

Notice to Members

SEPTEMBER 2003

SUGGESTED ROUTING

Executive Representative
Legal & Compliance
Operations
Senior Management

KEY TOPICS

Transaction Reporting
Electronic Communication Networks

ACTION REQUIRED

Electronic Communications Networks

SEC Approves Changes to Rules on Reporting of Transactions through Electronic Communications Networks (ECNs); Changes Effective October 6, 2003

Executive Summary

On September 4, 2003, the Securities and Exchange Commission (SEC) approved changes to rules governing the reporting of transactions through NASDAQ's Automated Confirmation Transaction Service (ACT) in order to clarify the reporting requirements applicable to transactions conducted through electronic communications networks (ECNs). The new rules do not apply to trades reported through NASD's Trade Reporting and Comparison Service (TRACS).

The changes, which take effect October 6, 2003, describe the three methods that may be used by ECNs and/or their customers to report trades executed through an ECN's facilities. ECNs that use ACT to report some or all of the transactions executed through their facilities are required to file a notice of their trade-reporting methods prior to October 6, 2003. Please use Attachment A to file this notice. Notices must be filed with NASDAQ's MarketWatch Department, 9509 Key West Avenue, Rockville, MD 20850, Attention: Sheila Dagucon (or you may fax the notification to (240) 386-6050); and NASD's Market Regulation Department, 9509 Key West Avenue, Rockville, MD 20850, Attention: Alternative Trading Systems Group (or you may fax the notification to (240) 386-5139).

Questions regarding this *Notice* may be directed to Sheila Dagucon, NASDAQ MarketWatch, at (240) 386-6049; or John Yetter, NASDAQ Office of General Counsel, at (202) 912-3039.

Background

Current practices of ECN trade reporting have developed over time in conjunction with the growth of the number of ECNs. As each new ECN entered the market, it registered under NASD Rule 4623 and informed NASDAQ and NASD concerning its planned method for reporting transactions. Although the use of different reporting methodologies by different ECNs has generally allowed ECNs to fulfill reporting obligations while tailoring their methodology to their own business needs and those of their subscribers, the absence of clearly defined rules has, in some circumstances, created confusion as to the trade reporting responsibilities of ECNs and their subscribers. The rule change approved by the Commission will provide members greater certainty concerning their trade reporting responsibilities, while allowing ECNs to continue using the various methods of trade reporting that have developed over time.

The rule change is based on NASDAQ's understanding of the different methods used by ECNs today to report trades, and, in general, the rule change is not intended to require ECNs to modify their current trade-reporting practices. Rather, the purpose of the rule change is to codify these practices in the form of clear, enforceable rules that will provide greater guidance to market participants. The rule change will apply to transactions in all securities that are executed through an ECN and reported to ACT.

The rule change permits ECN's to use any of three methods for reporting transactions. However, each ECN must inform, in writing, NASD and NASDAQ simultaneously which method it will use for reporting trades to ACT for each of its subscribers, although it may change its method at any time by providing, simultaneously, advance written notice to NASD and NASDAQ.

First, an ECN may assume sole responsibility for reporting transactions executed through its facilities and identify itself as the reporting party.

Second, an ECN may assume sole responsibility for transaction reporting, but identify a subscriber as the reporting party. In that case, the identified reporting party would be determined in accordance with the existing rules for allocating trade-reporting responsibility in NASD Rule 6130(c). Thus, if the subscribers conducting a transaction through the ECN were both market makers or both order entry firms, the selling party would be identified as the reporting party; if the transaction were between a market maker and an order entry firm, the market maker would be identified as the reporting party; and if the transaction were between a member (i.e., a broker/dealer) and a non-member (such as an institutional investor), the member would be identified as the reporting party.

Third, the ECN may impose some or all of the responsibility for reporting on its subscribers. In that case, the ECN would notify the appropriate reporting party, determined in accordance with the existing rules of priority for trade reporting in NASD Rule 6130(c), that it had an obligation to submit a report concerning the trade.

At any given time, an ECN may utilize more than one of these methods, with the choice of the method varying depending on the needs of particular subscribers. Thus, an ECN may use one method for one of its subscribers and a different method for all of its other subscribers. The ECN must, however, provide simultaneously NASD and NASDAQ advance written notice concerning the method that it will use for each subscriber.

In each case, the party submitting a trade report is responsible for ensuring its accuracy and completeness, by providing the information specified by Rule 6130(d). In addition, when an ECN submits a trade report identifying another party as the reporting party, both the ECN and the identified reporting party are responsible for ensuring the accuracy and completeness of the report.

The rule change also addresses procedures for reporting transactions in several unique circumstances associated with ECNs. First, the rule change provides that when the parties to a transaction executed through an ECN are both non-members, the ECN must submit all required trade reports and identify itself as the reporting party. This is the case because, as non-members, the parties to the transaction would not be eligible to report trades through ACT. Second, in circumstances where one ECN routes an order to another ECN that executes the order, the ECN that executes the order would be responsible for reporting the transaction, or requiring a subscriber to report the transaction, in accordance with one of the three basic methods for trade reporting described above. For purposes of the rules for allocating trade-reporting responsibility between ECN subscribers, the routing ECN would be deemed to be a market maker. Thus, if the executing ECN uses the second method of trade reporting (*i.e.*, reporting on behalf of its subscribers), and it receives an order from a routing ECN that is matched against the order of an order-entry firm or a non-member customer, the routing ECN would be identified as the reporting party. If the executing ECN matched the routed order against the order of a market maker or another ECN, however, the sell side would be identified as the reporting party.

Finally, it should be noted that the rule change applies only to transactions that are reported to ACT, since NASDAQ does not have authority to establish rules governing the reporting of trades to non-NASDAQ systems, including NASD's TRACS system. Thus, in circumstances where an ECN has the option to report trades to ACT or to another trade-reporting system, such as NASD's TRACS system, the rule does not mandate that the ECN use ACT for trade reporting. However, to the extent that the ECN or its subscribers opt to use ACT to report a particular transaction, all provisions of the rule change would apply to that transaction.

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Trade-reporting methods:

1. The ECN submits trade reports to ACT and identifies itself as the reporting party (NASD Rule 6130(c)(5)(A)).
2. The ECN submits trade reports to ACT on behalf of the reporting party and identifies the reporting party in accordance with the rules for determining reporting parties reflected in NASD Rule 6130(c)(1), (2), (3), and (4) (NASD Rule 6130(c)(5)(B)).
3. The ECN requires one of the parties to a transaction, determined in accordance with the rules for determining reporting parties reflected in NASD Rule 6130(c)(1), (2), (3), and (4), to submit the trade reports to ACT (NASD Rule 6130(c)(5)(C)).

Notice should be sent to:

- ◆ Nasdaq's MarketWatch Department
9509 Key West Avenue
Rockville, MD 20850

Or you may fax the notification to (240) 386-6050

Attention: Sheila Dagucon

AND

- ◆ NASD's Market Regulation Department
9509 Key West Avenue
Rockville, MD 20850

Or you may fax the notification to (240) 386-5139

Attention: Alternative Trading Systems Group

ATTACHMENT B — TEXT OF AMENDMENTS

New text is underlined; deletions are in brackets.

5400. NASDAQ STOCK MARKET AND ALTERNATIVE DISPLAY FACILITY TRADE REPORTING

* * * * *

5430. Transaction Reporting

(a) No change.

(b) Which Party Reports Transaction and to Which Facility

(1) In transactions between two Registered Reporting Nasdaq Market Makers, the member representing the sell side shall report the trade using ACT.

(2) In transactions between a Registered Reporting Nasdaq Market Maker and a Non-Registered Reporting Member, the Registered Reporting Nasdaq Market Maker shall report the trade using ACT.

(3) In transactions between two Non-Registered Reporting Members, the member representing the sell side shall report the trade using ACT or TRACS.

(4) In transactions between a member and a customer, the member shall report as follows:

(A) A Registered Reporting Nasdaq Market Maker shall report the trade using ACT;

(B) A Registered Reporting ADF Market Maker shall report the trade using TRACS; and

(C) A Non-Registered Reporting Member shall report the trade using ACT or TRACS.

(5) In transactions between two Registered Reporting ADF Market Makers, the member representing the sell side shall report the trade using TRACS.

(6) In transactions between a Registered Reporting ADF Market Maker and a Non-Registered Reporting Member, the Registered Reporting ADF Market Maker shall report the trade using TRACS.

(7) In transactions between a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF Market Maker, the member representing the sell side shall report as follows:

(A) A Registered Reporting Nasdaq Market Maker shall report the trade using ACT; and

(B) A Registered Reporting ADF Market Maker shall report the trade using TRACS.

(8) If a member simultaneously is a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF Market Maker, and has the trade reporting obligation pursuant to paragraphs (1), (2), (4), (5), (6), or (7), the member can report the trade using either ACT or TRACS, unless the trade is executed using ACES; the Nasdaq National Market Execution System ("NNMS"); [the SelectNet Service; the SmallCap Small Order Execution System ("SOES");] or the Primex Auction System ("Primex"). A trade executed using ACES must be reported using ACT, and trades executed using NNMS[, SelectNet, SOES,] or Primex will be reported to ACT automatically.

(9) In transactions conducted through an ACT ECN (as defined in Rule 6110) that are reported to ACT, the ACT ECN shall ensure that transactions are reported in accordance with Rule 6130(c). If an ACT ECN is also a Registered Reporting ADF ECN (as defined in Rule 4200A), Rule 6130(c) shall apply only to transactions conducted through the ECN for which trade reports are submitted to ACT.

* * * * *

6100. AUTOMATED CONFIRMATION TRANSACTION SERVICE (ACT)

6110. Definitions

(a) – (p) No change.

(q) The term "ACT ECN" shall mean a member of the Association that is an electronic communications network that is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member, to the extent that transactions executed through it are reported to ACT.

* * * * *

6130. Trade Report Input

(a) – (b) No change.

(c) Which Party Inputs Trade Reports to ACT

ACT Participants shall, subject to the input requirements below, either input trade reports into the ACT system or utilize the Browse feature to accept or decline a trade within the applicable time-frames as specified in paragraph (b) of this Rule. Trade data input obligations are as follows:

(1) in transactions between a Market Maker and an Order Entry Firm, the Market Maker shall be required to submit a trade report to ACT;

(2) in transactions between two Market Makers, the member representing the sell side shall be required to submit a trade report to ACT;

(3) in transactions between two Order Entry Firms, the member representing the sell side shall be required to submit a trade report to ACT[.];

(4) in transactions between a member and a customer, the member shall be required to submit a trade report to ACT;

(5) in transactions conducted through an ACT ECN that are reported to ACT, the ACT ECN shall ensure that transactions are reported in accordance with one of the following methods:

(A) the ACT ECN shall submit the trade reports to ACT and identify itself as the reporting party;

(B) the ACT ECN shall submit the trade reports to ACT on behalf of the reporting party and identify the reporting party in accordance with the rules for determining reporting parties reflected in paragraphs (1), (2), (3), and (4) above; or

(C) the ACT ECN shall require one of the parties, determined in accordance with the rules for determining reporting parties reflected in paragraphs (1), (2), (3), and (4) above, to submit the trade reports to ACT.

