an over-the-counter (OTC) option position on the same underlying security. The strike price of the listed option position and corresponding OTC option position must be within one strike price interval of each other and no more than one expiration month apart.

7. For reverse conversion, conversion and collar strategies set forth above in subparagraphs 2., 3. and 4., one of the option components can be an OTC option guaranteed or endorsed by the firm maintaining the proprietary position or carrying the customer account.

[a. The following positions, where each option contract is “hedged” by 100 shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in paragraphs (i) through (vi) above:]

[1. long call and short stock;]

[2. short call and long stock;]

[3. long put and long stock;]

[4. short put and short stock.]

[b. Except as provided under the OTC Collar Exemption contained in subparagraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in subparagraph (b)(3)(A)(i) through (v) with respect to standardized equity options, or paragraph (b)(3)(A)(ix) with respect to conventional equity options.]

[(viii) OTC Collar Aggregation Exemption]

[a. For purposes of this paragraph (b), the term OTC collar shall mean a conventional equity option position comprised of short (long) calls and long (short) puts overlying the same security that hedge a corresponding long (short) position in that security.]

[b. Notwithstanding the aggregation provisions for short (long) call positions and long (short) put positions contained in subparagraphs (b)(3)(A)(i) through (v) above, the conventional options positions involved in a particular OTC collar transaction need not be aggregated for position limit purposes, provided the following conditions are satisfied:]

[1. the conventional options can only be exercised if they are in-the-money;]

[2. neither conventional option can be sold, assigned, or transferred by the holder without the prior written consent of the writer;]

[3. the conventional options must be European-style (i.e., only exercisable upon expiration) and expire on the same date;]

[4. the strike price of the short call can never be less than the strike price of the long put; and]

[5. neither side of any particular OTC collar transaction can be in-the-money when that particular OTC collar is established.]

[6. the size of the conventional options in excess of the applicable basic position limit for the options established pursuant to subparagraph (b)(3)(A)(ix) must be hedged on a one-to-one basis with the requisite long or short stock position for the duration of the collar, although the same long or short stock position can be used to hedge both legs of the collar.]

[c. For multiple OTC collars on the same security meeting the conditions set forth in subparagraph b. above, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated,

but the short (long) calls need not be aggregated with the long (short) puts.]

[d. Except as provided above in subparagraphs b. and c., in no event may a member fail to aggregate any conventional options contract of the put class and the call class overlying the same equity security on the same side of the market with conventional option positions established in connection with an OTC collar.]

[e. Nothing in this subparagraph (b)(3)(A)(viii) changes the applicable position limit for a particular equity security.]

~~[(ix)]~~(viii) Conventional Equity Options

a. For purposes of [sub]paragraph (b), standardized equity option[s] contracts of the put class and call class on the same side of the market overlying the same security shall not be aggregated with conventional equity option[s] contracts or FLEX Equity Option[s] contracts overlying the same security on the same side of the market. Conventional equity option[s] contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a position limit equal to the greater of:

1. the basic limit of 13,500 contracts, or

2. any standardized equity options position limit as set forth in [sub]paragraphs (b)(3)(A)(ii) through (v) for which the underlying security qualifies or would be able to qualify.

b. In order for a security not subject to standardized equity options trading to qualify for an options position limit of more than 13,500 contracts, a member must first demonstrate to NASD's [the Association's] Market Regulation Department that the underlying security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

(B) No Change

Notice to Members

APRIL 2003

SUGGESTED ROUTING

Legal & Compliance
Operations
Principals
Registration
Registered Representatives
Senior Management
Training

KEY TOPICS

Registration Rules

INFORMATIONAL

Registration Rules

Technical Changes to the NASD Registration Rules
Effective Immediately

Executive Summary

On February 26, 2003, NASD filed with the Securities and Exchange Commission (SEC) for immediate effectiveness changes to the NASD Registration Rules.¹ The changes are technical in nature and include, among other things, removing references to old NASD forms and registration categories, deleting provisions regarding outdated grandfathering clauses, deleting duplicative provisions, and combining certain provisions to eliminate redundancies in the rule language. The text of the amendments and *Federal Register* version of the SEC Notice are attached (see Attachments A and B). For a detailed description of the amendments, members should review the attached SEC Notice (see Attachment B).

Questions/Further Information

Questions concerning this *Notice* may be directed to Afshin Atabaki, Attorney, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8902.

Background

As part of NASD's rule modernization initiative, NASD identified certain registration rules that were antiquated and needed updating to reflect changes in the regulatory landscape. The amendments clarify and clean up existing rules to reduce burdens on the industry resulting from these outdated registration requirements. These rule changes include:

- ◆ amendments to Rules 1021(a) and 1031(a) to permit a member to maintain or make application for the registration of a principal or representative who performs back-office operations;
- ◆ amendment to Rule 1021(d)(1) to reflect that members are required to submit an amended "Uniform Application for Securities Industry Registration or Transfer" (Form U-4) rather than an "elevation form," which was an outdated form;
- ◆ deletion of Rule 1021(d)(3) because it inaccurately suggested that an applicant who did not take the examination within 90 days or failed the examination could submit a new form and continue to function as a principal until qualified. This was inconsistent with Rule 1021(d)(1), which states that in no event may a person function as a principal beyond the initial 90-day period;
- ◆ amendment to Rule 1021(e) to clarify that existing members as well as new applicants are required to have at least two principals with respect to each aspect of their investment banking and securities business;
- ◆ removal of the reference to "financial principal" from Rule 1022(a)(3) because it related to an examination that is no longer administered;
- ◆ combining Rules 1022(a)(4), (5), and (6) to eliminate certain redundancies in the language and to clarify that a person registered solely as a general securities principal is not automatically qualified to function as a municipal securities principal or municipal fund securities limited principal;
- ◆ amendment to Rule 1022(g)(2)(A) to state that a person registered solely as a limited principal—general securities sales supervisor shall not be qualified to function in a principal capacity with responsibility over any of the areas of business not described in that rule. This change will clarify that such persons may be registered in other categories, if applicable;
- ◆ deletion of Rules 1032(a)(2)(A)–(D) and 1032(a)(2)(F) because these sections are no longer relevant to a majority of NASD members and, if necessary, the staff may provide waivers;
- ◆ amendment to Rule 1032(a)(2)(G) to reflect the Financial Services Authority's (FSA) new authorization and approval process;
- ◆ deletion of Rule 1032(g)(3) because most persons who were eligible for grandfathering have been processed and, if necessary, the staff may provide waivers to new applicants;
- ◆ removal of the phrase "on a pass/fail basis only" from Rule 1070(c) because NASD provides more than just pass/fail information to members;

-
- ◆ amendment to Rule 1070(e) to clarify that although age or physical infirmity will not individually of themselves constitute sufficient grounds to waive an examination, experience in an ancillary field may be sufficient grounds to waive an examination; and
 - ◆ replacement of the terms “Application for Classification as a Foreign Associate” in Rule 1100(b) with the terms “Uniform Application for Securities Industry Registration or Transfer,” which is the current application.

For a more detailed description of the amendments, members should review the attached SEC Notice.

Endnote

- 1 See Securities Exchange Act Release No. 47433 (March 3, 2003), 68 FR 11424 (March 10, 2003) (notice of filing and immediate effectiveness of File No. SR-NASD-2003-24) (“SEC Notice”).

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ATTACHMENT A

New language is underlined; deletions are in brackets.

1000. Membership, Registration and Qualification Requirements

1020. Registration of Principals

1021. Registration Requirements

(a) All Principals Must Be Registered

All persons engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with [the Association] NASD in the category of registration appropriate to the function to be performed as specified in Rule 1022. Before their registration can become effective, they shall pass a Qualification Examination for Principals appropriate to the category of registration as specified by the Board of Governors. A member shall not maintain a principal registration with [the Association] NASD for any person (1) who is no longer active in the member's investment banking or securities business, (2) who is no longer functioning as a principal, or (3) where the sole purpose is to avoid the examination requirement prescribed in paragraph (c). A member shall not make application for the registration of any person as principal where there is no intent to employ such person in the member's investment banking or securities business. A member may, however, maintain or make application for the registration as a principal of a person who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

(b) through (c) No Change.

(d) Application for Principal Status

(1) Any person associated with a member as a Registered Representative whose duties are changed by the member so as to require registration in any principal classification shall be allowed a period of 90 calendar days following the change in his duties during which to pass the appropriate Qualification Examination for Principals. Upon elevation, the member shall submit to [the Association] NASD an [elevation form] amended "Uniform Application for Securities Industry Registration or Transfer" [designated by the Board of Governors] and the

applicable fees. In no event may a person function as a Principal beyond the initial 90 calendar day period following the change in his duties without having successfully passed the appropriate Qualification Examination.

(2) No Change.

[(3) If an applicant does not take the examination within the ninety calendar day period or if the applicant fails the examination, a new principal elevation form and examination fee shall be required.]

(e) Requirement of Two Registered Principals for [New Applicants for Membership] Members

(1) An [applicant for membership in the Association] NASD member, except a sole proprietorship, shall have at least two officers or partners who are [qualified to become] registered as principals with respect to each aspect of the [applicant's] member's investment banking and securities business pursuant to the applicable provisions of Rule 1022[(a), (d) and (e), whichever are applicable, before it shall be admitted to membership]. This requirement applies to persons seeking admission as members and existing members.

(2) through (3) No Change.

1022. Categories of Principal Registration

(a) General Securities Principal

(1) through (2) No Change.

(3) Except as provided in Rule 1021(c), a person who was registered with [the Association] NASD as a Principal [or a Financial Principal,] shall not be required to pass a Qualification Examination for General Securities Principal and shall be qualified as a General Securities Principal.

(4) A person registered solely as a General Securities Principal shall not be qualified to function as a Limited Principal—Financial and Operations; Limited Principal—Registered Options and Security Futures; Limited Principal—General Securities Sales Supervisor; Municipal Securities Principal, or Municipal Fund Securities Limited Principal, unless [he] that person is also qualified and registered as such [pursuant to paragraph (b)].

[(5) A person registered solely as a General Securities Principal shall not be qualified to function as a Registered Options Principal unless he is also qualified and registered as such pursuant to the provisions of paragraph (f).]

[(6) A person qualified solely as a General Securities Principal shall not be qualified to be registered as a Limited Principal—General Securities Sales Supervisor unless he is also qualified and registered as such pursuant to the provisions of paragraph (g)(1).]

(b) Limited Principal—Financial and Operations

(1) through (2) No Change.

[(3) Except as provided in Rule 1021(c), a person designated pursuant to the provisions of subparagraph (1) hereof shall not be required to take the Limited Principal—Financial and Operations Examination and shall be qualified for registration as a Limited Principal—Financial and Operations if:

(A) such person had been performing the functions of a Limited Principal—Financial and Operations as defined in subparagraph (2) hereof on or before September 1, 1972; or

(B) such person was registered with the Association as a Financial Principal.]

(4) Renumbered as (3)

(c) through (e) No Change.

(f) Limited Principal—Registered Options and Security Futures [Principals]

No Change to rule language.

(g) Limited Principal—General Securities Sales Supervisor

(1) No Change.

(2) A person registered in this category solely on the basis of having passed the Qualification Examination for Limited Principal—General Securities Sales Supervisor shall NOT be qualified to:

(A) [be registered in any other category of principal registration] function in a principal capacity with responsibility over any area of business activity not prescribed in subparagraph (1);

(B) through (C) No Change.

(3) No Change.

(h) Limited Principal—Government Securities

(1) All persons associated with a member not previously registered as a principal who are to function as government securities principals shall be registered as such with NASD.

(2) Each person associated with a member must be registered as a Limited Principal—Government Securities if such person is:

(A) engaged in the management or supervision of the member's government securities business, including:

(i) underwriting, trading or sales of government securities;

(ii) financial advisory or consultant services for issuers in connection with the issuance of government securities;

(iii) research or investment advice, other than general economic information or advice, with respect to government securities in connection with the activities described in (i) and (ii) above;

(iv) activities other than those specifically described above that involve communication, directly or indirectly, with public investors in government securities in connection with the activities described in (i) and (ii) above; or

(B) responsible for supervision of:

(i) the processing and clearance activities with respect to government securities; or

(ii) the maintenance of records involving any of the activities described in paragraph (2)(A) above.

(3) Notification of Principal Status

A member shall promptly notify NASD when an individual not previously registered with the member as a principal assumes the duties of a principal on the form designated by the Board accompanied by the applicable fees.

IM-1022-1. Limited Principal—Registered Options and Security Futures [Principals]

No Change to rule language.

* * * * *

1030. Registration of Representatives

1031. Registration Requirements

(a) All Representatives Must Be Registered

All persons engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with [the Association] NASD in the category of registration appropriate to the function to be performed as specified in Rule 1032. Before their registration can become effective, they shall pass a Qualification Examination for Representatives appropriate to the category of registration as specified by the Board of Governors. A member shall not maintain a representative registration with [the Association] NASD for any person (1) who is no longer active in the member's investment banking or securities business, (2) who is no longer functioning as a representative, or (3) where the sole purpose is to avoid the examination requirement prescribed in paragraph (c). A member shall not make application for the registration of any person as representative where there is no intent to employ such person in the member's investment banking or securities business. A member may, however, maintain or make application for the registration as a representative of a person who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member, or a person who performs administrative support functions for registered personnel, or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

(b) through (c) No Change.

1032. Categories of Representative Registration

(a) General Securities Representative

(1) No Change.

(2) Except as provided in Rule 1031(c):

[(A) Any person who was registered with the Association as a Representative prior to September 1, 1974, shall be qualified to be registered with the Association as a General Securities Representative.]