When an ACT ECN reports transactions in accordance with subparagraph (A), the ACT ECN shall be responsible for ensuring that the trade reports are accurate and contain all information required by subsection (d) of this rule for both the ACT ECN and the identified non-reporting party. When an ACT ECN reports transactions in accordance with subparagraph (B), both the ACT ECN and the party identified as the reporting party shall be responsible for ensuring that the trade reports are accurate and contain all information required by subsection (d) of this rule for both the ACT ECN and the identified reporting party. When an ACT ECN requires reporting of transactions in accordance with subparagraph (C), the reporting party shall be responsible for ensuring the accuracy and completeness of the trade report.

An ACT ECN shall provide written notice to the Association of the method of trade reporting used by the ACT ECN for each of its subscribers, and may change the method of trade reporting used for a subscriber by providing advance written notice of the change to the Association;

(6) in transactions conducted through two ACT ECNs or an ACT ECN and an ECN that is not an ACT ECN, an ACT ECN shall be responsible for complying with the requirements of paragraph (5) above for reporting a transaction executed through its facilities, and an ECN that routed an order to it for execution shall be deemed to be a Market Maker and a member for purposes of the rules for determining reporting parties reflected in paragraphs (1), (2), and (4) above; and

(7) in transactions conducted through an ACT ECN in which neither of the parties is a member, the ACT ECN shall report the transaction in accordance with the requirements of subparagraph (5)(A) above.

(d) Trade Information To Be Input

Each ACT report shall contain the following information:

- (1) Security identification symbol of the eligible security (SECID);
- (2) Number of shares;
- (3) Unit price, excluding commissions, mark-ups or mark-downs;
- (4) Execution time for any transaction in Nasdaq or CQS securities not reported within 90 seconds of execution;
- (5) A symbol indicating whether the party submitting the trade report represents the Market Maker side or the Order Entry side;
- (6) A symbol indicating whether the transaction is a buy, sell, sell short, sell short exempt or cross;
- (7) A symbol indicating whether the trade is as principal, riskless principal, or agent;
- (8) Reporting side clearing broker (if other than normal clearing broker);
- (9) Reporting side executing broker as "give-up" (if any);
- (10) Contra side executing broker;
- (11) Contra side introducing broker in case of "give-up" trade;

(12) Contra side clearing broker (if other than normal clearing broker).

(13) For any transaction in an order for which a member has recording and reporting obligations under Rules 6954 and 6955, the trade report must include:

(A) An order identifier, meeting such parameters as may be prescribed by the Association, assigned to the order that uniquely identifies the order for the date it was received (see Rule 6954(b)(1)).

(B) The time of the execution expressed in hours, minutes, and seconds. This information must be reported regardless of the period of time between execution of the trade and the ACT trade report. All times reported to the ACT system shall be in Eastern Time.

(e) Aggregation of Transaction Reports

Individual executions of orders in a security at the same price may be aggregated, for ACT reporting purposes, into a single report if the transactions are with the identical contra party; provided, however, that a reporting party may not withhold reporting a trade in anticipation of aggregating the transaction with other transactions.

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6400. REPORTING TRANSACTIONS IN LISTED SECURITIES

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6420. Transaction Reporting

(a) No change.

(b) Which Party Reports Transaction

(1) Transactions executed on an exchange are reported by the exchange and shall not be reported by members.

(2) In transactions between two Registered Reporting Members, only the member representing the sell side shall report.

(3) In transactions between a Registered Reporting Member and a Non-Registered Reporting Member, only the Registered Reporting Member shall report.

(4) In transactions between Non-Registered Reporting Members, only the member representing the sell side shall report.

(5) In transactions conducted through an ACT ECN (as defined in Rule 6110), the ACT ECN shall ensure that the transactions are reported in accordance with Rule 6130(c).

(c) - (e) No change.

IM-6420. Transactions in Eligible Securities

Summary Of Provisions Governing Members' Requirements To Report Transaction In Eligible Securities

Chart 1 — General Reporting Requirements Under Rule 6420(b)

Member	Transaction	Member Reports When Contra-Party Is			
		[Designated] Registered Reporting Member	Non-[Designated] Registered Reporting Member	Exchange	Customer
[Designated] Registered Reporting Member	buys from:	No	Yes	No	Yes
	sells to:	Yes	Yes	No	Yes
Non-[Designated] Registered Reporting Member	buys from:	No	No	No	Yes
	sells to:	No	Yes	No	Yes
ACT ECN		See 6130(c)	See 6130(c)	No	See 6130(c)

Chart II — Reporting Requirements for "Riskless" Transactions as Defined in Rule 6420(d)(4)

Member	Transaction	Member Reports When Contra-Party Is			
		[Designated] Registered Reporting Member	Non-[Designated] Registered Reporting Member	Exchange	Customer
[Designated] Registered Reporting Member	buys from customer and sells to:	Yes	Yes	No	Yes
	sells to customer and buys from:	No	Yes	No	Yes
Non-[Designated] Registered Reporting Member	buys from customer and sells to:	No	Yes	No	Yes
	sells to customer and buys from:	No	No	No	Yes

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**6600. REPORTING TRANSACTIONS IN OVER-THE-COUNTER
SECURITIES**

* * * * *

6620. Transaction Reporting

(a) No change.

(b) Which Party Reports Transaction

(1) In transactions between two OTC Market Makers, only the member representing the sell side shall report.

(2) In transactions between an OTC Market Maker and a Non-Market Maker, only the OTC Market Maker shall report.

(3) In transactions between two Non-Market Makers, only the member representing the sell side shall report.

(4) In transactions between a member and a customer, the member shall report.

(5) In transactions conducted through an ACT ECN (as defined in Rule 6110), the ACT ECN shall ensure that the transactions are reported in accordance with Rule 6130(c), and the term "Market Maker" as used in such rule shall be construed to include an OTC Market Maker.

(c) - (e) No change.

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6900. REPORTING TRANSACTIONS IN DIRECT PARTICIPATION PROGRAMS

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6920. Transaction Reporting.

(a) No change.

(b) Which Party Reports Transactions

(1) In transactions between two members, only the member representing the sell side shall report.

(2) In transactions between a member and a customer, the member shall report.

(3) In transactions conducted through an ACT ECN (as defined in Rule 6110), the ACT ECN shall ensure that the transactions are reported in accordance with Rule 6130(c); provided that for purposes of Rule 6130(c)(5) (B) and (C), the party with the reporting obligation shall be as set forth in Rule 6130(c)(3) and the term "Order Entry Firm" as used in such rule shall be construed to refer to any member.

(c) – (e) No change.

Notice to Members

SEPTEMBER 2003

SUGGESTED ROUTING

Legal & Compliance
Operations
Registration
Senior Management

KEY TOPICS

Central Registration Depository
Form U4
New Member Application
Rule 1013
Rule 1140

INFORMATIONAL

Forms U4

Rule Amendments to Require Member Applicants to File Forms U4 Electronically; **Operative Date: October 27, 2003**

Executive Summary

NASD has amended Rule 1013 (New Member Application and Interview) to eliminate the requirement that new member applicants include in their membership applications signed, paper Forms U4 for their proposed associated persons. Rule 1013, as amended, requires new member applicants to file these Forms U4 electronically. NASD also has amended Rule 1140 (Electronic Filing Rules) to require new member applicants to follow the same procedures members must follow when making electronic Form U4 filings. The approved rule changes also make certain technical changes to Rules 1013 and 1140. Questions and answers explaining how members should comply with the amendments are included in Attachment A. The amendments are included with this *Notice* as Attachment B. The amendments to Rules 1013 and 1140 were filed with the Securities and Exchange Commission for immediate effectiveness on August 28, 2003;¹ the amendments, however, do not become operative until October 27, 2003.

Questions/Further Information

Questions concerning this *Notice* may be directed to the Office of General Counsel, NASD Regulatory Policy and Oversight: Patricia Albrecht, Assistant General Counsel, (202) 728-8026.

03-56

Background

As part of its effort to make the membership application process more efficient and less burdensome for applicants, NASD has amended Rule 1013 and Rule 1140 to require that member applicants, upon approval of their Web CRD entitlement request forms, file their Forms U4 electronically via Web CRD.

NASD Rule 1013 – New Member Application and Interview

Rule 1013(a)(2) (Contents) identifies the items an applicant must submit with its new membership application. The amendment to Rule 1013 eliminates Rule 1013(a)(2)(B), which currently requires an applicant to include in its membership application an original, signed paper Form U4 for each of the applicant's proposed associated persons who are required to be registered with NASD. Instead, Rule 1013(a)(3) (Electronic Filings), as amended, requires that upon approval of the applicant's Web CRD entitlement request form, the applicant must file all required Forms U4 electronically via Web CRD. The electronic filing requirement allows an applicant to use one unified process for all Form U4 submissions in the membership application process, reduces the amount of paperwork the applicant must submit with its membership application, and eliminates the need for NASD staff to separate the Forms U4 from the membership application material and route them to the appropriate office for review and entry into the Web CRD system. Because Rule 1013(a)(3) will require an applicant to file Forms U4 directly with Web CRD, NASD Web CRD staff will not experience any delays that might occur as a result of the routing process.

Process for Filing Electronic Forms U4

Rule 1013(a)(2)(R) requires an applicant to submit with its membership application a Web CRD entitlement request form. NASD Registration and Disclosure (RAD) will send the Web CRD entitlement request form to the applicant if it was not included in the application. Upon receipt of the completed Web CRD entitlement request form, RAD will, as appropriate, approve the form and provide the applicant with access to Web CRD.

Upon approval of the applicant's Web CRD entitlement request form, amended Rule 1013(a)(3) requires that the applicant submit electronically, among other things, Forms U4 for its proposed associated persons who are required to register under NASD rules. NASD expects an applicant to file Forms U4 for all proposed associated persons who are not yet registered with NASD within two weeks of receiving Web CRD access. Receiving such information within this two-week window will enable NASD staff to review the person's background information at an early stage in the application process.

In contrast, in the case of proposed associated persons who are already registered with NASD at the time the applicant submits its membership application (and thus for whom NASD already possesses significant background information), the applicant may submit electronic Forms U4 for such persons at any time prior to the approval of the membership application; provided, however, that if a currently registered person needs

to take a qualifying examination, the applicant must file the registered person's Form U4 early enough in the process to allow the registered person to take the necessary examination in a timely manner. In this regard, Rule 1014(a) (Standards for Admission) requires all associated persons to have the applicable licenses and registrations.² NASD's current policy allows each individual a 90-day window to pass all required examinations following the filing of an electronic Form U4.³

NASD Rule 1140 – Electronic Filing Rules

In connection with the new electronic Form U4 filing requirement, NASD also has amended Rule 1140. Rule 1140, as amended, subjects applicants to the same electronic filing requirements that members must follow when filing electronic Forms U4. Rule 1140 requires every electronic Form U4 filing made by a member to be based on a signed Form U4 provided by the associated person. In addition, Rule 1140 requires members, as part of their recordkeeping requirements, to retain the signed Forms U4 and make them promptly available upon regulatory request. Rule 1140, as amended, requires applicants to follow these same procedures when making electronic Form U4 filings. Among other things, these requirements will help ensure that each associated person has reviewed and confirmed the information set forth in the electronic Form U4, and has undertaken all related representations in the Form U4.

Technical Changes to NASD Rules 1013 and 1140

Finally, the amendments to Rules 1013 and 1140 make several technical changes, including:

- ◆ The references in these rules to "Form U-4" and "Form U-5" have been changed to "Form U4" and "Form U5," respectively.⁴
- ◆ Rule 1140 has been amended to replace references to "applicant" in Rule 1140 with references, as appropriate, to persons on whose behalf Forms U4 filings are being made.