[(B) A person who applied for registration as a Representative prior to September 1, 1974, and who become registered as a Representative prior to April 1, 1975 by virtue of having passed the Qualification Examination for Representatives (Test Series 1) shall be qualified to be registered as a General Securities Representative.]

[(C) A person who applied for registration as a Representative on or after September 1, 1974, or who registered as a Representative on or after April 1, 1975 by virtue of having passed the Qualification Examination for Registered Representatives (Test Series 1) shall be qualified to be registered only as a Limited Representative—Investment Company and Variable Contracts Products and as a Limited Representative—Direct Participation Programs as defined in paragraph (b) and (c) hereof.]

[(D) A person who was registered as a Registered Representative after September 1, 1974 by virtue of having passed the General Securities Representative Examination (Test Series 7) shall be qualified to be registered as a General Securities Representative.]

(E) Renumbered as (A)

[(F) A person who was registered as a Registered Representative for Sale of Variable Contracts Only shall be qualified to be registered as a Limited Representative—Investment Company and Variable Contracts Products.]

[(G)] (B) A person [registered and in good standing with] who is authorized or approved to conduct business in accordance with the requirements of The [Securities and Futures] Financial Services Authority and having passed the Modified General Securities Representative Qualification Examination [for United Kingdom Representatives] shall be qualified to be registered as a General Securities Representative except that such person's activities in the investment banking or

securities business may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.

(H) through (I) Renumbered as (C) through (D)

(3) No Change.

(b) through (e) No Change.

(f) Limited Representative—Equity Trader

(1) No Change.

(2) Before registration as a Limited Representative—Equity Trader as defined in subparagraph (1) hereof may become effective, an applicant must:

(A) No Change.

(B) pass an appropriate Qualification Examination for Limited Representative—Equity Trader. [Any person who was performing any of the activities described in paragraph (f)(1) above on or prior to May 1, 1998 and who has filed an application to take this examination by August 31, 1998 must pass the examination by May 1, 2000. Any person who is eligible for this extended qualification period and who fails this examination during the twenty-four (24) month time period commencing on May 1, 1998 and ending on May 1, 2000 must wait thirty (30) days from the date of failure to take the examination again. Any person, other than a person who is eligible for the extended qualification period, who files an application to take this qualification examination after May 1, 1998 must pass this examination before conducting such activities as described in paragraph (f)(1) above. In no event may a person who is eligible for the extended qualification period function as an Equity Trader beyond the 24-month period without having successfully passed the appropriate qualification examination.]

(g) Limited Representative—Government Securities

(1) through (2) No Change.

[(3) A person who has been performing the functions of a Limited Representative—Government Securities on or before April 1, 1996, may register as such without first meeting the requirement of subparagraph (1)(B) above unless:

(A) such person is currently subject to a statutory disqualification as defined in Section 3(a)(39) of the Act or

(B) during the past ten years before the effective date of that requirement was the subject of a suspension or fine of \$5,000 or more by the Association, the Securities and Exchange Commission, the Commodity Futures Trading Commission, state securities commission, foreign financial regulatory authority, or any other regulatory organization responsible for the investment banking or securities business.]

(h) No Change.

* * * * *

1070. Qualification Examinations and Waiver of Requirements

(a) through (b) No Change.

(c) Examination results shall be reported to member firms [on a pass/fail basis only] and may be accompanied by an analysis of the candidate's performance on the examination. Passing scores assigned to each examination series shall be determined by the Board of Governors, or its designee.

(d) [An applicant cannot receive assistance while taking the examination. Each applicant shall certify to the Board of Governors that no assistance was given to or received by him during the examination.]

[(e)] Pursuant to the Rule 9600 Series, [the Association] NASD may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination and accept other standards as evidence of an applicant's qualifications for registration. Advanced age[,] or physical infirmity [or experience in fields ancillary to the investment banking or securities business] will not individually of themselves constitute sufficient grounds to waive a Qualification Examination. Experience in fields ancillary to the investment banking or securities business may constitute sufficient grounds to waive a Qualification Examination.

(f) Renumbered as (e)

* * * * *

1080. Confidentiality of Examinations

[The Association] NASD considers all of its Qualification Examinations to be highly confidential. The removal from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such Qualification Examination, whether of a present or past series, or any other use which would compromise the effectiveness of the Examinations and the use in any manner and at any time of the questions or answers to the Examinations are prohibited and are deemed to be a violation of Rule 2110. An applicant cannot receive assistance while taking the examination. Each applicant shall certify to the Board that no assistance was given to or received by him during the examination.

* * * * *

1100. Foreign Associates

(a) No Change.

(b) Prior to the time the exemption provided for in paragraph (a) hereof may become effective, the member desiring to employ any such person must file with [the Association] NASD a [form designated "Application for Classification as a Foreign Associate"] "Uniform Application for Securities Industry Registration or Transfer" for each such person and must certify that such person meets the criteria of paragraph (a), as well as that:

(1) through (2) No Change.

(c) No Change.

[1110. Registration of Government Securities Principals and Representatives]

[1111. Registration of Principals]

[All persons associated with a member not previously registered as a principal who are to function as government securities principals shall be registered as such with the Association.]

[(a) Definition of Government Securities Principal]

[Persons associated with a member who are:]

[(1) engaged in the management or supervision of the member's government securities business, including:]

[(A) underwriting, trading or sales of government securities;]

[(B) financial advisory or consultant services for issuers in connection with the issuance of government securities;]

[(C) research or investment advice, other than general economic information or advice, with respect to government securities in connection with the activities described in (A) and (B) above;]

[(D) activities other than those specifically mentioned that involve communication, directly or indirectly, with public investors in government securities in connection with the activities described in (A) and (B) above; or]

[(2) are responsible for supervision of:]

[(A) the processing and clearance activities with respect to government securities; or]

[(B) the maintenance of records involving any of the activities described in paragraph (a)(1) above;]

[are designated as principals.]

[(b) Notification of Principal Status]

[A member shall promptly notify the Association of the assumption by an individual not previously registered with the member as a principal on the form designated by the Board of Governors accompanied by the applicable fees.]

* * * * *

[1113. Persons Exempt from Registration]

Persons associated with a member whose functions are exclusively clerical or ministerial are not required to register with the Association.]

broker terminals would require payment not only of the monthly terminal charge of \$350 per terminal, but also the other charges associated with Tools Plus, such as initial deposits, installation fees, connection and port charges, training fees, and hourly rates for customized programming. Finally, although Nasdaq does not currently foresee a demand for the use of full functionality terminals by non-members, the fee schedule for non-members also includes the prices for these terminals, in case such demand does develop.⁶

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁷ in general, and with Section 15A(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change contained in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

emerge. Telephone Conversation between John M. Yetter, Assistant General Counsel, Office of General Counsel, Nasdaq, and Susie Cho, Special Counsel, Division of Market Regulation ("Division"), Commission, on February 27, 2003.

⁶ Nasdaq notes that a Tools Plus user cannot use a Tools Plus terminal to route orders to a given market center unless the user has a relationship with the market center that allows it to do so under the rules governing access to that market center. For example, a member of a regional securities exchange that was not an NASD member could not use a Tools Plus terminal to route orders to Nasdaq's SuperMontage system unless the regional exchange was itself a SuperMontage participant (in which case, the member of the exchange could route orders through the exchange, as provided in NASD Rule 4710(e)). Telephone Conversation between John M. Yetter, Assistant General Counsel, Office of General Counsel, Nasdaq, and Susie Cho, Special Counsel, Division, Commission, on March 3, 2003.

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(5).

of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Nasdaq gave the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-21 and should be submitted by March 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-5565 Filed 3-7-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47433; File No. SR-NASD-2003-24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the NASD Registration Rules

March 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on February 26, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As part of its rule modernization initiative, NASD is proposing to make technical changes to the NASD registration rules and to update these rules. Below is the text of the proposed rule change. New text is in *italics*. Proposed deletions are in [brackets].

* * * * *

1000. Membership, Registration and Qualification Requirements

* * * * *

1020. Registration of Principals

1021. Registration Requirements

(a) All Principals Must Be Registered
All persons engaged or to be engaged in the investment banking or securities

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

business of a member who are to function as principals shall be registered as such with [the Association] *NASD* in the category of registration appropriate to the function to be performed as specified in rule 1022. Before their registration can become effective, they shall pass a Qualification Examination for Principals appropriate to the category of registration as specified by the Board of Governors. A member shall not maintain a principal registration with [the Association] *NASD* for any person (1) who is no longer active in the member's investment banking or securities business, (2) who is no longer functioning as a principal, or (3) where the sole purpose is to avoid the examination requirement prescribed in paragraph (c). A member shall not make application for the registration of any person as principal where there is no intent to employ such person in the member's investment banking or securities business. A member may, however, maintain or make application for the registration as a principal of a person who performs legal, compliance, internal audit, *back-office operations*, or similar responsibilities for the member or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

(b) through (c) No change.

(d) Application for Principal Status

(1) Any person associated with a member as a Registered Representative whose duties are changed by the member so as to require registration in any principal classification shall be allowed a period of 90 calendar days following the change in his duties during which to pass the appropriate Qualification Examination for Principals. Upon elevation, the member shall submit to [the Association] *NASD* an [elevation form] amended "*Uniform Application for Securities Industry Registration or Transfer*" [designated by the Board of Governors] and the applicable fees. In no event may a person function as a Principal beyond the initial 90 calendar day period following the change in his duties without having successfully passed the appropriate Qualification Examination.

(2) No Change.

[(3) If an applicant does not take the examination within the ninety calendar day period or if the applicant fails the examination, a new principal elevation form and examination fee shall be required.]

(e) Requirement of Two Registered Principals for [New Applicants for] Membership] *Members*

(1) An [applicant for membership in the Association] *NASD member*, except a sole proprietorship, shall have at least two officers or partners who are [qualified to become] registered as principals with respect to each aspect of the [applicant's] *member's* investment banking and securities business pursuant to the *applicable* provisions of rule 1022[(a), (d) and (e), whichever are applicable, before it shall be admitted to membership]. *This requirement applies to persons seeking admission as members and existing members.*

(2) through (3) No change.

1022. Categories of Principal Registration

(a) General Securities Principal

(1) through (2) No Change.

(3) Except as provided in rule 1021(c), a person who was registered with [the Association] *NASD* as a Principal [or a Financial Principal.] shall not be required to pass a Qualification Examination for General Securities Principal and shall be qualified as a General Securities Principal.

(4) A person registered solely as a General Securities Principal shall not be qualified to function as a Limited Principal—Financial and Operations; *Limited Principal—Registered Options and Security Futures; Limited Principal—General Securities Sales Supervisor; Municipal Fund Securities Limited Principal*, unless [he] that person is also qualified and registered as such [pursuant to paragraph (b)].

[(5) A person registered solely as a General Securities Principal shall not be qualified to function as a Registered Options Principal unless he is also qualified and registered as such pursuant to the provisions of paragraph (f).]

[(6) A person qualified solely as a General Securities Principal shall not be qualified to be registered as a Limited Principal—General Securities Sales Supervisor unless he is also qualified and registered as such pursuant to the provisions of paragraph (g)(1).]

(b) Limited Principal—Financial and Operations

(1) through (2) No change.

[(3) Except as provided in rule 1021(c), a person designated pursuant to the provisions of subparagraph (1) hereof shall not be required to take the Limited Principal—Financial and Operations Examination and shall be

qualified for registration as a Limited Principal—Financial and Operations if:

(A) such person had been performing the functions of a Limited Principal—Financial and Operations as defined in subparagraph (2) hereof on or before September 1, 1972; or

(B) such person was registered with the Association as a Financial Principal.]

(4) Renumbered as (3).

(c) through (e) No change.

(f) *Limited Principal—Registered Options and Security Futures* [Principals]

No change to rule language.

(g) Limited Principal—General Securities Sales Supervisor

(1) No change.

(2) A person registered in this category solely on the basis of having passed the Qualification Examination for Limited Principal—General Securities Sales Supervisor shall NOT be qualified to:

(A) [be registered in any other category of principal registration] *function in a principal capacity with responsibility over any area of business activity not prescribed in subparagraph (1);*

(B) through (C) No change.

(3) No change.

(h) *Limited Principal—Government Securities*

(1) *All persons associated with a member not previously registered as a principal who are to function as government securities principals shall be registered as such with NASD.*

(2) *Each person associated with a member must be registered as a Limited Principal—Government Securities if such person is:*

(A) *Engaged in the management or supervision of the member's government securities business, including:*

(i) *Underwriting, trading or sales of government securities;*

(ii) *Financial advisory or consultant services for issuers in connection with the issuance of government securities;*

(iii) *Research or investment advice, other than general economic information or advice, with respect to government securities in connection with the activities described in (i) and (ii) above;*

(iv) *Activities other than those specifically described above that involve communication, directly or indirectly, with public investors in government securities in connection with the activities described in (i) and (ii) above; or*

(B) *Responsible for supervision of:*

(i) *The processing and clearance activities with respect to government securities; or*

(ii) *The maintenance of records involving any of the activities described in paragraph (2)(A) above.*

(3) *Notification of Principal Status*

A member shall promptly notify NASD when an individual not previously registered with the member as a principal assumes the duties of a principal on the form designated by the Board accompanied by the applicable fees.

IM-1022-1. *Limited Principal—Registered Options and Security Futures [Principals]*

No change to rule language.

* * * * *

1030. Registration of Representatives

1031. Registration Requirements

(a) All Representatives Must Be Registered

All persons engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with [the Association] NASD in the category of registration appropriate to the function to be performed as specified in rule 1032. Before their registration can become effective, they shall pass a Qualification Examination for Representatives appropriate to the category of registration as specified by the Board of Governors. A member shall not maintain a representative registration with [the Association] NASD for any person (1) who is no longer active in the member's investment banking or securities business, (2) who is no longer functioning as a representative, or (3) where the sole purpose is to avoid the examination requirement prescribed in paragraph (c). A member shall not make application for the registration of any person as representative where there is no intent to employ such person in the member's investment banking or securities business. A member may, however, maintain or make application for the registration as a representative of a person who performs legal, compliance, internal audit, *back-office operations*, or similar responsibilities for the member, or a person who performs administrative support functions for registered personnel, or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

(b) through (c) no change.

1032. Categories of Representative Registration

(a) General Securities Representative

(1) No change.

(2) Except as provided in rule 1031(c): [(A) Any person who was registered with the Association as a Representative prior to September 1, 1974, shall be qualified to be registered with the Association as a General Securities Representative.]

[(B) A person who applied for registration as a Representative prior to September 1, 1974, and who became registered as a Representative prior to April 1, 1975, by virtue of having passed the Qualification Examination for Representatives (Test Series 1) shall be qualified to be registered as a General Securities Representative.]

[(C) A person who applied for registration as a Representative on or after September 1, 1974, or who registered as a Representative on or after April 1, 1975, by virtue of having passed the Qualification Examination for Registered Representatives (Test Series 1) shall be qualified to be registered only as a Limited Representative—Investment Company and Variable Contracts Products and as a Limited Representative—Direct Participation Programs as defined in paragraph (b) and (c) hereof.]

[(D) A person who was registered as a Registered Representative after September 1, 1974, by virtue of having passed the General Securities Representative Examination (Test Series 7) shall be qualified to be registered as a General Securities Representative.]

(E) Renumbered as (A)

[(F) A person who was registered as a Registered Representative for Sale of Variable Contracts Only shall be qualified to be registered as a Limited Representative—Investment Company and Variable Contracts Products.]

[(G)](B) A person [registered and in good standing with] *who is authorized or approved to conduct business in accordance with the requirements of The [Securities and Futures] Financial Services Authority and having passed the Modified General Securities Representative Qualification Examination [for United Kingdom Representatives]* shall be qualified to be registered as a General Securities Representative except that such person's activities in the investment banking or securities business may not involve the solicitation, purchase and/or sale of municipal securities as defined in section 3(a)(29) of the Act.

(H) through (I) renumbered as (C) through (D).

(3) No change.

(b) through (e) no change.

(f) Limited Representative—Equity Trader

(1) No change.

(2) Before registration as a Limited Representative—Equity Trader as defined in subparagraph (1) hereof may become effective, an applicant must:

(A) No change.

(B) pass an appropriate Qualification Examination for Limited Representative—Equity Trader. [Any person who was performing any of the activities described in paragraph (f)(1) above on or prior to May 1, 1998, and who has filed an application to take this examination by August 31, 1998, must pass the examination by May 1, 2000. Any person who is eligible for this extended qualification period and who fails this examination during the 24 month time period commencing on May 1, 1998, and ending on May 1, 2000, must wait 30 days from the date of failure to take the examination again. Any person, other than a person who is eligible for the extended qualification period, who files an application to take this qualification examination after May 1, 1998, must pass this examination before conducting such activities as described in paragraph (f)(1) above. In no event may a person who is eligible for the extended qualification period function as an Equity Trader beyond the 24-month period without having successfully passed the appropriate qualification examination.]

(g) Limited Representative—Government Securities

(1) through (2) no change.

[(3) A person who has been performing the functions of a Limited Representative—Government Securities on or before April 1, 1996, may register as such without first meeting the requirement of subparagraph (1)(B) above unless:

(A) Such person is currently subject to a statutory disqualification as defined in section 3(a)(39) of the Act or

(B) During the past 10 years before the effective date of that requirement was the subject of a suspension or fine of \$5,000 or more by the Association, the Securities and Exchange Commission, the Commodity Futures Trading Commission, state securities commission, foreign financial regulatory authority, or any other regulatory organization responsible for the investment banking or securities business.]

(h) No change.

* * * * *

1070. Qualification Examinations and Waiver of Requirements

(a) through (b) No Change.

(c) Examination results shall be reported to member firms [on a pass/fail basis only] and may be accompanied by an analysis of the candidate's performance on the examination. Passing scores assigned to each examination series shall be determined by the Board of Governors, or its designee.

(d) [An applicant cannot receive assistance while taking the examination. Each applicant shall certify to the Board of Governors that no assistance was given to or received by him during the examination.]

[(e)] Pursuant to the rule 9600 Series, [the Association] NASD may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination and accept other standards as evidence of an applicant's qualifications for registration. Advanced age[,] or physical infirmity [or experience in fields ancillary to the investment banking or securities business] will not individually of themselves constitute sufficient grounds to waive a Qualification Examination. *Experience in fields ancillary to the investment banking or securities business may constitute sufficient grounds to waive a Qualification Examination.*

(f) Renumbered as (e)

* * * * *

1080. Confidentiality of Examinations

[The Association] NASD considers all of its Qualification Examinations to be highly confidential. The removal from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such Qualification Examination, whether of a present or past series, or any other use which would compromise the effectiveness of the Examinations and the use in any manner and at any time of the questions or answers to the Examinations are prohibited and are deemed to be a violation of rule 2110. *An applicant cannot receive assistance while taking the examination. Each applicant shall certify to the Board that no assistance was given to or received by him during the examination.*

* * * * *

1100. Foreign Associates

(a) No Change.

(b) Prior to the time the exemption provided for in paragraph (a) hereof may become effective, the member desiring to employ any such person must file

with [the Association] NASD a [form designated "Application for Classification as a Foreign Associate"] "Uniform Application for Securities Industry Registration or Transfer" for each such person and must certify that such person meets the criteria of paragraph (a), as well as that:

(1) through (2) no change.

(c) No change.

[1110. Registration of Government Securities Principals and Representatives]

[1111. Registration of Principals]

[All persons associated with a member not previously registered as a principal who are to function as government securities principals shall be registered as such with the Association.]

[(a) Definition of Government Securities Principal]

[Persons associated with a member who are:]

[(1) engaged in the management or supervision of the member's government securities business, including:]

[(A) underwriting, trading or sales of government securities;]

[(B) financial advisory or consultant services for issuers in connection with the issuance of government securities;]

[(C) research or investment advice, other than general economic information or advice, with respect to government securities in connection with the activities described in (A) and (B) above;]

[(D) activities other than those specifically mentioned that involve communication, directly or indirectly, with public investors in government securities in connection with the activities described in (A) and (B) above; or]

[(2) are responsible for supervision of:]

[(A) the processing and clearance activities with respect to government securities; or]

[(B) the maintenance of records involving any of the activities described in paragraph (a)(1) above;]

[are designated as principals.]

[(b) Notification of Principal Status]

[A member shall promptly notify the Association of the assumption by an individual not previously registered with the member as a principal on the form designated by the Board of Governors accompanied by the applicable fees.]

* * * * *

[1113. Persons Exempt From Registration]

Persons associated with a member whose functions are exclusively clerical or ministerial are not required to register with the Association.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the NASD's rule modernization initiative, NASD has identified certain registration rules that are antiquated and need to be updated to reflect changes in the regulatory landscape. Many of these registration rules impose requirements that no longer serve a valid investor protection goal. The proposed changes, which primarily are technical in nature, are intended to clarify and clean-up existing rules to reduce burdens on the industry caused by outdated registration requirements.

Rules 1021 and 1031 (Principal and Representative Registration Requirements)

Rules 1021(a) and 1031(a) state that persons engaged in a member's investment banking or securities business who are functioning as principals or representatives must be registered with NASD in the appropriate registration category. These rules prohibit a member from registering a person as principal or representative where the member does not intend to employ the person in its investment banking or securities business. Rules 1021(a) and 1031(a) provide a narrow exception to this general prohibition by permitting a member to maintain the registration of a principal or representative who performs legal, compliance, internal audit, or similar responsibilities. NASD believes that principals or representatives who perform back-office operations,

including, but not limited to, cashiering, accounting, settling, and the record keeping of customers' cash or margin accounts, also should be included under this limited exception. Accordingly, NASD is proposing to add the term "back-office operations" before the terms "or similar responsibilities" in rules 1021(a) and 1031(a). Rule 1021(d)(1) states that a person who is currently a registered representative may function as a principal for 90 calendar days before he or she is required to pass the appropriate qualification examination for principal. This rule requires that a member submit an "elevation form" for a representative who has been elevated to principal. NASD no longer uses an "elevation form." Rather, NASD now requires members to submit an amended "Uniform Application for Securities Industry Registration or Transfer" (Form U-4). NASD is proposing to amend the rule to reflect this change.

Rule 1021(d)(3) suggests that an applicant who does not take the examination within 90 days or fails the examination can submit a new form and continue to function as a principal until qualified. This is inconsistent with rule 1021(d)(1), which states that in no event may a person function as a principal beyond the initial 90-day period. Therefore, NASD is proposing to delete rule 1021(d)(3).

Rule 1021(e) requires applicants for NASD membership to have at least two principals with respect to each aspect of the applicant's investment banking and securities business. NASD has interpreted rule 1021(e) to generally require all members, including new applicants, to have at least two principals with respect to each aspect of the member's investment banking and securities business. Therefore, NASD is proposing to amend rule 1021(e) to clarify that this requirement applies to existing members as well as new applicants.

Rules 1022 and 1032 (Principal and Representative Registration Categories)

Rule 1022(a)(3) states that a person who was registered with NASD as a principal or financial principal is not required to pass a qualification examination for general securities principal to be qualified as a principal. The term "financial principal" refers to an examination that is no longer administered and thus should be deleted from rule 1022(a)(3).

Rules 1022(a)(4), (5), and (6) provide that a person registered solely as a general securities principal is not automatically qualified to function in certain limited principal capacities.

NASD is proposing to combine these rules to eliminate certain redundancies in the language. Further, NASD is proposing to clarify that a person registered solely as a general securities principal is not automatically qualified to function as a municipal securities principal or municipal fund securities limited principal.

Rule 1022(b)(3) provides an exception from the limited principal—financial and operations examination for those persons who were performing these functions before September 1, 1972, and those persons who were registered as a financial principal. NASD is proposing to delete rule 1022(b)(3) because the grandfather clause and the reference to "financial principal" relate to changes made in the 1970s.

For consistency with the other headings under rule 1022, NASD is proposing to amend the headings for rule 1022(f) and IM-1022-1 to state: "Limited Principal—Registered Options and Security Futures."

Rule 1022(g)(2)(A) provides that a limited principal—general securities sales supervisor cannot be qualified to be registered in any other principal registration category. NASD believes that rule 1022(g)(2)(A) is inaccurate. Accordingly, NASD is proposing to replace the current language in rule 1022(g)(2)(A) to state that a person registered solely as a Limited Principal—General Securities Sales Supervisor shall not be qualified to function in a principal capacity with responsibility over any of the areas of business not described in that rule. This will clarify that such persons may be registered in other categories, if applicable.

Rules 1032(a)(2)(A)–(D) and 1032(a)(2)(F) relate to the transition from the Series 1 to the Series 7, which took place in the 1970's. NASD is proposing to delete rules 1032(a)(2)(A)–(D) and 1032(a)(2)(F) because these sections are no longer relevant to a vast majority of our members and NASD could provide waivers if necessary. Rule 1032(a)(2)(G) provides that persons registered and in good standing with the Securities and Futures Authority ("SFA") and who have passed the Modified General Securities Representative Qualification Examination for United Kingdom Representatives are qualified to be registered as general securities representatives, with certain restrictions. Under the previous regulatory framework in the United Kingdom, certain persons engaged in the securities and derivatives business were required to register with the SFA before they could engage in such

business. The Financial Services Authority ("FSA") has consolidated the regulatory duties that were carried out by the previous regulatory bodies, including the SFA. The FSA is an independent non-governmental body with statutory powers under United Kingdom legislation to regulate the financial services industry in the United Kingdom. Under the FSA structure, persons that plan to perform specified functions, known as regulated activities or controlled functions, must be either authorized or approved by the FSA before they can carry out these functions. Therefore, NASD is proposing to revise the language in rule 1032(a)(2)(G) to reflect the FSA's new authorization and approval process.

Rule 1032(f)(2)(B) sets forth the grace periods for passing the equity trader examination. For instance, registered representatives who were eligible for the two-year grace period were given until October 1, 2000, to pass the examination. Because the grace period deadlines have passed, NASD is proposing to delete the periods specified under rule 1032(f)(2)(B).

Rule 1032(g)(3) provides a grandfathering provision for persons who were performing the functions of a government securities limited representative on or before April 1, 1996. NASD believes that it is no longer necessary to keep this section because most persons who were eligible for grandfathering have been processed and, if necessary, the staff may provide waivers to new applicants. Accordingly, NASD is proposing to eliminate rule 1032(g)(3) in its entirety.

Rule 1070 (Qualification Examination and Waiver of Requirements)

Rule 1070(c) provides that qualification examination results will be reported to members on a pass/fail basis only. NASD is proposing to delete the phrase "on a pass/fail basis only" because NASD provides more than just pass/fail information to members.

Rule 1070(d) prohibits an applicant from receiving assistance while taking an examination. Rule 1080 requires that examinations be kept confidential. NASD is proposing to combine the language in rule 1070(d) and rule 1080 because these sections cover similar topics. Consequently, NASD is proposing to incorporate rule 1070(d) into rule 1080 and delete rule 1070(d).