Endnotes

1 SR-NASD-2003-136 (August 28, 2003); SEC Release No. 34-48448 (September 4, 2003); 68 FR 53626 (September 11, 2003).

2 Rule 1014(a)(2).

3 See NASD's "How to Become a Member" Web Page at www.nasdr.com/4700_toc.htm.

4 This change is being made in accordance with SR-NASD-2003-57 (Rule Change to Revise Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5)), which changed the references for Forms "U-4" and "U-5" to "U4" and "U5." See SEC Release No. 34-48161 (July 10, 2003), 68 FR 42444 (July 17, 2003).

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ATTACHMENT A

Questions and Answers Regarding Compliance With Amended NASD Rules 1013 and 1140

Q: Are the paper Forms U4 filed by applicants being replaced entirely by electronic Form U4 filings?

A: Yes. The requirement in Rule 1013(a)(2)(B) that a membership applicant must file signed, paper Forms U4 has been eliminated. Rule 1013(a)(3) has been amended to require that, upon approval of a membership applicant's Web CRD entitlement request form, the applicant must file Forms U4 electronically via Web CRD.

Q: Is the electronic Form U4 based on a signed, paper Form U4?

A: Yes, the electronic Form U4 is based on a signed, paper Form U4. Rule 1140(c) clarifies that all Forms U4 filed electronically must be based on a signed Form U4 that is provided to the member or an applicant for membership by the person.

Q: Who will retain the signed Form U4 and how will NASD obtain a copy if it needs it?

A: NASD Rule 1140 requires the member to retain the signed Form U4 and make it available promptly upon regulatory request.

Q: How does an applicant comply with amended Rule 1013(a)(3)?

- ◆ If a person who is not yet registered with NASD wants to become a registered person of the applicant, the applicant must, within two weeks of receiving Web CRD access, electronically file the Form U4 for such person. Receiving such information within this two-week window will enable NASD staff to review the person's background information at an early stage in the application process.
- ◆ If a person who is already registered with an NASD member (and thus for whom NASD already possesses significant background information) wants to become a registered person of the applicant, the applicant may submit electronic Forms U4 for such person at any time prior to the approval of the membership application; provided, however, that if a currently registered person needs to take a qualifying examination, the applicant must file the registered person's Form U4 early enough in the process to allow the registered person to take the necessary examination in a timely manner.

ATTACHMENT B

1000. Membership, Registration and Qualification Requirements

* * * * *

1013. New Member Application and Interview

(a) Filing of Application

(1) Where to File

An Applicant for [Association] NASD membership shall file its application with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business as defined in Rule 1011(l).

(2) Contents

The application shall include:

(A) an original signed and notarized paper Form BD, with applicable schedules;

[(B) an original signed paper Form U-4 for each Associated Person who is required to be registered under the Rules of the Association;]

(C) through (H) Renumbered as (B) through (G).

[(I)] (H) documentation of any of the following events, unless the event has been reported to the Central Registration Depository:

(i) through (ii) No change.

(iii) an investment-related customer complaint or arbitration that is required to be reported on Form U4 [U-4];

(iv) through (v) No change.

(J) through (S) Renumbered as (I) through (R).

(3) Electronic Filings

Upon approval of the Applicant's Web CRD entitlement request form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under NASD Rules, any amendments to its Forms BD or U4 [U-4, any additional Forms U-4], and any Form U5 [U-5] electronically via Web CRD.

* * * * *

(4) through (7) No change.

(b) No change.

* * * * *

1140. Electronic Filing Rules

(a) through (b) No change.

(c) Form U4 [U-4] Filing Requirements

(1) [Initial and transfer electronic application filings] Every initial and transfer electronic Form U4 filing shall be based on a signed Form U4 [U-4] provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed [applicant]. As part of the member's recordkeeping requirements, it shall retain the [applicant's] person's signed Form U4 [U-4] and make it available promptly upon regulatory request. An applicant for membership also must retain every signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

(2) Fingerprint Cards

Upon filing an electronic Form U4 [U-4] on behalf of [an applicant] a person applying for registration, a member shall promptly submit a fingerprint card for [the applicant] that person. NASD [Regulation] may make a registration effective pending receipt of the fingerprint card. If a member fails to submit a fingerprint card within 30 days after NASD [Regulation] receives the electronic Form U4 [U-4], the person's registration shall be deemed inactive. In such case, NASD [Regulation] shall notify the member that the person must immediately cease all activities requiring registration and is prohibited from performing any duties and functioning in any capacity requiring registration. NASD [Regulation] shall administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Series and the Rule 1030 Series. Upon application and a showing of good cause, [the Association] NASD may extend the 30-day period.

(d) through (e) No change.

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Notice to Members

SEPTEMBER 2003

INFORMATIONAL

SUGGESTED ROUTING

Continuing Education
Legal & Compliance
Registration
Senior Management

KEY TOPICS

Continuing Education
Firm Element

Continuing Education

Securities Industry/Regulatory Council on Continuing Education Issues Firm Element Advisory

Executive Summary

The Securities Industry/Regulatory Council on Continuing Education (Council) has issued the annual *Firm Element Advisory*, a guide for firms to use when developing their continuing education Firm Element training plans. The Council recommends that firms use the *Firm Element Advisory* as part of the Firm Element Needs Analysis to help identify relevant training topics for all covered persons, including supervisors. New rules or regulations, such as the Research Analyst Rules; major regulatory examination findings, such as those relating to mutual fund sales practices; ethics and professional conduct; and any new products or services the firm plans to offer should be considered as topics for Firm Element training.

All of the training resources found in the *Firm Element Advisory* may be found on the CE Council Web Site at www.securitiescep.com, where there are also two additional Firm Element resources. The first is the *Firm Element Organizer*, an easy-to-use software application that enables a search of an extensive database of training resources related to specific investment products or services. The second resource comprises CDs with scenarios taken from the Regulatory Element Supervisor (S201) and General (S101) programs. Log on to the Council Web Site for descriptions of the available scenarios.

03-57

Questions/ Further Information

Questions concerning this *Notice* may be directed to John Linnehan, Director, Continuing Education, at (240) 386-4684.

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The Securities Industry Continuing Education Program

Securities Industry Continuing Education Program Firm Element Advisory

Each year the Securities Industry/Regulatory Council on Continuing Education (Council) publishes the *Firm Element Advisory* to identify current regulatory and sales practice issues for possible inclusion in Firm Element training plans. This year's topics have been taken from a review of industry regulatory and self-regulatory organization (SRO) publications issued since the last *Firm Element Advisory* of October 2002.

The Council recommends that firms use the *Firm Element Advisory* as part of a firm's Firm Element Needs Analysis to identify training topics that are relevant to the firm, including training for supervisors. New rules or regulations, such as the Research Analyst Rules; major regulatory examination findings, such as those relating to mutual fund sales practices; ethics and professional conduct; and any new products or services the firm plans to offer should be considered as topics for Firm Element training.

The Council provides a convenient way for firms to access the training resources listed next to each topic in the *Firm Element Advisory*—the CE Council Web Site at www.securitiescep.com. In addition to the *Firm Element Advisory* material, there are also two additional resources to assist with Firm Element requirements. The first is the *Firm Element Organizer*. This is an easy-to-use software application that enables you to search an extensive database of training resources related to specific investment products or services you identify. The results of a search can then be edited into a document that will assist developing a Firm Element training plan. A tutorial on the CE Council Web Site demonstrates how to use the *Firm Element Organizer*. The second potential Firm Element resource comprises scenarios taken from the Regulatory Element Supervisor (S201) and General (S101) programs that may be suitable for Firm Element training.

For more information, log on to www.securitiescep.com, or phone Roni Meikle, Continuing Education Manager, New York Stock Exchange (212-656-2156), or John Linnehan, Director, Continuing Education, NASD (240-386-4684).

Training Topics and Relevant Training Points and References

Anti-Money Laundering

Anti-money laundering is an evolving topic. Many new rules and regulations have been adopted over the past two years to carry out the mandates of the USA PATRIOT Act. These requirements place additional due diligence, reporting, and training responsibilities on firms, supervisors, and registered representatives. Many SROs and government agencies maintain Web sites on anti-money laundering, including NASD (www.nasdr.com/money.asp), the U.S. Treasury (www.ustreas.gov => Bureaus => Financial Crimes Enforcement Network (FinCen) (www.fincen.gov)), and the SIA (www.sia.com => Reference Materials => Anti-Money Laundering Guidance).

See also, MSRB Notice 2003-28 (July 16, 2003), Approval by SEC of Rule G-41, on *Anti-Money Laundering Compliance*, NASD Notice To Members 02-47, *Anti-Money Laundering: Treasury Issues Final Suspicious Activity Reporting Rule For Broker/Dealers*, August 2002; NASD Notice to Members 03-34, *Anti-Money Laundering Customer Identification Programs for Broker/Dealers*, June 2003, and NYSE Information Memos 03-32, *Customer Identification Programs For Broker-Dealers*, July 14, 2003; 03-03, *Lifting Of The Temporary Moratorium On Information Requests Under Section 314 Of The USA PATRIOT Act*, February 20, 2003; 02-64, *USA PATRIOT Act Updates: Section 356 Requirement To Report Suspicious Transactions; Deadline Extension For Sections 313 And 319*, December 24, 2002; 02-46, *Compliance With Section 326 ("Verification Of Identification") Of The USA PATRIOT Act*, October 31, 2002 (www.nyse.com => Regulation => Information Memos).

Brokered Certificates of Deposit

NASD and the NYSE have provided guidance to their members that offer non-traditional certificate of deposit (CD) products. Typically, these products are long-term CDs offered by "deposit brokers" that carry a maturity date of more than one year, are callable at the discretion of the issuer, and trade in a secondary market. In certain circumstances, these products are securities. Irrespective of whether a particular CD product is a security, members must ensure that their registered representatives are properly trained and informed about the products, and that customers receive adequate disclosure of risk factors. Members are advised to carry CD products at fair market value on customer account statements. See *Notice to Members 02-69, Certificates of Deposit: Clarification of Member Obligations Regarding Brokered Certificates of Deposit*, October 2002; NYSE Information Memo 01-19, *Long-Term Certificates Of Deposit – Sales Practices*, July 20, 2001 (www.nyse.com => Regulation => Information Memos).

Business Conduct*Ethics*

Firms should be aware of the importance of ethics and professional responsibility as topics to include in their Firm Element training programs. Although the Securities Industry/Regulatory Council on Continuing Education (CE Council) will enhance the Regulatory Element programs via the introduction of scenarios and cases that will stress awareness of the ethical dimension to situations involving conflicts of interest, peer pressure, reputational risk, etc., Firm Element programs have certain advantages. Firm Element programs can utilize small, personal, and interactive training settings where different viewpoints and values can be expressed, evaluated, and shared. They can also deal with issues that are specific to the firm.

Beginning in 2004, when amendments to SRO continuing education rules regarding research analysts become effective (see *Research Analysts' Conflicts of Interest*, below), research analysts will be required to be registered and will be subject to the Firm Element as well as the Regulatory Element. Firm Element training for research analysts, and their immediate supervisors, must include ethics, professional responsibility, and other more specific topics. While not mandated for all other registered persons, the CE Council urges firms to carefully consider ethics and professional responsibility as they relate to other Firm Element training topics.

**Guarantees and
Sharing in
Customer
Accounts**

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). 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. See *NASD Notice to Members 03-21, Prohibition Against Guarantees and Sharing in Customer Accounts*, April 2003. See also NYSE Rule 352 (Guarantees and Sharing in Accounts) related to this topic.

Hedge Funds

Broker/dealers that offer hedge funds to their clients must fulfill their obligations to 1) provide balanced disclosure in promotional efforts; 2) perform a reasonable-basis suitability determination; 3) perform a customer-specific suitability determination; 4) supervise associated persons selling hedge funds and funds of hedge funds; 5) train associated persons regarding the features, risks, and suitability of hedge funds. See *NASD Notice to Members 03-07, NASD Reminds Members of Obligations When Selling Hedge Funds*, February 2003, and NASD Investor Alert, *Funds Of Hedge Funds – Higher Costs And Risks For Higher Potential Returns*, August 23, 2002, at www.nasdr.com/alert_hedgefunds.htm.

Municipal Fund Securities**529 Plan Sales Material**

The market for municipal fund securities, especially Section 529 College Savings Plans, is growing. Municipal fund securities represent investments in pools of securities, such as securities issued by registered investment companies. Municipal fund securities are municipal securities regulated by the MSRB. All sales materials related to them must comply with MSRB rules, including MSRB Rule G-21. In addition, certain sales materials for municipal fund securities must also comply with the advertising rules of the SEC and NASD, including NASD Rule 2210. See *NASD Notice to Members 03-17, Municipal Fund Securities: Sales Material for Municipal Fund Securities*, March 2003.

Principals supervising the sale of municipal fund securities must be appropriately qualified and hold either a Series 53 or Series 51 license. For more information, see NASD's Web Site at www.nasd.com/Investor/Choices/College/ and the MSRB Web Site at ww1.msrb.org/msrb1/mfs/default.asp.

Sales to Employees of Other Dealers

MSRB Rule G-28 has been amended to exempt transactions in municipal fund securities from the requirement that a dealer opening an account for another dealer's employee (or a spouse or child of the employee) provide notice to the other dealer and follow the other dealer's instructions with respect to transactions for the employee (or spouse or child).

See MSRB Notice 2003-9 (March 4, 2003), *SEC Approves Amendment to Rule G-28 on Sales to Employees of Other Dealers* (ww1.msrb.org/msrb1/archive/G-28approval.htm).

Municipal Securities**Consultants**

MSRB Rule G-38 defines a consultant as any person used by a dealer to obtain or retain municipal securities business through direct or indirect communication by such person with an issuer on the dealer's behalf where the communication is undertaken by such person in exchange for, or with the understanding of, receiving payment from the dealer or any other person. Dealers must disclose to issuers certain information about their consultants and report certain information about their consultants to the MSRB on Form G-37/G-38, including certain of their consultants' political contributions to issuer officials and payments to state and local political parties.

See MSRB Rule G-38: Consultants, *MSRB Rule Book*.

Political Contributions and Prohibitions on Municipal Securities Business

A recent rule change revised the definition of municipal finance professional (MFP) so that associated persons "primarily engaged" in municipal securities representative activities based on their retail sales of municipal securities are excluded from the definition. Any retail sales representatives who solicit municipal securities business from issuer officials remain covered under the rule as MFPs.

The look back and look forward provisions have been revised. The revisions produce the following results:

MFPs primarily engaged in municipal securities representative activities: The two-year look back is retained, and the look forward is reduced to one year.

Solicitor MFPs: The two-year look back is retained, but limited only to contributions to officials of the issuer solicited, and the look forward is reduced to one year.

Supervisor and management-level MFPs: The look back is reduced to six months and the look forward is reduced to one year.

Dealers are prohibited from engaging in municipal securities business with a municipal securities issuer within two years after any contribution to an official of such issuer made by the dealer, any MFP, or any political action committee controlled by the dealer. A dealer that has triggered the ban may seek an exemption from the appropriate regulatory agency, or, in certain limited circumstances, use an automatic exemption. MSRB Rule G-37 describes relevant factors to be considered by the appropriate regulatory agency in determining whether to grant an exemption.

See MSRB Notice 2003-25 (June 30, 2003), *Electronic G-37 Submission System (eG-37 System) Becomes Operational* (www.msrb.org/msrb1/archive/eG-37AnnouncementNotice.htm); and MSRB Notice 2003-17 (May 12, 2003), *SEC Approves Amendments to Rule G-37 Revising the Exemption Process and the Definition of Municipal Finance Professional* (www1.msrb.org/msrb1/archive/G-37approval503.htm).

Qualifications

Dealers are required to ensure that their supervisors are appropriately qualified for their area of responsibility. The principal who serves as the primary contact for electronic communications from the MSRB must be qualified as a municipal securities principal or a municipal fund securities limited principal. The individual who is directly engaged in the functions of a municipal securities principal in a firm that limits its municipal securities activities to municipal fund securities must be qualified as a municipal securities principal or a municipal fund securities limited principal.

See MSRB Notice 2003-6 (February 28, 2003), *Reminder: To Supervise Municipal Fund Securities Activities, a Municipal Fund Securities Limited Principal (Series 51) or Municipal Securities Principal (Series 53) Qualification is Required by April 1, 2003* (www1.msrb.org/msrb1/archive/noticeG-3.htm); and MSRB Notice 2003-26 (July 1, 2003), *Notice of Technical Amendments to Form G-40, on E-Mail Contacts* (www1.msrb.org/msrb1/archive/G-40Revisedform.htm).

Transaction Reporting

Broker/dealers have an obligation to report their municipal securities transactions to the MSRB accurately and on time. Transaction information is made available to the public, and to the NASD and other regulators for market surveillance and enforcement activities.

See NASD Notice to Members 03-13, *MSRB Rules G-12 and G-14: NASD Reminds Firms about Transaction Reporting Requirements and Announces Enforcement Actions Against Firms for Violations of MSRB Transaction Reporting Rules G-12 and G-14*; MSRB Notice 2003-7 (March 3, 2003), *Reminder Regarding MSRB Rule G-14, Transaction Reporting Requirements* (www1.msrb.org/msrb1/archive/TRSnotice0203.htm); see also the section on Municipal Price Reporting/Transaction Reporting System on the MSRB Web Site, www.msrb.org.

Mutual Funds

Breakpoints and Share Classes

Failure to provide customers with appropriate mutual fund discounts is conduct that violates SRO rules. NASD has issued *Special Notice to Members 02-85 (NASD Requires Immediate Member Firm Action Regarding Mutual Fund Purchases and Breakpoint Schedules*, December 2002) and two investor Alerts regarding mutual funds to make investors aware of share classes and breakpoints. Broker/dealers should remind their associated persons of their obligation to ensure that their clients are charged the lowest possible front-end sales charge. See NASD Investor Alerts: *Class B Mutual Fund Shares: Do They Make the Grade?* (www.nasdr.com/alert_classb_funds.htm), dated June 25, 2003; *Mutual Fund Breakpoints: A Break Worth Taking* (www.nasdr.com/alert_breakpoint.htm), and *Understanding Mutual Fund Share Classes* (www.nasdr.com/alert_mfclasses.htm), both dated January 14, 2003.

Note that the *Report of the Joint NASD/Industry Task Force on Breakpoints* (www.nasdr.com/breakpoints_report.asp, page 15) recommends greater focus on breakpoint rules, terms, and considerations in Firm Element training.

To stay current on this important topic, firms should monitor NASD's Breakpoint Web Site: www.nasdr.com/breakpoints_members.asp.

Late Trades and Market Timing

Investment Company Act Rule 22c-1(a) generally requires that redeemable securities of investment companies be sold and redeemed at a price based on the net asset value (NAV) of the fund computed after the receipt of orders to purchase. It is a violation of NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade), and may be a violation of the federal securities laws and NASD Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices), for member firms and their associated persons to knowingly or recklessly effect mutual fund transactions that are priced based on NAV that is computed prior to the time the order to purchase or redeem was given by the customer. Furthermore, it may be a violation of NASD Rule 2110 and the federal securities laws to knowingly or recklessly facilitate certain mutual fund transactions, such as market timing transactions, in conjunction with, or with the acquiescence of, a mutual fund sponsor, fund administrator, investment adviser, underwriter, or any other affiliated person where those other parties acted contrary to a representation made in the prospectus or statement of additional information pursuant to which the mutual fund shares are offered.

See *NASD Special Notice to Members 03-50, Mutual Fund Transactions: NASD Reminds Member Firms of Their Obligations Regarding Mutual Fund Transactions and Directs Review of Policies and Procedures*, September 2003.

Options*Supplement to the
Options Disclosure
Document*

The SEC approved the Options Clearing Corporation's supplement to the Options Disclosure Document (ODD) relating to:

- 1) Options on Investment Companies and Similar Entities
- 2) Special Exercise Settlement Procedures or Restrictions that may be imposed upon the occurrence of certain extraordinary events;
- 3) Disclosure that a Registration Statement and Prospectus will no longer be available from the OCC or U.S. options exchanges.

See CBOE Regulatory Circular RG03-12 dated March 5, 2003, *Supplement to the Options Disclosure Document Regarding Exercise Settlement Values*.

**OTC Equity
Securities**

On August 22, 2002, the SEC approved new NASD Rule 2315, (Recommendations to Customers in OTC Equity Securities) [Recommendation Rule]. Rule 2315 is intended to address abuses in transactions involving thinly capitalized (microcap) securities. The Rule mandates that a member conduct a due diligence review of an issuer's current financial and business information before recommending that issuer's microcap securities. Since the Rule does not supercede existing member obligations when recommending a security, e.g., suitability determination, compliance with Rule 2315 does not provide a safe harbor from an RR's responsibility to determine the appropriateness of such securities for each prospective customer. See *NASD Notice to Members 02-66, OTC Equity Securities: SEC Approves NASD Rule 2315; Recommendations to Customers in OTC Equity Securities*, October 2002.

**Outside Business
Activities and
Private Securities
Transactions**

A registered person who sells a security away from his or her firm without first obtaining written approval from the firm violates NASD Rule 3040, and a registered person who engages in an outside business activity without prior notice to his or her firm, including the sale of non-securities products, violates NASD Rule 3030. Registered persons are advised to provide written notice to their firms before they engage in the sale of any financial instrument that is not approved by their firm. NYSE Rule 407 states that associated persons obtain their employers' written approval prior to establishing or monitoring securities or commodities accounts or entry into private securities transactions. See also NYSE Information Memo 02-40, *Amendments To Rule 407 Relating To Private Securities Transactions*, August 28, 2002 (www.nyse.com => Regulation => Information Memos).

SEC-approved amendments to CBOE rules require non-supervisory associated persons who are registered and who engage in outside business activities to provide written notice to the member organization that employs them and receive the member's prior written consent for such outside activities. With respect to persons registered as ROPs, FinOps, or Sales Supervisors of member organizations of which the CBOE is the Designated Examining Authority, such individuals must have prior written authorization from the member firm prior to engaging in any outside business activity. The member firm is also required to provide prompt written notice to the CBOE of any outside business of registered supervisory personnel.

See CBOE Regulatory Circular RG03-37 dated June 9, 2003, *Other Affiliations of Registered Associated Persons*.