Rule 1070(e) provides that experience in fields ancillary to investment banking or securities business will not in and of itself constitute sufficient grounds for waiving an examination. NASD is proposing to amend rule 1070(e) to clarify that although age or physical

infirmity will not individually of themselves constitute sufficient grounds to waive an examination, experience in an ancillary field may be sufficient grounds to waive an examination.

Rule 1100 (Foreign Associates)

Rule 1100(b) requires that members employing foreign associates file an "Application for Classification as a Foreign Associate." NASD no longer uses this application. Thus, NASD is proposing to replace the terms "Application for Classification as a Foreign Associate" with the terms "Uniform Application for Securities Industry Registration or Transfer," which is the current application.

Rule 1111 (Registration of Government Securities Principals)

Rule 1111 relates to the registration requirements for government securities principals. Because this rule relates to principal registration requirements, NASD is proposing to move this rule to the rule 1020 Series and renumber it as rule 1022(h). The heading for rule 1022(h) will be "Limited Principal—Government Securities." Rule 1022(h) will not include a subsection on examination because there is no required examination for this registration category. Non-substantive changes also were made to this provision to clarify its application.

Rule 1113 (Persons Exempt From Registration)

Both rules 1060(a)(1) and 1113 state that associated persons whose functions are solely and exclusively clerical or ministerial are exempt from registration. NASD is proposing to delete rule 1113 because it duplicates rule 1060(a)(1).

Finally, NASD is adopting a new corporate structure and is seeking the merger of NASD Regulation and NASD Dispute Resolution into NASD, with the merger becoming effective upon the Commission's authorization of the operation of Nasdaq other than as a facility of NASD. To underscore this new corporate structure and renewed regulatory focus, NASD generally does not refer to itself using its full corporate name, "the Association" or "the NASD." Instead NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, NASD has replaced several references to "the Association" and "the NASD" in the text of the proposed rule change with "NASD."

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions

of section 15A(b)(6) of the Act,⁴ which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change also is consistent with the provisions of sections 15A(b)(3)⁵ and 15A(g)(3) of the Act,⁶ which, among other things, authorize NASD to prescribe standards of training, experience, and competence for persons associated with NASD members. NASD believes that the proposed rule change clarifies NASD registration obligations and provides consistency throughout these rules and will assist members and their associated persons in complying with these rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by NASD as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act⁷ and rule 19b-4(f)(6) thereunder.⁸ Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of this filing; and NASD provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date,⁹ the proposed rule change

has become effective pursuant to section 19(b)(3)(A) of the Act¹⁰ and rule 19b-4(f)(6) thereunder.¹¹

NASD has requested that the Commission waive the 30-day pre-operative waiting period, which would make the proposed rule operative immediately. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case because the proposed rule change is highly technical in nature. For these reasons, the Commission waives the 30-day pre-operative period and designates that the proposal become operative immediately.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be

withdrew SR-NASD-2002-185 and refiled the proposed rule change as a "non-controversial" filing pursuant to section 19(b)(3)(A) of the Act and rule 19b-4(f)(6) thereunder because the proposed rule change is highly technical in nature. Rule 19b-4(f)(6)(iii) under the Act requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days before doing so (or such shorter time as designated by the Commission). The Commission finds that NASD satisfied the five-day pre-filing requirement by filing SR-NASD-2002-185.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴ 15 U.S.C. 78o-3(b)(6).

⁵ 15 U.S.C. 78o-3(b)(3).

⁶ 15 U.S.C. 78o-3(g)(3).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ NASD initially filed the proposed rule change on December 30, 2002 for full notice and comment in accordance with section 19(b)(2) of the Act. See SR-NASD-2002-185. NASD subsequently

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-2002-03 and should be submitted by March 31, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-5570 Filed 3-7-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47434; File No. SR-NASD-2002-112]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., To Amend NASD Rule 3070 To Require Members To File Copies of Criminal and Civil Complaints and Arbitration Claims With NASD

March 3, 2003.

I. Introduction

On August 15, 2002, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² to amend Rule 3070 of its rules to require members promptly to file copies with NASD of certain criminal and civil complaints and arbitration claims against a member or a person associated with a member. NASD amended the proposed rule change on December 9, 2002.³ Notice of the proposed rule change and Amendment No. 1 thereto was published for comment in the **Federal Register** on December 27, 2002.⁴

The Commission received five comment letters regarding the proposal.⁵ On February 12, 2003, NASD

filed a response to the comment letters.⁶ This order approves the proposed rule change as amended by Amendment No. 1.

II. Description of the Proposal

The proposed rule change amends NASD Rule 3070 to require members to file promptly with NASD copies of certain criminal and civil complaints and arbitration claims against the member or a person associated with the member. The purpose of the rule proposal is to improve the quality and flow of information to NASD with respect to allegations of broker misconduct, so that NASD can enhance investor protection efforts by promptly taking appropriate regulatory action to address the specific alleged misconduct and to prevent similar or related misconduct in the future.

Specifically, the proposed rule change requires members to file with NASD copies of (1) any criminal complaints filed against the member or plea agreements entered into by the member that are covered by the rule; (2) any securities or commodities-related private civil complaints filed against the member; (3) any arbitration claim against the member (except those claims that have already been filed with NASD Dispute Resolution, in which case NASD obtains copies of such claims directly from NASD Dispute Resolution); and (4) any criminal complaint or plea agreement, private civil complaint or arbitration claim against an associated person that is reportable under question 14 on Form U-4, irrespective of any dollar threshold requirements that question imposes for

Notice to Members 02-53 concerning the proposed amendment to NASD Rule 3070 prior to the Commission's publication of the proposed rule filing); letter from Marc A. Cohn, Assistant Vice President, Metropolitan Life Insurance Company ("MetLife"), to Jonathan G. Katz, Secretary, Commission, dated December 27, 2002 ("MetLife Letter"); letter from Stephen G. Sneeringer, Senior Vice President & Counsel, A.G. Edwards & Sons, Inc. ("A.G. Edwards"), to Jonathan G. Katz, Secretary, Commission, dated January 17, 2002 ("A.G. Edwards Letter"); letter from Edward Turan, Chairman, Arbitration Committee, Securities Industry Association ("SIA") and John Polanin, Jr., Chairman, Self-Regulation and Supervisory Practices Committee, SIA, to Jonathan G. Katz, Secretary, Commission, dated January 24, 2003 ("SIA Letter"); and letter from David A. Weintraub, Attorney at Law, David A. Weintraub, P.A. ("Weintraub"), to Jonathan G. Katz, Secretary, Commission, dated February 6, 2003 ("Weintraub Letter"). The comment letters are described in Section III, *infra*.

⁶ See letter from Philip A. Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated February 11, 2003 ("NASD Response Letter"). The NASD Response Letter does not respond to the Weintraub Letter because the Weintraub Letter was received by the Commission after NASD filed the NASD Response Letter.

notification (except those arbitration claims that have already been filed with NASD Dispute Resolution). To avoid duplicative filing, the rule proposal also provides that members need not separately produce the above-referenced documents if they have already been the subject of a request by NASD's Registration and Disclosure staff. These amendments are discussed in greater detail in the Commission's notice soliciting public comment on this proposal.⁷

III. Summary of Comments

The Commission received five comment letters on the proposed rule change.⁸ Although four of the commenters generally supported NASD's desire to obtain and collect information regarding broker misconduct, they each contended that the proposal was unduly burdensome for members and offered alternative suggestions for achieving NASD's stated objectives.⁹ The fifth comment letter was written in response to the SIA Letter and in support of the proposed rule change.¹⁰ World Group and A.G. Edwards stated that NASD would be unduly burdened by the volume of documents it would receive compared to the amount of new relevant information. MetLife and the SIA stated that the proposal was inconsistent with NASD's rule modernization initiative, which seeks to streamline NASD rules by maximizing regulatory efficiency while imposing the least regulatory burden.¹¹

In its response to commenters, NASD focused only on comments made in connection with this proposal. The World Group, MetLife and A.G. Edwards Letters also addressed a change in NASD's policy regarding letters NASD issues when a determination is made to close an investigation without disciplinary action (referred to as "close-out letters"). While notice of the policy change with respect to close-out letters was contained in the same *Notice to Members* 02-53 that announced that NASD had filed with the SEC its proposal to amend Rule 3070, that policy change is not part of this rule filing. Accordingly, this order does not address the policy change with respect to close-out letters.

NASD disagrees that the proposal would impose duplicative filing requirements on members or be unduly

⁷ See *supra*, note 4.

⁸ See *supra*, note 5.

⁹ See World Group Letter, MetLife Letter, A.G. Edwards Letter and SIA Letter.

¹⁰ See Weintraub Letter.

¹¹ See *Special NASD Notice to Members* 01-35.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 6, 2002, and enclosures ("Amendment No. 1"). Amendment No. 1 replaced the original rule filing in its entirety.

⁴ See Securities Exchange Act Release No. 47060 (December 20, 2002), 67 FR 79203.

⁵ See letter from Kevin L. Palmer, Legal Department, World Group Securities, Inc. ("World Group"), to Jonathan G. Katz, Secretary, Commission, dated September 19, 2002 ("World Group Letter") (World Group commented on NASD

Notice to Members

APRIL 2003

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Senior Management
Registered Representatives
Principals

KEY TOPICS

NASD Rule 2330
Guarantees Against Loss
Sharing in Customer Accounts

INFORMATIONAL

Prohibition Against Guarantees and Sharing in Customer Accounts

SEC Approves Amendments to NASD Rules Regarding Prohibition Against Guarantees and Sharing in Customer Accounts; **Effective Date: May 12, 2003**

Executive Summary

On February 12, 2003, the Securities and Exchange Commission (SEC) approved amendments to NASD Rules 2330(e) (Prohibition Against Guarantees) and 2330(f) (Sharing in Accounts; Extent Permissible).¹ The amendments to Rule 2330(e) clarify that members and their associated persons are prohibited from guaranteeing any customer against loss in connection with any securities transaction or in any securities account of the customer. Rule 2330(f) has been amended to require that associated persons obtain prior written authorization from their employing member firm and that members and associated persons obtain prior written authorization from the customer before sharing in a customer's account. The amendments also delete from Rule 2330(f) the requirement that members and associated persons obtain the prior written authorization of the member carrying the account before sharing in a customer's account. The text of these amendments are set forth in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to Afshin Atabaki, Attorney, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8902.

03-21

Discussion

In response to requests for interpretive guidance, NASD has amended Rules 2330(e) and 2330(f) as described below to clarify their scope and enhance their effectiveness.

Rule 2330(e) – Prohibition Against Guarantees

Previously, NASD Rule 2330(e) prohibited a member or its associated persons from guaranteeing a customer against loss in any customer's account that was carried by the member and in any securities transaction effected by the member with or for the customer. A strict reading of that rule would have limited its application to only those guarantees made by the member (or the member's associated persons) carrying the customer's account and those guarantees made by the member (or the member's associated persons) effecting a securities transaction with or for the customer.

NASD has amended Rule 2330(e) to clarify that the rule prohibits a member and its associated persons from making guarantees to any customer, not just those customers whose accounts are carried by the member or those customers for whom a member is effecting a securities transaction. The reason for the prohibition is that such guarantees create the expectation that the customer is insulated from market risk intrinsic in securities ownership and may induce the customer to engage in a securities transaction that is not otherwise appropriate for the customer.²

Rule 2330(f) – Sharing in Accounts

NASD Rule 2330(f) prohibits members and associated persons from sharing in the profits or losses in a customer's account except under certain limited conditions.³ Rule 2330(f)(1)(A) permitted a member or person associated with a member to share in the profits or losses in a customer's account if such member or person associated with a member obtained prior written authorization from the member that was carrying the account and the sharing was proportionate to the member's or associated person's contributions to the account. NASD Rule 2330(f)(2) permitted a member or person associated with a member that acted as an investment adviser to receive compensation based on a share in the profits or gains in a customer's account if such member or person associated with a member obtained prior written authorization from the member that was carrying the account, and the conditions specified in Rule 205-3 under the Investment Advisers Act of 1940 were satisfied.

Both Rule 2330(f)(1)(A) and Rule 2330(f)(2) required the member or associated person that was sharing in the profits or losses in a customer's account to obtain the prior written authorization of the member that was carrying the account. These rules did not necessarily require an associated person to obtain the prior written authorization of his or her employing member when sharing in the profits or losses in a customer's account. Employing members only would be notified if they also were the carrying member of the account or if the arrangement triggered application of another NASD rule, e.g., Rules 3030 (Outside Business Activities of an Associated Person), 3040 (Private

Securities Transactions of an Associated Person), or 3050 (Transactions for or by Associated Persons).⁴ In addition, neither Rule 2330(f)(1)(A) nor Rule 2330(f)(2) required a member or its associated persons to obtain the prior written authorization of the customer in whose account they intended to share.

NASD believes that it is important for a customer to provide his or her written approval prior to a member or its associated persons sharing in that customer's account. Further, employing members should be notified and affirmatively authorize sharing in a customer's account so that they are better able to supervise their associated persons and ensure compliance with NASD rules and other applicable laws and regulations.

Therefore, NASD has amended Rules 2330(f)(1)(A) and 2330(f)(2) to require that, when sharing in a customer's account, associated persons obtain the prior written authorization of their employing member and that members and their associated persons obtain the prior written authorization of the customer. In addition, Rule 2330(f) has been amended to remove the requirement that members and associated persons obtain the written authorization of the member carrying the account before sharing in a customer's account. NASD notes that, notwithstanding a member's or associated person's compliance with the requirements of Rule 2330(f), the conduct permitted under Rule 2330(f) may trigger notice and other requirements under other NASD rules, including NASD Rules 3030, 3040, and 3050. Rule 2330(f) does not affect the applicability of such other rules to these arrangements.