**Principal-
Protected Funds**

The recent bear market has left many investors worried more about securing the return of their investment dollars than about the return on their investments. Some have turned to new types of mutual funds that pledge to guarantee, for a set period of time, that the capital invested in the mutual fund or in a variable annuity's sub-accounts will be kept safe—for a price. These products are known as "principal-protected" funds (or, alternatively, principal protection, capital preservation, or guaranteed funds). Associated persons should be trained in the features, risks, and suitability of principal-protected funds and explain to their clients how they work and what they cost. See NASD Investor Alert, *Principal-Protected Funds – Security Has a Price*, (www.nasdr.com/alert_principal_protected_funds.htm), dated March 27, 2003.

**Registration and
Reporting
Requirements**

*Criminal and Civil
Complaints and
Arbitration Claims*

On March 3, 2003, the SEC approved a proposal to amend NASD Rule 3070 to require members promptly to file with NASD copies of certain criminal and civil complaints and arbitration claims that name a member or an associated person as defendant or respondent. The amendment requires members promptly to file with NASD copies of the following documents: (1) any criminal complaints filed against the member or plea agreements entered into by the member that are covered by Rule 3070; (2) any securities or commodities-related private civil complaints filed against the member; (3) any arbitration claim against the member; 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 U4, irrespective of any dollar threshold requirements that question imposes for notification. See *NASD Notice to Members 03-23, Rule 3070: SEC Approves Amendment to Rule 3070 to Require Filing with NASD of Criminal and Civil*

Complaints and Arbitration Claims, May 2003. See also NYSE Information Memos 03-11, Fingerprint Processing And FBI Identification Records, March 25, 2003, and 02-52, New Forms U-4 AND U-5 Filing Procedures Through Web CRD, November 18, 2002 (www.nyse.com) => Regulation => Information Memos.

**Research Analysts'
Conflicts of
Interest**

On May 10, 2002, the SEC approved new NASD Rule 2711 (Research Analysts and Research Reports), as well as amendments to New York Stock Exchange (NYSE) Rule 351, (Reporting Requirements), and Rule 472, (Communications With The Public). The intent of the new rule and rule amendments is to increase research analysts' independence from influences within their firms and provide disclosure of conflicts of interests that might potentially bias research analysts and the research reports they produce. Generally, the new rule and amendments: 1) restrict the relationship between research and investment banking departments; 2) require disclosure of financial interests in subject companies by analysts and firms; 3) require disclosure of existing and potential investment banking relationships with subject companies; 4) impose quiet periods for the issuance of research reports; 5) restrict personal trading by analysts; and 6) require disclosure of information that assists investors in tracking the correlation between analysts' recommendations and stock price movement.

On July 29, 2003, the SEC approved further amendments to these rules. The amendments are the latest in a series of joint regulatory efforts intended to address broker/dealer and analyst conflicts of interest and to enhance public disclosure of such potential conflicts of interest. The amendments also amend NASD/NYSE rules to comply with the mandates of the Sarbanes-Oxley Act of 2002, and impose registration, qualification, and continuing education requirements on research analysts. When the amendments to SRO Continuing Education Rules become effective in 2004, research analysts will be required to be registered and will be subject to the Regulatory Element and the Firm Element. Firm Element training for research analysts and their immediate supervisors will be required to include ethics, professional responsibility, and the requirements of new Research Analyst rules, e.g., NASD Rule 2711.

See NASD Notice to Members 03-44: *Research Analysts and Research Reports*, August 2003; NYSE Information Memos 03-36, *Amendments to Disclosure and Reporting Requirements*, August 25, 2003; 03-30, *RULE 472 - Gatekeeper Requirements*, July 10, 2003; 03-12, *April 1st Reporting Requirement - Rules 351 & 472*, March 25, 2003; *Disclosure and Reporting Requirements Nos 02-55*, November 29, 2002, and 02-30, July 9, 2002 (www.nyse.com => *Regulation* => *Information Memos*).

See also NASD Notice to Members 02-39: *SEC Approves Rule Governing Research Analysts' Conflicts of Interest*, July 2002; and *SEC Regulation Analyst Certifications (Reg AC)* at www.sec.gov/rules/final/33-8193.htm.

NASD maintains a Web Site on this evolving topic that is continuously updated at www.nasdr.com/analyst_guide.htm

**Security Futures
(also known as
Single Stock
Futures)**

The Commodity Futures Modernization Act of 2000 lifted the ban on the trading of security futures (*i.e.*, futures on narrow-based indices, single stocks, and options on securities futures). Because security futures have different characteristics and requirements than existing securities, the SROs have adopted rules that require any currently registered securities professional that intends to engage in a security futures business or to supervise such activity to complete a training program covering security futures, which may be included as Firm Element training for the pertinent registered persons. The SROs have also developed a content outline for use in the development of the training program, which focuses on the essential information individuals and supervisors should know before conducting a securities futures business. The content outline has five modules:

- 1) Stocks and Stock Options
- 2) Futures Contracts
- 3) Security Futures
- 4) Regulatory Requirements for Security Futures
- 5) Supervision of the Offer and Sale of Security Futures.

An individual's current registration category will determine which of these modules must be completed before engaging in a security futures business. Series 7 registrants, for example, may not need to participate in the training on Stocks and Stock Options. Therefore, a member firm must consider the registration category and qualifications of persons in determining the nature and scope of his or her training.

Firms may develop their own securities futures training program or may engage a third party provider to deliver the training program, so long as the training provided encompasses all appropriate subjects in the SRO-developed content outline. Firms remain responsible for compliance with SRO rules in all respects where training is developed and or administered by outside parties. NASD and the NFA have developed a Web-based security futures training program that, if completed in the prescribed manner, would satisfy the required training requirement. Information regarding this training program can be obtained at www.nasdr.com/futures.asp. Note: Securities and futures SROs are in the process of developing regulatory requirements for the registration and qualification of persons engaged in security futures contracts sales and supervision activities. Please monitor the NASD Web Site and these other SRO Web sites for additional information: www.nfa.futures.org, www.nyse.com, and www.amextrader.com.

Broker/dealers need to maintain records of the completion of any security futures training program designed to satisfy the requirement. Members may be required during an examination or investigation to demonstrate that individuals who are engaged in a security futures business have completed the required training.

For more information on security futures in general, please see: www.nqlx.com and www.onechicago.com.

Supervision

Books and Records

Branch office managers and other supervisory personnel, as well as RRs, should be aware of SEC-approved amendments to the broker/dealer Books and Records Rules, Rule 17a-3 and Rule 17a-4 under the Securities Exchange Act of 1934, that became effective on May 2, 2003. The amendments clarify and expand recordkeeping requirements in connection with purchase and sale documents, customer records, associated person records, customer complaint records, and certain other matters. The amendments also require broker/dealers to maintain or promptly produce certain records at each office to which those records relate.

Some of the more significant aspects of the Books and Records Rules are:

- ◆ The definition of "office."
- ◆ Updating Customer Account Records.
- ◆ Additional Information Annotated on Order Tickets.
- ◆ Additional Records Related to Associated Persons.
- ◆ Retention of Communications With the Public.

For more information, see NASD's Books and Records Web Site at www.nasdr.com/books.asp, which has links to the following: *SEC Interpretive Release: Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934, Rel. 34-47910 (5/29/03)*; *NASD Notice to Members 01-80, Books and Records Rules: Amendments To Broker/Dealer Books And Records Rules Under The Securities Exchange Act Of 1934*, December 2001; and *Frequently Asked Questions*.

See also NYSE Information Memos 03-18, *I. Amended Rule 36, (Communications Between Exchange And Members' Offices) – Cell Phones, And Requirements For Conducting A Public Business II. Clarification Of Recent SEC Books And Records Rules*, May 6, 2003, and 03-16, *Effective Date For "Books And Records" Rule Amendments*, April 15, 2003 (www.nyse.com => *Regulation => Information Memos*).

Also see CBOE Regulatory Circular RG03-032 dated May 2, 2003, *Effective Date for "Books and Records" Rule Amendments*, and PHLX Membership Memo 0551-03 dated May 5, 2003, *Amendments to Broker-Dealer Books and Records Rules*.

General Topics

Industry continuing education rules require a broker/dealer to include supervisory training for supervisors if its Firm Element Needs Analysis establishes the need for it. Supervisors should be trained on new rules with general application, e.g., anti-money laundering, as well as new rules relating to new products, if applicable. Firms should reiterate with supervisors the importance of internal controls as they relate to areas such as changing customer addresses, Letters of Authorization, mail directed to customer post office boxes, time and price discretionary orders, and supervision of producing managers.

Broker/dealers may also find it helpful to periodically review with their supervisors various examples of conduct that violates SRO rules, such as:

- Exercising Discretion Without Prior Written Authority
- Failure to Respond to SRO Information Requests
- Failure to Provide Customers With Mutual Fund Breakpoints
- Falsifying Documents
- Forgery
- Misrepresentations to Customers
- Selling Away
- Unsuitable Recommendations
- Unauthorized Trading

Supervisors in turn may wish to share this information with the registered persons they supervise. Many industry SROs publish information on their Web sites that illustrate improper conduct and the disciplinary action taken by regulators. For example: NASD's quarterly *Disciplinary Update* at www.nasdr.com/disc_update_index.asp, and NYSE's Disciplinary Actions at www.nyse.com/regulations.html.

Instant Messaging

Instant messaging is a developing technology that can pose supervisory and recordkeeping challenges for member firms. Instant Messaging's lack of formality does not exempt it from the general standards applicable to all forms of communication with the public. Broker/dealers must supervise the use of instant messaging consistent with the required supervision of e-mail messaging. Depending on the circumstances, instant messaging could be either sales literature or correspondence. Compliance in each of these situations depends on clear supervision and review procedures that are consistently followed. If a member is unable to establish an adequate supervisory program, the member must prohibit the use of instant messaging in customer communication. Broker/dealers must also ensure that their use of instant messaging complies with applicable SEC and SRO recordkeeping requirements. See *NASD Notice to Members 03-33, Instant Messaging: Clarification for Members Regarding Supervisory Obligations and Recordkeeping Requirements for Instant Messaging*, July 2003.

Also, broker/dealers are required pursuant to NYSE Rule 440 and SEC Rules 17a-3 and 17a-4 to retain records that relate to the conduct of their business. Instant messaging, while a new format for communications, is subject to the same retention requirements as any other form of written or electronic communications. See Information Memo 03-7, *Electronic Logs And Record Retention*, March 5, 2003 (www.nyse.com => *Regulation* => *Information Memos*).

**Variable Annuities
and Life Insurance**

Associated persons should be trained in the features, risks, and suitability of variable annuity and life insurance contract exchanges so as to assist their clients in making informed decisions. NASD has published a number of Investor Alerts on this subject:

- ◆ *Should You Exchange Your Variable Annuity?*
(www.nasdr.com/alert_annuityexchanges.htm)
February 15, 2001
- ◆ *Should You Exchange Your Life Insurance Policy?*
(www.nasdr.com/alert_exchange_lifeinsurance.htm)
September 23, 2002
- ◆ *Variable Annuities: Beyond the Hard Sell,*
(www.nasdr.com/alert_variable_annuities.htm)
May 27, 2003

See also *NASD Notice to Members 99-35, The NASD Reminds Members of Their Responsibilities Regarding the Sale of Variable Annuities*, May 1999; and *Variable Annuities: What You Should Know*, at www.sec.gov/consumer/varannty.htm.

To Obtain More Information

For more information about publications contact the SROs at these addresses:

Self-Regulatory Organization	Address and Phone Number	Online Address
American Stock Exchange	American Stock Exchange Marketing Department 86 Trinity Place New York, NY 10006 800-THE-AMEX	www.amex.com www.amextrader.com
Chicago Board Options Exchange	Chicago Board Options Exchange 400 S. LaSalle Street Chicago, IL 60605 877-843-2263 e-mail: help@cboe.com	www.cboe.com
Municipal Securities Rulemaking Board	MSRB Publications Department 1900 Duke Street Suite 600 Alexandria, VA 22314 703-797-6600	www.msrb.org
NASD	NASD MediaSource P.O. Box 9403 Gaithersburg, MD 20898-9403 240-386-4200	www.nasd.com
New York Stock Exchange	New York Stock Exchange Publications Department 11 Wall Street 18th Floor New York, NY 10005 212-656-5273 or 212-656-2089	www.nyse.com
Philadelphia Stock Exchange	Philadelphia Stock Exchange Marketing Department 1900 Market Street Philadelphia, PA 19103 800-THE PHLX or 215-496-5158	www.phlx.com

Notice to Members

SEPTEMBER 2003

SUGGESTED ROUTING

Corporate Finance
Legal and Compliance
Operations
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KEY TOPICS

Debt Securities
Dissemination
Operations
Rule 6200 Series
Transaction Reporting

INFORMATIONAL

Corporate Debt Securities Transaction Reporting

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

Executive Summary

NASD requires members to report corporate debt securities transactions to NASD and subjects transaction information of certain categories of securities to dissemination pursuant to the Trade Reporting and Compliance Engine (TRACE) rules (TRACE Rules). In this *Notice to Members*, NASD provides guidance on frequently asked questions concerning the reporting of debt securities when par value is not a standard amount and the resubmission of rejected TRACE trade reports under the new 45-minute reporting requirement.

Questions/Further Information

Questions concerning this *Notice* may be directed to tracefeedback@nasd.com; Elliot Levine, Chief Counsel, Market Operations, Regulatory Services and Operations, at (202) 728-8405; or, Sharon K. Zackula, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8985.

Interpretive Guidance

Questions and Answers 1 through 5 address how a member reports bond quantities when the bond traded has a non-standard par value (a par value other than \$1,000 per bond). Question and Answer 6 address the resubmission of rejected trade reports under the new 45-minute reporting requirement, and the rescission of prior guidance on this subject.

03-58

Questions and Answers

Q1. How do I report a baby bond (less than \$1,000 face value per bond)?

A1. Enter the amount in decimal form. Examples: 1/2 a bond = ".50"; a \$512.37 piece of a bond = ".51237."

Q2. How do I report quantity for a bond with a pro-rata sinking fund that has a factor?

A2. The TRACE Rules and the TRACE System include the assumption that one bond is equal to \$1,000 par value. Therefore, the quantity for bonds that involves a factor must be translated into a percentage of \$1,000. Reporting quantity for bonds involving a factor is the same as reporting quantity for a baby bond.

Example: A broker/dealer buys or sells 25 bonds with a pro-rata sinking fund for which the current factor is .300. To determine the quantity for reporting to TRACE, multiply 25 by .300 for a quantity of 7.5 bonds. This results in a remaining principal amount of \$7,500 (at this point in the sinking fund schedule), instead of the original \$25,000.

Q3. How do I report quantity on bonds with par values greater than \$1,000? (Note that two exceptions, GMAC 0 12/1/12 and GMAC 0 6/15/15, are addressed in No. 4)

A3. As noted above, the TRACE Rules and TRACE System assume that one bond has a standard par value, which is \$1,000. When this is not true, and the bond traded has a par value greater than \$1,000, the total par value traded must be translated into \$1,000 equivalents.

Examples:

A bond has a par value of \$2,500. If 20 bonds are bought or sold, the total par value is \$50,000. Divide \$50,000 by \$1,000. Quantity reported to TRACE = 50.

A bond has a par value of \$500,000. If 10 bonds are bought or sold, the total par value is \$5,000,000. Divide by \$1,000. Quantity reported to TRACE = 5,000.

Q4. How do I report quantity and price for GMAC 0 12/1/12 and GMAC 0 6/15/15? These issues trade on the NYSE in units and in prices expressed in hundreds rather than in bond dollars (representing a percentage of par). If I execute OTC, however, how do I report quantity, price, and yield into TRACE?

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- A4. Both the GMAC 0 12/1/12, CUSIP 370424CZ4 (Symbol GMAC.GC) and the GMAC 0 6/15/15 CUSIP 370424DA8 (Symbol GMAC.GD) are exceptions to the norm for reporting to TRACE, since firms may hold these securities differently on their stock records and price can also be expressed in multiple ways. Firms typically settle these trades ex-clearing, with settlement necessitating that both parties use the same standards.

Both issues have par values greater than \$1,000 and a final maturity value of \$10,000. On the New York Stock Exchange (NYSE), both issues are traded in units: one unit = \$10,000. For example, if one unit having a maturity value of \$10,000 trades for a contracted value of \$4,950, a price of \$495 for a quantity of one unit (or one tenth of the contract amount) would be reported to the NYSE. To arrive at the same yield that is posted on the NYSE, market participants can perform a zero-coupon calculation using a workaround solution of entering a dollar price of 49.50 (moving the decimal place an additional place to the left, or one hundredth of the contract amount), which "resembles" bond dollars.

In order to accommodate reporting of these two bonds, the TRACE System adopts the same workaround solution for the calculation of yield to maturity, based upon a "bond-like" price (a price under \$100). The TRACE System assumes a \$1,000 par value; hence, reporting a quantity of one (unit) would be disseminated as \$1,000, which would be both incorrect and misleading. Therefore, since each security trades in increments of \$10,000, the reporting party should report a quantity of 10 for each unit traded. When the transaction information is disseminated, the quantity will appear as 10,000. Report yield to maturity (YTM) only.

Firms executing OTC transactions in either of these issues should submit their TRACE reports according to the example below. Firms reporting through third-party intermediaries should make sure that they can support this methodology; otherwise, reporting will have to be accomplished manually. When reporting through NSCC, the entry should be submitted using a zero-coupon price (e.g., less than 100) and a quantity 10 times the number of units traded (rather than the contract amount). The entry should be marked as a "reporting only" report, so that it will not flow through NSCC's comparison system. Any possible submissions to NSCC for comparison in these securities should be done separately from the TRACE transaction report.

Example:

One (1) unit is bought, having a maturity value of \$10,000. Reported quantity = 10 and reported price = 49.50. YTM is determined from this price, using the zero-coupon calculation. When disseminated, the quantity reported of one unit will appear as 10,000 traded at 49.50 with the corresponding YTM. (To report the purchase of 4 units, report a quantity of 40.)

Note: Report to TRACE YTM only.

Q5. How do I report commissions for the securities GMAC 0 12/1/12 and GMAC 0 06/15/15, referenced above?

A5. Commissions in fractions of a point: Because the maturity value of each unit is \$10,000, one point = \$100, rather than the norm of one point = \$10 for a bond with a \$1,000 principal value at maturity. If the commission charged to the customer in the purchase or sale of GMAC 0 12/1/12 or GMAC 0 06/15/15 is one-eighth of a point (.125), this represents \$12.50 per each \$10,000 maturity value. In this example, the member would report .125 in the commission field. If, for example, the price of one unit traded is \$4,950 (on the NYSE, \$495), on TRACE, the price reported is 49.50. Add or subtract the one-eighth of a point (.125) (depending upon whether you sold or bought) to/from the price that will be used to calculate the yield. If selling, the all-inclusive price would be 49.625 (49.50 + .125), with yield to maturity (YTM) calculated from this price. If buying, the all-in price would be 49.375 (49.50 - .125), with YTM calculated from this price.

Flat-fee commissions: If the commission charged to the customer on two units of \$10,000 is \$50, and the price of one unit is \$4,950 (on the NYSE, \$495), then the price reported to TRACE is 49.50, and the commission is reported as .25. If selling, add .25 to 49.50 and calculate YTM from an all-in price of 49.75. If buying, subtract .25 from 49.50, which results in an all-in price of 49.25 with which to calculate YTM.

Q6. When the new TRACE 45-minute reporting period becomes effective, how much time does a member have to resubmit a trade report that was rejected?

A6. As of October 1, 2003, the period to report a transaction to TRACE will be reduced from 75 minutes to 45 minutes.¹ As a result, NASD is issuing new guidance, effective as of 8:00 a.m. Eastern Time on October 20, 2003, regarding the resubmission of rejected trade reports, and is withdrawing the guidance issued in NtM 02-76 (November 2002), Question and Answer No. 1 (Q & A 1).² The guidance issued in NTM 02-76, Q & A 1, is withdrawn as of 8:00 a.m. Eastern Time on October 20, 2003, and, after that time, members should not rely on it.

The period to report a transaction in a TRACE-eligible security will be reduced from 75 minutes to 45 minutes effective October 1, 2003. NASD recognizes, however, that some members may be using a reporting technology that does not immediately relay a message to the member that a transaction report has been rejected. Thus, members may be unaware for a substantial part of the 45-minute reporting period that they must resubmit the trade report.³ Accordingly, in these circumstances, as a general rule, NASD expects that members will correct and resubmit rejected trade reports as soon as practicable, but not later than 90 minutes from the time of execution. (This generally applicable interpretive guidance is referred to hereinafter as the "45-Minute Extension.")

However, there are three scenarios when a member may not rely on the 45-Minute Extension. The three scenarios are set forth below.

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- a. If a member executes a trade less than 45 minutes before the closing of the TRACE System (on or after 5:45:01 p.m. Eastern Time through 6:29:59 p.m. Eastern Time),⁴ under Rule 6230(a)(1), the member has the option to report the transaction to TRACE the same day, or the next day that the TRACE System is open, within 45 minutes of the opening. In both of these scenarios, a member is not entitled to rely on the 45-Minute Extension to comply with the obligation to timely report.
- i. No Extension of Time Applies: If the member reports the transaction to TRACE before the TRACE System closes and the transaction report is rejected, the member must report the transaction the next day the TRACE System is open, within the first 45 minutes that the System is open in order for the report to be timely. *The 45-Minute Extension does not apply in these circumstances.* For example, a member executes a transaction at 6:10 p.m. Eastern Time on Thursday, the member reports the transaction at 6:29 p.m. Eastern Time, and the transaction report is rejected. On Friday morning, the member must resubmit the corrected transaction report within the first 45 minutes that the TRACE System is open for the report to be timely.
- ii. Fifteen-Minute Extension: If the member opts to first file the transaction report on the next business day that the TRACE System is open, and the transaction report is rejected, the member must correct and resubmit the transaction report as soon as possible and not later than one hour after the TRACE System opens. Stated another way, *the member has 45 minutes to report the transaction and is granted an additional 15 minutes to comply with its reporting obligation. The 45-Minute Extension does not apply in these circumstances.* For example, a member executes a trade at 6:10 p.m. Eastern Time on Thursday, the member first reports the trade on Friday at 8:05 a.m. Eastern Time, and the report is rejected. The member must correct and resubmit the transaction report not later than 8:59:59 a.m. Eastern Time in order for the report to be considered timely filed. The 15-minute extension of time to report is appropriate because members have had time to prepare the transaction report, and should attempt to report outstanding transactions promptly after the TRACE System opens.
- b. Fifteen-Minute Extension: If a member executes a trade when the TRACE System is closed (e.g., on or after 6:30 p.m. Eastern Time on a business day that the TRACE System was open, during a weekend or a holiday, or before 8:00 a.m. Eastern Time on a business day that the TRACE System will open), the member is required under Rule 6230(a)(2) through (4) to report the transaction the first day that the TRACE System is open, within 45 minutes. If the transaction report is rejected, the member must correct and resubmit a transaction report as soon as possible, but not later than one hour after the TRACE System opens. *In this case also, the member has 45 minutes to report the transaction and is granted only an additional 15 minutes to comply with its reporting obligation. In addition, the 45-Minute Extension does not apply.* For example, a member executes a trade at 7:00 p.m. Eastern Time on Thursday. The TRACE System is closed until Friday at 8:00 a.m. Eastern Time. The member first reports the trade on Friday at 8:05 a.m. Eastern Time, and the report is rejected. The member must correct and

resubmit the trade report not later than 8:59:59 a.m. Eastern Time to report on time. The member is permitted to use only an additional 15 minutes to report for the same reasons expressed above.