Endnotes

- 1 See Securities Exchange Act Release No. 47354 (February 12, 2003), 68 FR 8053 (February 19, 2003) (order approving File No. SR-NASD-2002-180).
- 2 A "guarantee" that is extended to all holders of a particular security by an issuer as part of that security generally would not be prohibited under Rule 2330(e).
- 3 For example, this provision formed the basis of an NASD enforcement action against Credit Suisse First Boston, Inc., in which NASD found that Credit Suisse First Boston's practice of sharing in the profits in customers' accounts in exchange for allocating initial public offering securities to such customers violated Rule 2330(f). In January 2002, Credit Suisse First Boston settled this matter without admitting or denying the allegations. See Credit Suisse First Boston Corporation, Letter of Acceptance, Waiver and Consent, No. CAF020001 (Jan. 22, 2002).
- 4 Rule 3030, among other things, requires that associated persons notify their employer member of any business activity outside the scope of their relationship with the member. Rule 3040, among other things, requires that associated persons obtain written approval from their employer member before engaging in any securities transaction for which they have or may receive selling compensation outside the regular course or scope of their employment with the member. Rule 3050, among other things, requires an associated person to notify his or her employer member in writing prior to opening an account or placing an initial order for the purchase or sale of securities with another member and to notify that member in writing of his or her employment relationship with the employer member.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

2330. Customers' Securities or Funds

(a) through (d) No Change.

(e) Prohibition Against Guarantees

No member or person associated with a member shall guarantee a customer against loss in connection with any securities [account] transaction or in any securities account of such customer [carried by the member or in any securities transaction effected by the member with or for such customer].

(f) Sharing in Accounts: Extent Permissible

(1)(A) Except as provided in paragraph (f)(2) no member or person associated with a member shall share directly or indirectly in the profits or losses in any account of a customer carried by the member or any other member; provided, however, that a member or person associated with a member may share in the profits or losses in such an account if (i) such [member or] person associated with a member obtains prior written authorization from the member [carrying the account] employing the associated person; (ii) such member or person associated with a member obtains prior written authorization from the customer; and (iii) [the] such member or person associated with a member [shall] share in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the member or person associated with a member.

(B) Exempt from the direct proportionate share limitation of paragraph (f)(1)(A)(iii) are accounts of the immediate family of such member or person associated with a member. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the member or person associated with a member otherwise contributes directly or indirectly.

(2) Notwithstanding the prohibition of paragraph (f)(1), a member or person associated with a member that is acting as an investment adviser (whether or not registered as such) may receive compensation based on a share in profits or gains in an account if (i) [the member or] such person associated with a member seeking such compensation obtains prior written authorization from the member [carrying the account] employing the associated person; (ii) such member or person associated with a member seeking such compensation obtains prior written authorization from the customer;[,] and (iii) all of the conditions in Rule 205-3 of the Investment Advisers Act of 1940 (as the same may be amended from time to time) are satisfied.

Notice to Members

APRIL 2003

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

Dissemination of Additional Corporate Debt Securities
Will Begin on April 14, 2003

Executive Summary

On January 31, 2003, the Securities and Exchange Commission (SEC or Commission) approved an amendment to Rule 6250 of the Trade Reporting and Compliance Engine (TRACE) Rules, the Rule 6200 Series, to require dissemination of transaction information on 90 Investment Grade securities that are rated "Baa/BBB."¹ Rule 6250(a)(4), as approved on January 31, required NASD to select the 90 bonds. During the selection process, NASD determined that if an incremental, additional number of "Baa/BBB" bonds were disseminated, the quality of information NASD would collect would improve substantially. On March 17, 2003, NASD filed an amendment to Rule 6250(a)(4) to allow NASD to select up to 120 bonds rated "Baa/BBB" for dissemination. The proposed increase was effective upon filing with the SEC.

NASD has identified the 120 "Baa/BBB" TRACE-eligible securities for which transaction information will be disseminated, and will implement dissemination on April 14, 2003, at 8:00 a.m., Eastern Time. The text of Rule 6250(a)(4), as amended on March 17, 2003, is set forth in Attachment A.

Questions/Further Information

Questions concerning this *Notice* should be directed to tracefeedback@nasd.com; Justin Tubiolo, Vice President, Fixed Income, Regulatory Services and Operations, at (212) 858-4419; Elliot Levine, Chief Counsel, Market Operations, Regulatory Services and Operations, at (212) 858-4174; or Sharon K. Zackula, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8985.

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Background and Discussion

NASD began requiring members to report transaction information on all TRACE-eligible corporate debt securities on July 1, 2002. Those transactions that are subject to dissemination are a smaller group. First, on July 1, 2002, NASD began disseminating information on transactions occurring in two types of securities: (1) TRACE-eligible securities that have an initial issuance size of \$1 billion or greater and are Investment Grade at the time of receipt of the transaction report; and (2) 50 TRACE-eligible securities that are actively traded, Non-Investment Grade,² and meet other criteria set forth in Rule 6250(a)(2). Under these provisions, approximately 540 securities were subject to dissemination. Second, on March 3, 2003, NASD began disseminating information on transactions occurring in a third group of securities, which includes all TRACE-eligible securities that are Investment Grade, are rated by Moody's as "A3" or higher, and by S&P as "A-" or higher, and have an original issue size of \$100 million or greater.³ With the implementation of this provision, NASD currently disseminates transaction information on more than 4,200 TRACE-eligible securities.

Dissemination of Additional TRACE-Eligible Securities Rated "Baa/BBB"

In *Notice to Members 03-12*, NASD indicated that it would announce the dissemination of a fourth category of securities, a designated group of "Baa/BBB"-rated TRACE-eligible securities, upon completing the process of identifying the securities. During the selection process, NASD, based on

guidance from independent economists, determined that the database of disseminated transaction data on "Baa/BBB" TRACE-eligible securities should be incrementally increased to include transaction information on up to 120 securities. This modest increase in the transparency of "Baa/BBB" securities would improve significantly the quality of the data to be collected. The increased transparency would provide a better foundation for determining the effect, if any, of transparency on liquidity.

On March 17, 2003, NASD modified Rule 6250(a)(4) by filing a rule change that became effective when filed with the SEC. The modification allows NASD to select up to 120 securities, which is a maximum increase of 30 securities.⁴ Specifically, NASD must designate the "triple-B-" rated securities using three groups, Group 1, Group 2, and Group 3. Each of the three groups is to be composed of not more than 50 securities. At the time of designation, each TRACE-eligible security in Group 1 must be rated "Baa1/BBB+" and each TRACE-eligible security in Groups 2 and 3 must be rated, respectively, "Baa2/BBB" and "Baa3/BBB-." In addition, if a TRACE-eligible security has a rating from only one rating agency, it may not be designated.

NASD has designated the securities, and is now able to establish the effective date. NASD will begin dissemination of transaction information in 120 "triple-B"-rated TRACE-eligible securities on April 14, 2003.

Endnotes

- 1 See Securities Exchange Act Release No. 47302 (January 31, 2003), 68 FR 6233 (February 6, 2003) (File No. SR-NASD-2002-174) (Approval Order). "Investment Grade" is defined in Rule 6210(h) to mean "any TRACE-eligible security rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories." In the Approval Order, the SEC also approved proposed changes to disseminate a new and large class of additional TRACE-eligible Investment Grade securities. Specifically, under Rule 6250(a)(3), any TRACE-eligible security rated A3/A- or better and having an initial issuance size of \$100 million or greater became subject to dissemination. NASD implemented dissemination of the A3/A- securities on March 3, 2003. See *Notice to Members 03-12* (February 2003).
- 2 "Non-Investment Grade" is defined in Rule 6210(i) to 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...."
- 3 In addition, a security that is required to be disseminated under this criteria, on or after the effective date of the provision, will continue to be subject to dissemination unless the security is downgraded below "Baa3/BBB-."
- 4 See Securities Exchange Act Release No. 47566 (March 25, 2003) 68 FR 15490 (March 31, 2003) (File No. SR-NASD-2003-41) (notice of filing and immediate effectiveness of proposed rule to disseminate up to 30 additional corporate bonds). In this filing to amend Rule 6250(a)(4), NASD proposed that not more than 120 TRACE-eligible bonds rated "Baa/BBB" at the time of designation would be designated and disseminated.

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ATTACHMENT A

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, NASD will disseminate transaction information (except that market aggregate information and last sale information will not be updated after 5:15 p.m. Eastern Time) in the securities described below.

(1) No Change.

(2) No Change.

(3) No Change.

(4) Ninety to 120 TRACE-eligible securities designated by NASD that are rated "Baa/BBB" at the time of designation, according to the following standards.

(A) Three groups, each composed of up to 50 [30] TRACE-eligible securities (Group 1, Group 2, and Group 3), but collectively not exceeding 120, shall be designated by NASD. At the time of designation, each TRACE-eligible security in Group 1 must be rated "Baa1/BBB+[,;]" and each TRACE-eligible security in Group 2 and Group 3 must be rated, respectively, "Baa2/BBB[,;]" and "Baa3/BBB-[,;]" [provided that if] if a TRACE-eligible security is rated one of the "Baa" ratings by Moody's and one of the "BBB" ratings by S&P and the ratings indicate two different levels of credit quality, the lower of the two ratings will be used to determine the group to which a debt security will be assigned under this paragraph (a)(4).

(B) No Change.

(C) No Change.

(b) through (d) No Change.

Disciplinary and Other NASD Actions

REPORTED FOR APRIL

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 March 2003.

Firm Expelled

American Investment Services, Inc. (CRD #21111, Oklahoma City, Oklahoma) was expelled from NASD membership. The sanction was based on findings that the firm conducted a securities business while failing to maintain its minimum required net capital. NASD also found that the firm prepared inaccurate trial balances and net capital computations and filed inaccurate FOCUS Part IIA reports. The findings also stated that the firm failed to report customer complaints, arbitration proceedings, settlements of arbitration proceedings, and disciplinary actions against registered representatives associated with the firm. Furthermore, the findings stated that the firm executed trades that it did not report accurately as short sales and bunched trades. (NASD Case #C8A020057)

Firms Fined, Individuals Sanctioned

Brookstreet Securities Corporation (CRD #14667, Irvine, California), Stanley Clifton Brooks, (CRD #31684, Registered Principal, San Clemente, California), and Kathleen Margaret McPherson (CRD #1526361, Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$100,000, jointly and severally, with Brooks and McPherson to the extent of \$25,000. The firm was required to retain an independent consultant to conduct a review and to prepare written reports and make recommendations as to the adequacy of the firm's supervisory and compliance policies and procedures and its system for applying such procedures. Brooks was suspended from association with any NASD member in any principal capacity for 30 days and McPherson was suspended from association with any NASD member in any principal capacity for 15 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Brooks and McPherson, failed to implement, maintain, and enforce either reasonable written supervisory procedures or a reasonable supervisory system that would have enabled the firm to effectively comply with NASD rules and regulations, and to have prevented and detected the violations of these rules and regulations by certain registered representatives it employed.

Brooks' suspension will begin April 24, 2003, and will conclude at the close of business May 23, 2003. McPherson's suspension began April 7, 2003, and will conclude at the close of business April 21, 2003. (NASD Case #C02030010)

Computer Clearing Services, Inc. (CRD #20776, Glendale, California) and Stephen Scott Worcester (CRD #1133812, Registered Principal, Chino Hills, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$40,000, jointly and severally with Worcester. In addition, Worcester was fined \$5,000 individually and suspended from association with any NASD member in a financial and operations principal capacity for 45 days. The firm was also required to retain an independent consultant to conduct a review and to prepare written reports and make recommendations as to the adequacy of the firm's financial and operations policies and procedures and its system for applying such procedures. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Worcester, failed to compute accurately the amount required to be deposited into the Special Reserve Bank Account for the Exclusive Benefit of Customers, and failed to deposit into the Reserve Bank Account the amount required to satisfy the firm's reserve requirement. The findings stated that the firm, acting through Worcester, utilized the instrumentalities of interstate commerce to engage in the securities business while failing to have and maintain sufficient net capital. The findings also stated that the firm, acting through Worcester, failed to make, keep current, and preserve accurate financial books and records regarding the income statement, balance sheet, general ledger, securities ledgers, trial balances, net capital computations, and Reserve Bank Account computations, and failed to prepare and preserve accurate supporting documentation to evidence compliance with Securities and Exchange Commission (SEC) rules.

Worcester's suspension began April 7, 2003, and will conclude at the close of business May 21, 2003. (NASD Case #C02030014)

Magellan Securities, Inc. (CRD #15986, Harper Woods, Michigan) and Terry Michael Laymon (CRD #304342, Registered Principal, Grosse Point Woods, Michigan) were censured and fined \$20,000, jointly and severally. Laymon was also barred from association with any NASD member as a supervisor, suspended from association with any NASD member in any principal capacity for two years, and ordered to requalify by exam as a general securities principal before resuming those responsibilities. The sanctions were based on findings that the firm and Laymon failed to exercise reasonable supervision over a registered representative's activities. Specifically, the firm and Laymon failed to conduct an on-site compliance examination of the representative's office, failed to review correspondence generated and received at the representative's office, failed to review the customer account documentation the representative sent to Laymon, and failed to review the representative's trading activity in his securities account at another member firm. In addition, NASD found that Laymon chose not to supervise the representative.

Laymon's suspension began March 3, 2003, and will conclude at the close of business March 2, 2005. (NASD Case #C3B010016)

Firm and Individual Fined

Intrepid Securities, Inc. (CRD#19311, Torrance, California) and Stephen Peter Kelly (CRD #1454359, Registered Principal, Torrance, California) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Kelly consented to the described sanctions and to the entry of findings that the firm, while acting under the direction and control of Kelly, failed to establish and maintain a supervisory system reasonably designed to ensure that producing branch managers at its Office of Supervisory Jurisdiction complied with NASD rules. (NASD Case #C02030003)

Firms Fined

Buell Securities Corp. (CRD #1342, Wethersfield, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures concerning the firm's regular and rigorous reviews for best execution within 30 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that its supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable laws and regulations concerning the firm's regular and rigorous reviews for best execution. The findings also stated that the firm failed to show the time of entry, time of execution, and the correct time of execution on memorandums of brokerage orders. (NASD Case #CMS030030)

Fleet Securities, Inc. (CRD #13071, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, and thereby failed to honor its published quotation. The findings also stated that firm maintained an asked quotation in The NASDAQ Stock Market that caused a locked or crossed market condition to occur. (NASD Case #CMS030024)

Schoff & Baxter, Inc. (CRD #3290, Burlington, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanction and to

the entry of findings that it permitted representatives to perform duties as registered persons while their registration status was inactive due to their failure to timely complete the Regulatory Element of NASD's Continuing Education Requirements. (NASD Case #C04030009)

William Blair & Company L.L.C. (CRD #1252, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it was a party to a locked or crossed market condition prior to the market opening and received a Trade-or-Move message in each instance through SelectNet®, but, within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. (NASD Case #CMS030032)

Individuals Barred or Suspended

Jose A. Arteta (CRD #4163052, Registered Representative, Hawthorne, 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, Arteta consented to the described sanction and to the entry of findings that he willfully misrepresented a material fact on his Uniform Application for Securities Industry Registration (Form U-4). (NASD Case #C02030007)

Leonardo Balzano (CRD #2387185, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,189.69, required to pay \$12,810.31 in disgorgement of commissions in partial restitution to public customers, and suspended from association with any NASD member in any capacity for 10 months. The fine and restitution must be paid before Balzano reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Balzano consented to the described sanctions and to the entry of findings that he exercised control over customer accounts and effected numerous and excessive securities transactions in these accounts, using unsuitable levels of margin, in a manner that was inconsistent with customer investment objectives. The findings also stated that Balzano recommended and engaged in transactions in the accounts of public customers and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs.

Balzano's suspension began March 5, 2003, and will conclude January 4, 2004. (NASD Case #C9B030009)

Alan Robert Bluemel (CRD #1549009, Registered Representative, West Valley City, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,912.50, including disgorgement of commissions earned of \$3,412.50, and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Bluemel reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bluemel consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide written notification to, or obtain written approval from, his member firm.

Bluemel's suspension began March 17, 2003, and will conclude at the close of business June 16, 2003. (NASD Case #C3A030006)

Richard David Bukowski (CRD #1234505, Registered Representative, Greenfield, Massachusetts) 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 Bukowski, no monetary sanctions have been imposed. Without admitting or denying the allegations, Bukowski consented to the described sanction and to the entry of findings that he converted and misused insurance customer funds totaling \$35,000 by placing the funds into his personal bank account for his own use and benefit without customer authorization. The findings also stated that Bukowski failed to respond to NASD requests for information. (NASD Case #C11020045)

Mathieu Siddhartha Chamberlain (CRD #2292343, Registered Representative, New York, 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 70 days. Without admitting or denying the allegations, Chamberlain consented to the described sanctions and to the entry of findings that he opened an account at his member firm for a public customer and executed a transaction in the account without the customer's prior knowledge, authorization, or consent. The findings also stated that Chamberlain exercised discretion in the accounts of a public customer without consulting with the customer before each transaction, without the customer's prior written authorization, and without his member firm's prior written acceptance of the account as discretionary. NASD also found that Chamberlain exceeded his authority and executed the sale of stock in the accounts of public customers without the prior knowledge, authorization, or consent of the customer or the other account holders.

Chamberlain's suspension began March 17, 2003, and will conclude May 25, 2003. (NASD Case #C10020067)

Michael Chien (CRD #3066470, Registered Principal, Sunrise, Florida), Scott Keith Kaplan (CRD #2908394, Registered Representative, Brooklyn, New York), and Chiaying Wong (CRD #3059293, Registered Principal, Brooklyn, New York) submitted Offers of Settlement in which Chien and Kaplan were each barred from association with any NASD member in any capacity and Wong was suspended from association with any NASD member in any principal capacity for six months. Wong is also required to re-qualify by exam before acting again in any principal capacity. In light of the financial status of Kaplan and Wong, no monetary sanctions have been imposed. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Chien served as his member firm's co-president and supervised a branch office without being properly qualified or registered as a principal. The findings also stated that Chien, acting on behalf of his member firm, initiated sales efforts to privately place \$21 million of common stock of an affiliated company through a purported Regulation D, Rule 506 offering although there was no registration in effect for the offering and it did not comply with Rule 506 or any other registration exemption.

The findings also stated that Kaplan engaged in the distribution of shares of the common stock although no registration statement had been filed with the SEC or was in effect for the offering. NASD also found that Chien acted recklessly in creating offering memoranda that contained material misrepresentations and omissions of material fact. In addition, NASD found that Chien and Wong failed to supervise adequately the sales practices of an associated person at their member firm's branch office, and Chien failed to take adequate steps to investigate "red flags" indicating that associated persons were engaging in sales practice violations. Moreover, NASD found that Chien assisted in the design and creation of a Web site that failed to provide a balanced statement of the benefits and risks of investing in the common stock of an affiliated company and the target companies, failed to reflect sufficiently the inherent uncertainty of investment returns, and included inaccurate and exaggerated claims about one of the target companies. Furthermore, NASD found that Kaplan failed to disclose any specific risks to public customers, made material misrepresentations to the customers, and made price predictions.

Wong's suspension began April 7, 2003, and will conclude at the close of business October 6, 2003. (NASD Case #CAF020024)

Thomas Edwin Christensen (CRD #2480652, Registered Principal, White Plains, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Christensen failed to respond to NASD requests for information. The findings also stated that Christensen made baseless predictions of price increases without

a reasonable basis in soliciting public customers and potential customers to purchase stocks. (NASD Case #C07020071)

Laura Leigh Cockrell (CRD #2738492, Registered Representative, Spring Hill, Tennessee) was barred from association with any NASD member in any capacity. The sanction was based on findings that Cockrell generated checks totaling \$77,100 drawn on her member firm's house postage account, public customer accounts, and one firm employee account without the knowledge or consent of either the firm or the account holders, and deposited the checks in an account under her control, thereby converting the funds to her own use and benefit. The findings also stated that Cockrell failed to respond to NASD requests for information. (NASD Case #C05020046)

Mitchell Mark Cohen (CRD #1584397, Registered Principal, Roslyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$42,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as a general securities representative within 90 days after reassociation with any NASD member. In light of the financial status of Cohen, a fine of \$42,000 has been imposed. The fine must be paid before Cohen reassociates with any NASD member following the suspension. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that in contravention of the Board of Governors Free-Riding and Withholding Interpretation, Cohen purchased shares of an initial public offering for his own investment account that traded at a premium in the immediate aftermarket to restricted persons (a "hot issue"). The findings also stated that Cohen failed to provide written notification to any of his member firms of the maintenance of his accounts at another member firm in which he had a beneficial interest. In addition, NASD found that Cohen failed and neglected to provide written notification to the firm with which he maintained the account of his association with any of his member firms.

Cohen's suspension will begin April 21, 2003, and will conclude at the close of business May 20, 2003. (NASD Case #C05030011)

Stephen John Critchfield (CRD #2228772, Registered Representative, Colts Neck, 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, Critchfield consented to the described sanction and to the entry of findings that he altered a customer's annuity statement by deleting the customer's identifying information and replacing it with his own. The findings also stated that Critchfield further sent this altered document to a bank that was considering his mortgage application as verification of his assets. In addition, NASD found that Critchfield completed a "Verification of Employment Form" in connection with the subject mortgage application that

contained false and misleading information regarding his salary and position at his member firm. Furthermore, NASD found that Critchfield forged the signature of a purported vice president of his member firm on the form and submitted the forged document to the bank considering his mortgage application. (NASD Case #C9B030008)

Jacques Manlio Chrysoschoos (CRD #2774892, Registered Representative, St. Petersburg, 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, Chrysoschoos consented to the described sanction and to the entry of findings that he participated in private securities transactions and in outside business activities without providing prior written notification to his member firm. (NASD Case #C07030011)

Sean Courtney (CRD #4392645, Associated Person, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Courtney failed to respond to NASD requests for information. Courtney also submitted a materially false Form U-4. (NASD Case #C10020100)

Gary Donald Cowell (CRD #1063414, Registered Representative, West Mifflin, Pennsylvania) 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 one year, and ordered to disgorge \$47,550, plus interest, in commissions in partial restitution to public customers. The fine and restitution must be paid before Cowell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cowell consented to the described sanctions and to the entry of findings that he engaged in business activities outside the scope of his employment with a member firm and failed to provide his member firm with written notice. The findings also stated that Cowell engaged in private securities transactions outside the scope of his employment with a member firm, and failed to provide his member firm with prior written notice describing the proposed transactions and his proposed role in them.

Cowell's suspension began March 17, 2003, and will conclude at the close of business March 16, 2004. (NASD Case #C9A030004)

Steven Emerson Davis (CRD #2329249, Registered Representative, Winston-Salem, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Davis consented to the described sanction and to the entry of findings that, in an attempt to induce public customers to do business with him, Davis made misrepresentations to the customers, including

falsely representing that his client list included celebrities. The findings also stated that Davis failed to respond to an NASD request to provide sworn testimony. (NASD Case #C07030010)

John Christian Ferraro (CRD #2756017, Registered Representative, Islip, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Ferraro engaged in unauthorized transactions in the account of a public customer without the prior knowledge, authorization, or consent of the customer. The findings also stated that Ferraro executed discretionary transactions in the account of a public customer without obtaining prior written authorization from the customer or prior written acceptance of the account as discretionary from his member firm. NASD also found that Ferraro made unsuitable recommendations to a public customer and engaged in excessive trading in the customer's account without reasonable grounds for believing that his recommendations and trading were suitable for the customer based upon the customer's financial situation and needs. (NASD Case #C10020088)

Kenneth Louis Fiacco (CRD #1815268, Registered Principal, Coto de Caza, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000, payable to a public customer as restitution, and suspended from association with any NASD member in any capacity for 90 business days. The fine payments must be current before Fiacco reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Fiacco consented to the described sanctions and to the entry of findings that he recommended an investment strategy for the account of a public customer that was unsuitable for the customer in view of the frequency and nature of the recommended transactions and the customer's financial situation, objectives, circumstances, and needs.

Fiacco's suspension began March 17, 2003, and will conclude at the close of business July 23, 2003. (NASD Case #C02030002)

James Stanley Freeman (CRD #1401714, Registered Representative, Citrus Heights, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,250, including disgorgement of \$10,250 in commissions earned, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Freeman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Freeman 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. The findings also stated that Freeman engaged in outside business activities, for compensation, without providing prompt written notice to his member firm.

Freeman's suspension began April 7, 2003, and will conclude at the close of business October 6, 2003. (NASD Case #C01030006)

Anthony Charles Fricano (CRD #1161253, Registered Representative, Brookfield, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,950, including disgorgement of \$950 in commissions earned, and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Fricano consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, failed and neglected to give written notice of his intention to engage in such activities to his member firm, and failed to receive written approval from his member firm prior to engaging in such activities.

Fricano's suspension began March 17, 2003, and will conclude at the close of business May 16, 2003. (NASD Case #C8A030011)

Anthony Galeotafiore (CRD #2507162, Registered Principal, Melville, New York), Francis Louis Smookler, Jr. (CRD #2712672, Registered Representative, Arlington, Virginia), and Mark David Pellettieri (CRD #2380691, Registered Principal, Melville, New York) submitted an Offer of Settlement in which they were each fined \$5,000, suspended from association with any NASD member in any capacity for three months, and ordered to disgorge \$250,150, jointly and severally, in consulting fees. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they engaged in private securities transactions, for compensation, and failed to provide prior written notice to their member firm describing in detail the proposed transactions, their roles therein, and whether they had received, or might receive, selling compensation in connection with the transactions. The findings also stated that Galeotafiore, Smookler, and Pellettieri participated in outside business activities and failed to provide prompt written notice to their member firm.

Smookler's and Pellettieri's suspensions began March 17, 2003, and will conclude at the close of business June 16, 2003. Galeotafiore's suspension began April 7, 2003, and will conclude at the close of business July 6, 2003. (NASD Case #CLI020006)

Kenneth Joseph Gilmore (CRD #1047301, Registered Principal, Gillette, New Jersey) was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Gilmore reassociates with any NASD member following the suspension. The sanctions were based on findings that Gilmore caused his member firm's books and records to be inaccurate in that he falsified records.

Gilmore's suspension began March 3, 2003, and concluded at the close of business March 14, 2003. (NASD Case #C9B020037)

Bruce William Haffner (CRD #1325040, Registered Representative, Hinsdale, Illinois) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 120 days. In light of the financial status of Haffner, no monetary sanction has been imposed. Without admitting or denying the allegations, Haffner consented to the described sanction and to the entry of findings that he entered into a settlement agreement with public customers, without his member firm's knowledge or consent, whereby he agreed to compensate the customers for the losses sustained in their accounts. NASD also found that Haffner exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that Haffner failed to respond to NASD requests for documents and information.