Regardless of the reporting mechanism used by the member (e.g., batch submission, CTCL, Web browser, third party intermediary reporting systems), any rejected trade reports should be corrected and resubmitted to TRACE as soon as possible by the reporting member. NASD will continue to monitor members' reporting to ensure that members have procedures in place that are reasonably designed to ensure that rejected trade reports are identified, corrected, and resubmitted in a timely manner. Patterns and practices of late submissions due to rejections may be considered a violation of the TRACE Rules and Rule 2110.

Endnotes

- 1 See NtM 03-36 (June 2003).
- 2 Q & A 1 allowed a member, in certain extenuating circumstances, to resubmit rejected trade reports that were "high priority" reports as soon as practicable, but not later than 2 and ½ hours after the time of execution of the transaction, and allowed a member to correct and resubmit a "low priority" report as soon as practicable, but not later than the end of the reporting day on the day of execution (or the first business day following the day of execution, if the transaction occurred on a non-business day). High-priority reports were defined as reports of transactions in securities that are subject to dissemination under Rule 6250. Reports of transactions in securities not subject to dissemination under Rule 6250 were low-priority reports. In this guidance, NASD has eliminated these two categories.
- 3 Certain members are using technology that reports transactions to and receives verification of accepted reports back from TRACE via a "batch" process, and this batch process may add time to the identification and correction of trade reports initially rejected by the TRACE System.
- 4 The normal schedule for TRACE System operations is 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time. The times are provided as an example. The actual times may vary if the TRACE System is not operating on a normal schedule.

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Disciplinary and Other NASD Actions

REPORTED FOR SEPTEMBER

NASD* has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of August 2003.

Firms Expelled, Individuals Sanctioned

Liss Financial Services (CRD #21950, Milwaukee, Wisconsin) and Jerome Edward Liss (CRD #310709, Registered Representative, Belgium, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was expelled from NASD membership and Liss was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the offer and sale of a security, they engaged in a series of transactions with the issuer and with affiliates of the issuer that operated as a scheme to evade the registration provisions of the Securities Act of 1933. NASD found that the firm and Liss served as statutory underwriters for the issuer in violation of Section 5 of the Securities Act of 1933 by acquiring unregistered shares from the issuer and from control affiliates of the issuer by means of a gypsy swap transaction, distributing those shares to the public without registration or valid exemption, and returning the proceeds of the distribution to the issuer. The findings also stated that the firm and Liss effected transactions for customer accounts in the securities of a penny stock without providing customers with the disclosure required under Section 15g of the Exchange Act and Rules 15g-2 and 15g-3 thereunder. Specifically, NASD found that the respondents failed to furnish customers with risk disclosure documents relating to the penny stock market before effecting customer transactions; failed to obtain from customers a manually signed and dated written statement acknowledging receipt of the risk disclosure document before effecting customer transactions in the company securities; and failed to disclose to customers and to confirm in writing the bid and ask price of the stock before effecting customer transactions in the stock. In addition, NASD found that the firm and Liss failed to respond to NASD requests for documents and information. Furthermore, NASD determined that the firm failed to reasonably supervise the activities of employees, and failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with securities laws, regulations, and NASD rules. **(NASD Case #CMS030167)**

SFI Investments, Inc. (CRD #21663, New York, New York) and Frank Joseph Fasano (CRD #1003292, Registered Principal, Summit, New Jersey). The firm was expelled from NASD membership and Fasano was barred from association with any NASD member in any capacity. In light of the expulsion and bar, as well as the financial status of Fasano, no monetary sanctions were imposed. The sanctions were based on findings that the firm, acting through traders and with Fasano's acquiescence and approval, improperly used public customer accounts as the firm's

de facto accounts for proprietary trading in municipal securities in violation of its restriction agreement with NASD. The findings also stated that the firm, acting through Fasano, engaged in a securities business while failing to maintain the net capital required by the Securities and Exchange Commission (SEC). NASD also found that the firm and Fasano allowed individuals to function as general securities representatives without having registered with NASD and failed to exercise reasonable supervision over them. In addition, NASD found that the firm failed to respond to NASD requests for information in a timely manner. (NASD Case #C10970176)

Firms Fined, Individuals Sanctioned

Banyan Capital Markets, LLC (CRD #45763, Boca Raton, Florida) and Barry Fredric Goldberg (CRD #3096483, Registered Principal, Boca Raton, Florida) were fined \$10,000, jointly and severally. The firm was also censured and Goldberg was fined \$20,000, individually, and suspended from association with any NASD member in any capacity for 45 days. The fines must be paid before Goldberg reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the firm and Goldberg consented to the described sanctions and to the entry of findings that the firm and Banyan produced a research report evaluating a public company that was unbalanced, unwarranted, and contained omissions of material fact concerning the company. The findings also stated that the report failed to disclose that the company might be required to issue securities to satisfy current debt, thereby diluting previously issued stock. NASD also found that the firm, through Goldberg, failed to supervise adequately the work of a registered representative in preparing the report. In addition, NASD found that the report failed to disclose in the written agreement that the firm would be compensated by the company for the services of the representative, and that the compensation was to be received by the firm.

Goldberg's suspension began July 16, 2003, and concluded at the close of business August 29, 2003. (NASD Case CAF030035)

Blackwood Securities, LLC (CRD #44669, New York, New York) and Craig Robert Schlifstein (CRD #2637134, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$105,000, \$20,000 of which is joint and several with Schlifstein. Schlifstein was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Schlifstein, failed to submit required information to the Order Audit Trail SystemSM (OATSSM) on 506 consecutive business days, and submitted to OATS reports with respect to equity securities traded on The

Nasdaq Stock Market that were not in the electronic form prescribed by NASD. The findings stated that the reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web Site, but the firm did not correct or replace any of the subject reports.

NASD also found that the firm, acting through Schlifstein, transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data, executed a short-sale transaction in a Nasdaq National Market[®] (NNM[®]) security at or below the current inside bid when the current inside bid was below the preceding inside bid in the security, and executed short-sale orders and failed to make an affirmative determination prior to executing such transactions. Furthermore, the firm, acting through Schlifstein, failed to respond timely and/or completely to NASD requests for information. In addition, the findings stated that the firm, acting through Schlifstein, failed to keep current and amend Schlifstein's application for registration, and the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning the bid test rule, the affirmative determination rule, and the OATS reporting rules.

Schlifstein's suspension began August 18, 2003, and concluded at the close of business August 29, 2003. (NASD Case #CMS030168)

Institutional Equity Corporation f/k/a Redstone Securities, Inc. (CRD #19628, Dallas, Texas) and Robert Alton Shuey, III (CRD #710362, Registered Principal, Dallas, Texas) were fined \$20,000, jointly and severally, and Shuey was suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that the firm, acting through Shuey, failed to deposit funds of best efforts minimum-maximum offerings in bona fide escrow accounts, as represented in the offering memoranda. The findings also stated that the firm, acting through Shuey, utilized the instrumentalities of interstate commerce to engage in a securities business while failing to maintain its required minimum net capital and filed FOCUS reports that inaccurately stated the firm's net capital. In addition, the findings stated that the firm, acting through Shuey, failed to prepare and maintain accurate books and records.

Shuey's suspension began July 21, 2003, and will conclude at the close of business July 20, 2004. (NASD Case #C06020018)

Phillip Louis Trading, Incorporated (CRD #19378, Red Bank, New Jersey) and Johnny Philip Figliolini, Jr. (CRD #1058617, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$44,000, including disgorgement of \$14,036.31 in commissions received. Figliolini was fined \$10,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify by exam for the Series 24 license before acting again in a principal

capacity. Without admitting or denying the allegations, the firm and Figliolini consented to the described sanctions and to the entry of findings that an agent of the firm effected the sale of unregistered shares of stock to market makers while the firm engaged in the distribution of the stock to market makers and acted as an underwriter as defined in Section 2(11) of the Securities Act of 1933. The findings also stated that the firm allowed individuals to exercise discretion in the accounts of public customers without receiving prior written authorization from the customers, and that the firm did not accept the accounts in writing as discretionary. NASD found that Figliolini failed to supervise the activities of an individual in the sale of unregistered securities and failed to respond to red flags and inquire as to the source of the stocks and the relationships between account holders. In addition, NASD found that the firm failed to institute a supervisory system and establish and maintain written supervisory procedures reasonably designed to achieve compliance with federal securities laws, regulations, and NASD rules regarding restricted securities.

Figliolini's suspension began August 18, 2003, and concluded at the close of business August 29, 2003. (NASD Case #CAF030036)

Firm and Individual Fined

Tripp & Company, Inc. (CRD #6967, New York, New York) and Kevin Michael John O'Connor (CRD #1096256, Registered Principal, Port Chester, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,500, jointly and severally. Without admitting or denying the allegations, the firm and O'Connor consented to the described sanctions and to the entry of findings that the firm, acting through Tripp, operated without a registered financial and operations principal. The findings also stated that the firm, acting through O'Connor, failed to maintain accurate books and records. (NASD Case #C10030062)

Firms Fined

Automated Trading Desk Brokerage Services, LLC (CRD #36000, Mt. Pleasant, South Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. In addition, NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the reporting of short-sale transactions to NASD. (NASD Case #CMS030162)

Clayton, Williams & Sherwood Investments (CRD #23551, Newport Beach, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted registered persons to act in capacities requiring registration while their NASD registrations were inactive due to failure to complete in a timely manner the Regulatory Element of the Continuing Education Requirement. (NASD Case #C02030043)

Investment Placement Group (CRD #14458, La Jolla, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected transactions in stock option contracts that resulted in the firm's customers holding or controlling an aggregate equity options position that exceeded the applicable options position limits. The findings also stated that the firm did not follow the procedures set forth in its written supervisory procedures that direct a designated supervisor to identify positions that exceed allowable option position limits under the rules of self-regulatory organizations, and thus failed to establish, maintain, and enforce a supervisory system that was reasonably designed to achieve compliance with NASD Rule 2860(b)(3). (NASD Case #CMS030164)

Seaboard Securities, Inc. (BD #755, Florham Park, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$12,500, and required, within 30 days of acceptance of this AWC, to retain at its sole expense, an independent outside consultant not unacceptable to NASD to conduct a review of and prepare a written report and make recommendations as to the adequacy of the firm's supervisory and compliance policies and procedures and its system for applying such procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to entry of findings that it failed to timely amend certain Forms U4 and U5 of registered representatives of a branch office after becoming aware of information triggering an obligation to amend these Forms, such as the filing of reportable customer complaints and arbitration claims. NASD also found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure that Forms U4 and U5 were promptly amended upon receipt of information triggering an obligation to amend. (NASD Case #C9B030049)