Haffner's suspension began April 7, 2003, and will conclude at the close of business August 4, 2003. (NASD Case #C8A020060)

David Edward Hausch (CRD #2353438, Registered Principal, East Northport, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Hausch consented to the described sanction and to the entry of findings that he failed to testify truthfully, accurately, non-deceptively, and/or completely during an NASD on-the-record interview.

Hausch's suspension began April 7, 2003, and will conclude at the close of business April 6, 2005. (NASD Case #C10990158)

Kevan Thomas Hauer (CRD #4517591, Registered Representative, New Bedford, Massachusetts) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hauer consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U-4. (NASD Case #C11020046)

Dean Hoang (CRD #2633633, Associated Person, Huntington Beach, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hoang willfully failed to disclose material facts on his Form U-4. (NASD Case #C02020040)

J. Craig Hili (CRD #2531966, Registered Representative, Miami Beach, Florida) submitted an Offer of Settlement in which he was fined \$13,637.20, including disgorgement of commissions received of \$8,637.20, required to pay \$44,917.05

in restitution to public customers, and suspended from association with any NASD member in any capacity for 60 days. The fine and restitution must be paid before Hili reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hili consented to the described sanctions and to the entry of findings that he engaged in unauthorized transactions in public customer accounts.

Hili's suspension began April 7, 2003, and will conclude at the close of business June 5, 2003. (NASD Case #C3A020040)

Mark William Holdom (CRD #2764717, Registered Representative, Studio City, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. In light of the financial status of Holdom, no monetary sanctions have been imposed. Without admitting or denying the allegations, Holdom consented to the described sanction and to the entry of findings that he effected, or caused to be effected, transactions in the securities accounts of public customers by exercising discretionary power in the accounts without having obtained the customers' and his member firm's prior written authorization. The findings also stated that Holdom executed, and/or caused to be executed, unauthorized transactions in the account of a public customer without the customer's knowledge, authorization, and consent. The findings further stated that Holdom recommended and engaged in transactions in the accounts of public customers without having reasonable grounds for believing that his recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. (NASD Case #C02030012)

Michael George Ingram (CRD #1902188, Registered Representative, Titusville, 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, Ingram consented to the described sanction and to the entry of findings that he obtained \$35,000 from a public customer for investment purposes, failed to invest the funds, and converted the funds for his own use and benefit. The findings also stated that Ingram failed to respond to NASD requests for information. (NASD Case #C07030009)

Howard Scott Ismark (CRD #2928579, Registered Representative, North Miami Beach, Florida) was barred from association with any NASD member in any capacity and ordered to pay \$3,518.64, plus interest, in restitution to a public customer. The sanctions were based on findings that Ismark executed transactions in the accounts of public customers without their prior authorization. The findings also stated that Ismark failed to respond to NASD requests for information and documents. Ismark also participated in a private securities

transaction without providing prior written notice of the transaction to his member firm. (NASD Case #C07020070)

Willard Grant Johnson (CRD #1602686, Registered Representative, Geneseo, Illinois) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for six months. In light of the financial status of Johnson, no monetary sanction has been imposed. Without admitting or denying the allegations, Johnson consented to the described sanction and to the entry of findings that he engaged in outside business activities by receiving compensation for selling pay telephone leases. The findings stated that Johnson failed to give prompt written notice of his engagement in such activities to his member firm.

Johnson's suspension began April 7, 2003, and will conclude at the close of business October 6, 2003. (NASD Case #C8A020078)

Greer Alan Kendall (CRD #1557479, Registered Principal, Coppell, 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 Freeman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kendall consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior notice, written or otherwise, to his member firm describing the proposed transactions, his role therein, and whether he had received, or might receive, selling compensation in connection with these transactions.

Kendall's suspension began March 17, 2003, and will conclude at the close of business September 16, 2004. (NASD Case #C06030003)

Gregory Scott Kolb (CRD #1170145, Registered Representative, Powell, Wyoming) 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 years. The fine must be paid before Kolb reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kolb consented to the described sanctions and to the entry of findings that he recommended to members of the public that they sell mutual fund "B" shares and purchase mutual fund "A" shares in their securities accounts maintained at his member firm. The findings stated that these recommendations resulted in transaction costs that exceeded the savings that could be realized from the purchase of "A" shares through lower Rule 12b-1 fees when alternatives were available to achieve the accounts' objectives at lower cost.

Kolb's suspension began March 3, 2003, and will conclude at the close of business March 2, 2005. (NASD Case #C3A030005)

Daniel A. Kyman (CRD #4276618, Registered Representative, Gilbert, Arizona) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Kyman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kyman consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed to provide his member firm with prompt written notice.

Kyman's suspension began April 7, 2003, and will conclude at the close of business October 6, 2004. (NASD Case #C3A020054)

William Alexander Lawson (CRD #3105513, Associated Person, Charleston, South Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lawson submitted a materially false Form U-4 and failed to respond to NASD requests for information. (NASD Case #C07020079)

James C. Lewis (CRD #4083964, Registered Representative, Crawford, 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 three months. The fine must be paid before Lewis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that he signed the name of a public customer to letters of authorization for the liquidation of securities, without the knowledge or consent of the customer.

Lewis' suspension began March 17, 2003, and will conclude at the close of business June 16, 2003. (NASD Case #C05030008)

Edward Leoncio Mesa (CRD #1192539, Registered Representative, Homestead, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for 18 months, and ordered to disgorge \$85,200, plus interest, in ill-gotten gains in partial restitution to public customers. The fine and restitution must be paid before Mesa reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mesa consented to the described sanctions and to the entry of findings that he

engaged in private securities transactions without giving prior written notice to, or receiving prior written permission from, his member firm.

Mesa's suspension began March 17, 2003, and will conclude at the close of business September 16, 2004. (NASD Case #C07030008)

Wesley Lawrence Moschetto (CRD #4158356, Registered Principal, Tamarac, 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, Moschetto consented to the described sanction and to the entry of findings that he changed account information of public customers at his member firm and executed trades in their accounts without authorization from the customers. The findings also stated that Moschetto effected unauthorized wire transfers totaling \$129,700.63 from the accounts of public customers to a bank account under his control, thereby converting the funds to his own use. NASD also found that Moschetto failed to respond to NASD requests for information. (NASD Case #C07030012)

Adam Mosslih (CRD #2601978, Registered Representative, Syosset, New York) submitted an Offer of Settlement in which he was fined \$22,512.82, including the disgorgement of commissions received of \$2,512.50, required to pay \$24,473.04 in restitution to public customers, and suspended from association with any NASD member in any capacity for 31 days. Without admitting or denying the allegations, Mosslih consented to the described sanctions and to the entry of findings that he engaged in unauthorized transactions in public customer accounts.

Mosslih's suspension began April 7, 2003, and will conclude at the close of business May 7, 2003. (NASD Case #C3A020041)

Anthony Benjamin Phillips (CRD #2436301, Registered Representative, South Holland, Illinois) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Phillips consented to the described sanction and to the entry of findings that he participated in a private securities transaction, failed and neglected to give written notice of his intention to engage in such activities to his member firm, and failed to receive written approval from the firm prior to engaging in such activities. The findings also stated that Phillips failed to respond to NASD requests for documents and information. (NASD Case #C8A020089)

John Franklin Pinnix, III (CRD #3239999, Registered Representative, Lacombe, Louisiana) 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 Pinnix reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Pinnix consented to the described sanctions and to the entry of findings that he willfully failed to amend his Form U-4 to disclose a material fact.

Pinnix's suspension will begin April 21, 2003, and will conclude at the close of business October 20, 2003. (NASD Case #C05030012)

Jeffrey David Post (CRD #2717986, Registered Representative, Mesa, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Post consented to the described sanction and to the entry of findings that he converted \$6,310 remitted by public customers for payment towards variable life insurance policies and for investment in a mutual fund for his own use and benefit without the customers' prior knowledge, authorization, or consent. The findings also stated that Post failed to respond to NASD requests for information. (NASD Case #CLI030004)

Michael John Price (CRD #1723203, Registered Principal, Atlanta, Georgia) 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 business days. The fine must be paid before Price reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Price consented to the described sanctions and to the entry of findings that he exercised discretionary power in the account of a public customer without prior written authorization from the customer and without having the account accepted as discretionary by his member firm.

Price's suspension began April 7, 2003, and will conclude at the close of business May 19, 2003. (NASD Case #C07020081)

Allen Douglas Ray, Jr. (CRD #1904019, Registered Representative, Matthews, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ray consented to the described sanction and to the entry of findings that he participated in an outside business activity without providing written notice to his member firm. The findings also stated that Ray failed to respond to an NASD request to provide sworn testimony. (NASD Case #C07030013)

Hugh Charles Robinson (CRD #1057735, Registered Principal, Cherry Hill, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which Robinson was suspended from association with any NASD member in any

capacity for six months. In light of the financial status of Robinson, no monetary sanction has been imposed. Without admitting or denying the allegations, Robinson consented to the described sanction and to the entry of findings that he engaged in outside business activities without prompt written notice to his member firm.

Robinson's suspension began April 7, 2003, and will conclude at the close of business October 6, 2003. (NASD Case #C9A030007)

Mark David Romano (CRD #1431260, Registered Representative, Lakewood, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$27,315, including disgorgement of \$22,315 in net commissions received, and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Romano reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Romano consented to the described sanctions and to the entry of findings that he engaged in outside business activities without giving prompt written notification to any of his member firms.

Romano's suspension began March 17, 2003, and will conclude at the close of business September 16, 2004. (NASD Case #C02030005)

Thomas Daniel Roskin (CRD #2267315, Registered Representative, New York, New York) submitted an Offer of Settlement in which he was fined \$35,000, suspended from association with any NASD member in any capacity for two years, ordered to pay \$16,120.62, plus interest, in restitution to public customers, and ordered to requalify as a general securities representative within 120 days of his reassociation with any NASD member following the suspension. The fine and restitution must be paid before Roskin reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Roskin consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without their prior knowledge, authorization, or consent. The findings also stated that Roskin, through means or instrumentalities of interstate commerce or of the mails, intentionally, knowingly, or recklessly employed a device, scheme, contrivance, and artifice to defraud; omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or courses of business that operated as a fraud or deceit upon public customers. In addition, NASD found that Roskin, through means or instrumentalities of interstate commerce or of the mails, intentionally and/or recklessly made material, misleading, and/or false representations to a public customer that were

without a reasonable basis, and failed to disclose material information including, but not limited to, negative information about a company and investment risks. NASD also found that Roskin opened a new brokerage account at his member firm under the name of a public customer without the customer's prior knowledge, authorization, or consent, and executed an unauthorized transaction in the account. Moreover, NASD found that Roskin executed unauthorized transactions in the account of a public customer, cancelled one transaction after the customer complained, and falsely represented to his member firm on a firm internal cancellation form that the customer was unable to pay for the transaction.

Roskin's suspension began April 7, 2003, and will conclude at the close of business April 6, 2005. (NASD Case #C10010140)

Robby Don Schumacher (CRD #2714791, Registered Representative, Long Beach, New York) was fined \$17,763, required to pay \$8,012.57, plus interest, in restitution to public customers, and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Schumacher reassociates with any NASD member. The sanction was based on findings that Schumacher executed unauthorized trading in public customer accounts.

Schumacher's suspension began March 17, 2003, and will conclude June 14, 2003. (NASD Case #C3A020038)

Timothy John Sherer (CRD #833618, Registered Representative, Saratoga, California) submitted an Offer of Settlement in which he was fined \$37,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Sherer reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sherer 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.

Sherer's suspension began April 7, 2003, and will conclude at the close of business October 6, 2003. (NASD Case #C01020011)

Stephen Joseph Stoop, Jr. (CRD #4030969, Registered Representative, Woodbridge, 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, Stoop consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U-4. (NASD Case #C9B030006)

Frederick Stratton Sundin (CRD #1489465, Registered Representative, Cranston, Rhode Island) submitted a Letter

of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to pay \$58,551.02, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Sundin consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, and receiving prior written approval from, his member firm. The findings also stated that Sundin recommended and initiated a \$55,551.02 purchase by a public customer of a limited partnership interest without having reasonable grounds for believing that the recommendation and resulting transaction were suitable. In addition, NASD found that Sundin failed to respond completely to NASD requests for information. (NASD Case #C11030006)

Gregory James Toth (CRD #2620359, Registered Representative, White Plains, New York) submitted an Offer of Settlement that stipulates the following: that he is suspended from association with any NASD member in any capacity for one year, shall not associate with any NASD member and be supervised by any individual who has previously been associated with a disciplined firm as defined in NASD Conduct Rule 3010(b)(2)(x), and shall be subject to special supervision including, but not limited to, the monitoring of his sales presentations on at least a monthly basis for one year after he becomes registered with an NASD member. In light of the financial status of Toth, no monetary sanctions have been imposed. Without admitting or denying the allegations, Toth consented to the described sanctions and to the entry of findings that he used high-pressure sales tactics and knowingly made numerous baseless predictions of substantial price increases and misrepresentations of fact to public customers and potential customers in connection with the solicitation of orders to purchase a common stock.

Toth's suspension began April 7, 2003, and will conclude at the close of business April 6, 2004. (NASD Case #C07020067)

Jorge G. Trejo (CRD #2604823, Associated Person, Cicero, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Trejo converted funds from his member firm's checking account, without knowledge or consent of the firm. (NASD Case #C8A020068)

Dean Lloyd Welsh (CRD #2454880, Registered Representative, Carlsbad, 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, Welsh consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an off-the-record interview, and to provide information and documents. (NASD Case #C02030008)

Colin Eric Whittle (CRD #3131319, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity and ordered to pay \$14,660.11, plus interest, in restitution to a public customer. The sanctions were based on findings that Whittle failed to respond to NASD requests for information and documents. The findings also stated that Whittle engaged in transactions in the account of a former public customer without the knowledge, authorization, or consent of the customer. (NASD Case #C10020085)

Joseph Michael Wilkins (CRD #4449883, Associated Person, Denver, North Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Wilkins failed to respond to NASD requests for information. Wilkins also failed to disclose material facts on his Form U-4. (NASD Case #C07020088)

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.

Anthony James Apuzza (CRD #2431669, Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that while using the means and instrumentalities of interstate commerce to offer securities for sale, he omitted to state material facts necessary in order to make the statements made in connection with such offer, in light of the circumstances in which they were made, not misleading. The complaint also alleges that Apuzza made material misrepresentations in the form of price predictions to induce transactions and the transactions did occur. (NASD Case #C3A030007)

Christian William Blake (CRD #2216784, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he effected transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Blake failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #C10030012)

Barbara Lynch Brandenburg (CRD #28824, Registered Representative, Dallas, Texas) was named as a respondent in an NASD complaint alleging that she caused checks totaling \$79,000 to issue from the accounts of public customers held at her member firm, without the knowledge or consent of the firm

or the account holders, endorsed each check with the names of the customers, and deposited the checks into an account under her control. The complaint also alleges that Brandenburg failed to respond to NASD requests for information. (NASD Case #C05030009)

Robert Preston Buckingham (CRD #2808859, Registered Representative, Omaha, Nebraska) was named as a respondent in an NASD complaint alleging that he processed checks totaling \$95,000 received by his member firm from public customers for deposit into the customers' brokerage accounts and, without the customers' knowledge or consent, converted the customers' funds by making internal accounting entries on the books and records of the firm, causing the checks to be deposited in Buckingham's personal brokerage account at his member firm and converting the funds for his own use and benefit. The complaint also alleges that Buckingham failed to respond to NASD requests for information. (NASD Case #C04030006)

Steven Richard Jaloza (CRD #1320831, Registered Principal, Muttontown, New York) and Salvatore Anthony Fradella (CRD #1482494, Registered Principal, Manhasset, New York) were named as respondents in an NASD complaint alleging that they, directly or indirectly, by the use of any means or instrumentalities of interstate commerce or of the mails, or any facility of any national securities exchange, employed artifices, devices, or schemes to defraud, made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaged in acts, practices, or courses of business that operated, or would operate, as a fraud or deceit; and induced the purchase of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances.

The complaint also alleges that Jaloza and Fradella failed to disclose to investors in a private placement offering that their member firm was making loan payments to an outside business entity and might provide funding to an outside business in which they had a self-interest, and other supplemental material information regarding the loan. The complaint further alleges that Jaloza and Fradella made material omissions of fact concerning the number of customer accounts their member firm maintained in discussing the creation of an online Internet division and the number of users to support the development of its online division. The complaint further alleges that Jaloza and Fradella failed to exercise reasonable care in connection with their decision, on behalf of their member firm, to invest in an outside business entity and failed to engage in any meaningful examination of its business operations, breaching the duty of care they owed to their member firm's shareholders. Moreover, the complaint alleges that Jaloza caused his member firm to fail to make and preserve required books and records and failed to ensure that his member firm filed its monthly FOCUS reports. (NASD Case #CLI030003)

Tad Enrique Mihalopoulos, Sr. (CRD #2035916, Registered Representative, Tracy, California) was named as a respondent in an NASD complaint alleging that he sold government Class B mutual fund shares to public customers without disclosing to the customers that they were investing in Class B shares, that the shares were subject to contingent deferred sales charges, or that the shares were subject to contingent deferred sales charges for a longer period of time than was originally stated. The complaint also alleges that Mihalopoulos submitted investment order authorizations signed by the customers to his member firm that falsely represented that Mihalopoulos had accurately disclosed contingent deferred sales charges to the customers. (NASD Case #C01030004)

Seth Paul Page (CRD #2457887, Registered Representative, Bayonne, New Jersey) was named as a respondent in an NASD complaint alleging that he signed a public customer's signature to a Client Agreement form and a letter regarding a new address without the customer's consent or authority. The complaint also alleges that Page executed securities transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. Furthermore, the complaint alleges that Page failed to respond to NASD requests for information and to provide testimony. (NASD Case #C9B030011)

Thomas Michael Rohrer (CRD #858539, Registered Representative, Glenview, Illinois) was named as a respondent in an NASD complaint alleging that Rohrer recommended and effected transactions that constituted excessive trading activity for an individual retirement account (IRA) of a public customer, without having a reasonable basis for believing that the recommendations and resultant transactions were suitable for the customer, based upon customer's age, net worth, financial situation, investment objectives, and medical condition. The complaint also alleges that Rohrer purchased or sold, or caused the purchase or sale of, various securities for the IRA of a public customer without the knowledge or consent of the customer or her daughter who had a power of attorney over the assets of the customer, and in the absence of written or oral authorization to Rohrer to exercise discretion in said account. The complaint further alleges that Rohrer failed to provide truthful and non-misleading information to NASD during an on-the-record interview. (NASD Case #C8A030012)

Curtis Larry Williams, Jr. (CRD #3142719, Registered Representative, Lake Charles, Louisiana) was named as a respondent in an NASD complaint alleging that he participated in private securities transactions without prior written notice to, or approval from, his member firm. The complaint also alleges that Williams misused customer funds by depositing customers' checks into his personal bank account and later investing the funds in his name. (NASD Case #C05030010)

Firm Suspended for Failure to Supply Financial Information

The following firm was 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 8221. 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.

Richard J. Altobelli & Co.
Ashburnham, Massachusetts
(February 13, 2003)

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.

Fried, Lanny T.
New York, New York
(February 28, 2003)

Gates, Frank Jay
Roseville, California
(March 4, 2003)

George, Audrey Sue
Littleton, Colorado
(February 28, 2003)

Ko, Benny
Walnut, California
(March 3, 2003)

Leone, Christopher M.
Coconut Creek, Florida
(February 19, 2003)

Lisnoff, Jr., Robert W.
Medford, New York
(March 7, 2003)

O'Connor, Theresa A.
San Francisco, California
(March 4, 2003)

Prentice, Edward E.
Sacramento, California
(March 3, 2003)

Strocchio, Rick F.
Lombard, Illinois
(February 19, 2003)

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.

Fearn, Kevin M.
Delaware, Ohio
(February 21, 2003)

Hedburg, Russell Glen
Rockford, Illinois
(March 6, 2003)

Kanabroski, Dana
Union, Kentucky
(March 7, 2003)

Robinson, Paul
Marietta, Georgia
(March 4, 2003)

Shain, Russell
Brooklyn, New York
(February 21, 2003)

Young, Ernest
Chicago, Illinois
(February 6, 2003)

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

Holzer, Richard J.
Montville, New Jersey
(February 10, 2003)

Walson, Carl R.
Santa Barbara, California
(February 10, 2003)

NASD Charges Frank Quattrone with Spinning, Undermining Research Analyst Objectivity, Failure to Cooperate in Investigation

NASD charged Frank P. Quattrone, formerly the head of Credit Suisse First Boston's (CSFB's) technology sector investment banking unit (Tech Group), with "spinning" violations, as well as creating and overseeing a flawed organizational structure that undermined research analyst objectivity. In a separate complaint filed today, NASD also charged Quattrone with failing to cooperate in an NASD investigation into whether he encouraged CSFB Tech Group employees to destroy documents after he was notified of NASD and federal investigations. These complaints are an outgrowth of NASD investigations into investment banking activities, including IPO pricing and analyst conflict of interest, that began in May 2000.

"Recent investigations into conflicts of interest on Wall Street have shown that in too many cases in the past, investors' interests were compromised for greater investment banking revenues," said Mary L. Schapiro, NASD's Vice Chairman and President of Regulatory Policy and Oversight. "In restoring integrity to our markets and investor confidence in our industry, it is absolutely necessary that we hold individuals responsible for these abuses accountable. Institutions can only act through people and when individuals violate our rules, enforcement actions with meaningful sanctions must follow."

The first of the two complaints filed today alleges the following:

When Quattrone joined CSFB in 1998, he was already an established investment-banking star. At CSFB, Quattrone continued to play a dominant role in the business of underwriting new issues for technology companies. Quattrone created what amounted to a firm-within-a-firm at CSFB, bringing with him dozens of colleagues and associates and fashioning an organizational structure under which research analysts, investment bankers, and brokers all reported to him. This structure was enormously successful. In 1999, CSFB managed more U.S. IPOs than any other firm. In 2000, investment banking was the firm's second largest revenue source, generating \$3.68 billion, a 60 percent increase over the year before. Quattrone's profited substantially as well. Between August of 1998 and the end of 2001, he personally received compensation of over \$200 million.

One way Quattrone's Tech Group sought to win and retain investment-banking business was by "spinning" IPO shares; for example, giving access to hot IPOs to select corporate executives who could influence their employers' choice of investment bankers. Spinning took a uniquely aggressive form in the Tech Group. In making presentations to prospective investment banking clients, the Tech Group held out access to IPO shares as an inducement to the prospective client's officials. The group

also identified "strategic" technology company insiders and ranked them according to their perceived ability to influence their companies' choice of investment bankers. At its peak, there were over 300 accounts popularly known as "Friends of Frank" accounts. Through managed discretionary trading accounts, the Tech Group allocated IPO shares to such individuals and, in aftermarket trading, flipped shares back to CSFB, producing substantial profits for the owners of the accounts. To prevent dilution of the IPO profits, the Tech Group discouraged the owners from trading in the accounts themselves. To ensure that the owners knew how much money was being made for them, the group sent them monthly unofficial performance reports enumerating realized and unrealized gains and rates of return. The unofficial report on one such account reflected total gains of more than \$1.3 million and a rate of return of nearly 58,000 percent over a 19-month time period. Because dispensing such profits to tech company insiders was tantamount to giving them cash gifts, the practice violated NASD gifts and gratuities rules.

Another way the Tech Group sought to obtain business was by holding out to prospective clients the prospect of CSFB's issuing favorable research about them. Tech Group research analysts actively participated in soliciting investment-banking business. "Pitch books" used in presentations to prospective clients included excerpts from favorable research reports prepared by Tech Group analysts for other CSFB client companies. Quattrone created a powerful incentive for analysts to initiate and maintain positive coverage on investment banking clients by linking their compensation to investment banking revenue and encouraging investment bankers to participate in analysts' performance evaluations. He also allowed issuers to review and comment on draft research reports, including proposed recommendations and price targets. These practices compromised the independence and objectivity of the Tech Group's analysts.

By creating the inherently flawed reporting and supervisory structure under which these improper practices flourished, and by allowing and endorsing these practices, Quattrone violated NASD rules.

This action grew out of the coordinated research analyst investigations led by the SEC and conducted by NASD in conjunction with the NYSE and other regulators.

In the second complaint filed today, NASD charged Quattrone with failing to appear for investigative testimony before NASD. The expected testimony was to cover a number of subjects, including whether Quattrone encouraged CSFB employees in the Tech Group to destroy documents after being notified of NASD and federal investigations. Quattrone was notified as early as June 2000 that NASD was investigating CSFB's IPO allocation practices, and was specifically counseled then not to alter or

destroy documents. In September 2000, Quattrone was advised of an SEC investigation, and on December 3, 2000, he was notified of a federal grand jury investigation of those same practices. Yet on December 5, 2000, Quattrone sent an e-mail to Tech Group employees encouraging them to cleanse their files. In January 2002, CSFB settled charges relating to this IPO profit sharing investigation, paying NASD and the SEC \$100 million.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension, or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution.

For Your Information

SEC Rule 17a-4 (f)(2)(i)


This article is intended to clarify a factual reference to SEC Rule 17a-4 (f)(2)(i) previously reported in the **Fall 2000, Volume 14.3, of the NASD Regulatory & Compliance Alert.**

- Q: If a broker/dealer intends to store records using electronic storage media, can a third party vendor provide services to a broker/dealer if the third-party vendor is an affiliated company?
- A: Pursuant to Rule 17a-4(f)(2)(i) the staff of the SEC Division of Market Regulation (DMR) has informed NASD that an affiliate or parent of the broker/dealer may provide representation that selected storage media meets the conditions set forth in paragraph (f)(2)(ii) of Rule 17a-4.

Paragraph (f)(2)(i) of Rule 17a-4 stipulates if a broker/dealer is employing any electronic storage media other than optical disk technology (including CD-ROM), the member, broker, or dealer must so notify its designated examining authority at least 90 days prior to employing such storage media. Additionally, the NASD member must provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets the conditions set forth in paragraph (f)(2)(ii) of SEC Rule 17a-4.

Irrespective of the above, the staff of the DMR has informed NASD that a third-party vendor required under Rule 17a-4 (f)(3)(vii) must be a party independent of the broker/dealer. An affiliate or parent of the broker/dealer is not independent.

Paragraph (f)(3)(vii) of Rule 17a-4 requires every NASD member, broker, or dealer exclusively using electronic storage media for some or all of its record preservation to retain at least one third party who has access to and the ability to download information from the member's, broker's, or dealer's electronic storage media to



any acceptable medium under SEC Rule 17a-4. The third party is required to file notification with the designated examining authority for the member, broker, or dealer that it will provide access or furnish data promptly to the U.S. Securities and Exchange Commission, its designees or representatives as stipulated.

Questions regarding this article may be directed to Susan DeMando, NASD Member Regulation, at (202) 728-8411.