Tanager Capital Group LLC (BD #111972, Maplewood, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it conducted securities and investment banking activities prior to

the approval of the firm's membership with NASD. (NASD Case #C9B030048)

United Securities Alliance, Inc. (BD #36487, Greenwood Village, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$111,425. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that registered persons failed to take the Regulatory Element of Continuing Education within their respective windows and subsequently became inactive; and, while inactive, the firm allowed them to engage in activities that required registration, and they generated and were paid transaction-based compensation. NASD found that the firm allowed registered persons not to participate in the firm Element of Continuing Education. The findings also stated that the firm failed to report, or was delinquent in reporting, occurrences that required reporting under Rule 3070 and failed to conduct annual inspections of offices of supervisory jurisdiction. In addition, NASD determined that the firm failed to register off-site locations such as branch offices with NASD, and that the firm could only provide evidence that 157 of the firm's 1,130 registered persons attended an annual compliance meeting in 2000. The findings also stated that the firm failed to perform the requisite background check on 17 new hires, and, in addition, failed to obtain the Form U5 from the previous employer of five of the new hires. NASD also found that the firm failed to promptly notify NASD of branch office address changes and that the firm's written supervisory procedures and supervisory system were inadequate. (NASD Case #C3A030032)

vFinance Investments, Inc. (CRD #44962, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions in a NNM security and failed to report each of these transactions to the Automated Confirmation Transaction Service (ACTSM) with a short-sale modifier. The findings stated that the firm executed short-sale orders in NNM securities and failed to make an affirmative determination prior to executing such transactions. NASD also found that the firm executed short-sale transactions in NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. In addition, NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short sales. (NASD Case #CMS030177)

Individuals Barred or Suspended

Fulvio Antonio Acosta, Jr. (CRD #2857206, Registered Representative, Philadelphia, Pennsylvania) 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 Acosta reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Acosta consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transfers within a public customer's variable annuity without the customer's prior knowledge, consent, and authorization.

Acosta's suspension began August 18, 2003, and will conclude at the close of business November 17, 2003. (NASD Case #C10030061)

Joseph Ali (CRD #3063988, Associated Person, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ali consented to the described sanction and to the entry of findings that he forged the signatures of public customers on a Third Party Full Discretionary Authorization form that provided Ali with power of attorney and authorized him to exercise control over the funds in the customers' account at his member firm. The findings also stated that Ali wired \$23,000 from the account of public customers at his member firm to his personal bank account and converted the funds for his own use and benefit, without the customers' knowledge, authorization, or consent. NASD also found that Ali falsely testified about the conversion during an NASD on-the-record interview. (NASD Case #C10030057)

Frank Joseph Argenziano (CRD #1933781, Registered Principal, Massapequa, New York) submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Argenziano consented to the described sanctions and to the entry of findings that he engaged in the sale of an initial public offering (IPO) of common shares and warrants to public customers and misrepresented the structure of the IPO, and created an improper tie-in by instructing the firm's brokers to solicit the offering securities to public customers as a unit only when, in fact, the Registration Statement filed with the SEC provided that common shares and warrants could be purchased separately. The findings also stated that Argenziano engaged in unauthorized customer trades by causing purchases of the offering to be inputted upon the effective time of the offering without giving the brokers the required opportunity to first call all of the customers to firm up the IPO purchases. NASD also found that Argenziano caused the clearing firm to create and mail inaccurate transaction confirmations to public customers that failed to disclose the actual number of IPO shares and warrants purchased by the customers and reflected an unauthorized purchase of a unit IPO security. In addition, NASD found that Argenziano caused his firm to maintain inaccurate books and records by entering a "dummy" automatic data

processing security number for a non-existent unit security on confirmations, trade cancellation notices, client account statements, and proprietary account statements, and by recording the entry of sales and cancellations of such sales for nonpayment when no such legitimate sales had occurred.

Argenziano's suspension began August 18, 2003, and concluded at the close of business September 8, 2003. (NASD Case #CAF030009)

Samuel Shmuel Barmapov (CRD #4245309, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barmapov consented to the described sanction and to the entry of findings that he recommended and sold to public customers shares of stock in two obscure, low-priced, highly speculative companies. The findings stated that, in recommending these stocks, Barmapov misrepresented the financial prospects of the companies and made baseless price predictions. In addition, NASD found that Barmapov failed to disclose the risks of investing in these speculative stocks and omitted material facts concerning the financial conditions of the companies. Further, the respondent's recommendations of these stocks were unsuitable for the customers. (NASD Case #CMS030157)

Val U. Barrutia (CRD #1020898, Registered Principal, Colorado Springs, Colorado) 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, Barrutia consented to the described sanction and to the entry of findings that he received \$794,886 from public customers for the purpose of purchasing securities, but converted these funds for his own use and benefit without the customer's prior knowledge, authorization, or consent. (NASD Case #C3A030034)

Wendell Duane Belden (CRD #1324913, Registered Principal, Tulsa, Oklahoma) was fined \$40,000, required to pay \$55,567.03, plus interest, in restitution to the estate of a public customer, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam as a principal before functioning in any principal capacity. The SEC affirmed the sanctions following an appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that Belden made unsuitable recommendations to a public customer by recommending Class B mutual fund shares instead of Class A shares in order to receive higher commissions.

Belden's suspension began August 18, 2003, and will conclude at the close of business August 17, 2004. (NASD Case #C05010012)

Rick Louis Bradley (CRD #4368588, Registered Representative, Dubuque, Iowa) 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, Bradley consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4 and failed to respond to NASD requests for information. (NASD Case #C04030039)

Barbara Lynch Brandenburg (CRD #28824, Registered Principal, Dallas, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Brandenburg caused checks totaling \$79,000 to be issued 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 findings also stated that Brandenburg failed to respond to NASD requests for information. (NASD Case #C05030009)

Richard Edward Casner (CRD #2932269, Registered Representative, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Casner consented to the described sanction and to the entry of findings that he conducted unauthorized transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The findings stated that after the customer complained to Casner that she had not authorized the transactions, he attempted to settle the complaint by depositing the amount of losses generated by the unauthorized transactions into the customer's account and did not disclose the customer's complaint or the fact that he had deposited funds into the customer's account to his member firm. NASD also found that Casner failed to respond to NASD requests for information. (NASD Case #C06030016)

Douglas Paul Cataldo (CRD #2467839, Registered Representative, Lynn, Massachusetts) 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, Cataldo consented to the described sanction and to the entry of findings that he converted a public customer's funds. (NASD Case #C11030024)

James Jay Christiano (CRD #2747068, Registered Principal, Jericho, New York) was fined \$50,000 and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Christiano failed to testify truthfully during an NASD on-the-record interview.

Christiano's suspension began July 21, 2003, and will conclude at the close of business July 20, 2005. (NASD Case C10990158)

Austin Charles Cogswell (CRD #600615, Registered Representative, Atlanta, Georgia) 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, Cogswell consented to the described sanction and to the entry of findings that he participated in numerous private securities transactions, for compensation, without providing his member firm prior written notice of his intent to participate in the transactions, without obtaining his firm's approval in writing, and without having the transactions supervised by his member firm and carried on its books and records. The findings also stated that Cogswell participated in outside business activities without providing his member firm prompt written notice of his activity. (NASD Case #C07030052)

John Francis Collopy, Jr. (CRD #51410, Registered Principal, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,000, jointly and severally, and suspended from association with any NASD member in a financial and operations principal capacity for five business days. Without admitting or denying the allegations, Collopy consented to the described sanctions and to the entry of findings that a member firm, acting through Collopy, conducted a securities business while failing to maintain the required net capital under Securities Exchange Act Rule 15c3-1.

Collopy's suspension began September 2, 2003, and concluded at the close of business September 8, 2003. (NASD Case #C07030051)

John Marvin Cook, II (CRD #1900910, Registered Representative, Miami Beach, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Cook failed to respond to an NASD request to appear for an on-the-record interview. (NASD Case #CMS030016)

John Michael Curran (CRD #1576877, Registered Principal, Dallas, Texas), Douglas Matthew Kent (CRD #2584392, Registered Principal, Arlington, Texas), and Mitchell Seth Rosenthal (CRD #1084558, Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which Curran was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 30 business days. Kent was barred from association with any NASD member in any capacity and Rosenthal was fined \$7,500 and suspended from association with any NASD member in any principal capacity for 30 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Kent, who was responsible for conducting proprietary trading on behalf of his member firm, placed transactions that belonged in the firm's

proprietary trading account into the IRA account of Rosenthal in order to conceal trading losses in the proprietary account, resulting in trading losses of \$16,530 in Rosenthal's account. The findings stated that Kent conducted unauthorized transactions in his firm's error account and concealed his trading activity by, among other things, entering fictitious trades to offset the unauthorized trades and entering fictitious prices for executed transactions and canceling executed transactions. NASD also found that Rosenthal learned of Kent's activities, failed to take any remedial action against Kent, and failed to notify the firm's chief supervisory officer of Kent's activities. Furthermore, the findings stated that Rosenthal and Curran, on behalf of their member firm, failed to act in a manner reasonably calculated to prevent Kent from violating applicable securities laws, regulations, and NASD rules.

Curran's suspension began August 18, 2003, and will conclude at the close of business September 29, 2003. Rosenthal's suspension began August 18, 2003, and will conclude at the close of business September 29, 2003. (NASD Case #C06030014)

Luis Felipe Diaz, Jr. (CRD #2539595, Registered Representative, Setauket, New York) was fined \$30,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid upon Diaz' reentry into the securities business. The sanctions were based on findings that Diaz made misrepresentations to public customers regarding risks associated with investments in variable annuity contracts.

Diaz' suspension began July 21, 2003, and will conclude October 18, 2003. (NASD Case #CLI030002)

Lawrence Richard Dugo (CRD #2555823, Registered Representative, Farmingdale, 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, Dugo consented to the described sanction and to the entry of findings that he recommended and sold to public customers two obscure, low-priced, highly speculative securities. The findings stated that, in recommending the securities, Dugo misrepresented the financial prospects of the companies and made baseless price predictions, failed to disclose the risks of investing in these speculative stocks, and omitted material facts concerning the companies' financial conditions. In addition, NASD found that Dugo recommended stocks to public customers for whom the stocks were unsuitable. (NASD Case #CMS030174)

John Mann Ellsworth (CRD #1748107, Registered Principal, Salt Lake City, Utah) 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, Ellsworth consented to the described sanction and to the entry of findings that he converted \$196,000 from the account of a public customer for his own use and benefit

without the customer's prior knowledge, authorization, or consent. (NASD Case #C3A030031)

William Brian Fazio (CRD #4087019, Registered Principal, Milwaukee, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Fazio consented to the described sanctions and to the entry of findings that he recommended the purchase of securities to public customers of his member firm without reasonable grounds for believing that such investments were suitable in light of the customers' security holdings, financial situation, and needs.

Fazio's suspension began July 15, 2003, and concluded at the close of business July 28, 2003. (NASD Case #CMS030166)

Morty Paul Forney (CRD #1076472, Registered Principal, Billings, Montana) 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, Forney consented to the described sanction and to the entry of findings that he obtained checks from a public customer totaling \$149,295.25 intended for the purchase of securities. NASD found that, without the knowledge or consent of the customer, Forney deposited the funds in his personal bank account, thereby converting the customer's funds to his own use and benefit. (NASD Case #C3B030011)

Randall Joseph Frey (CRD #3212391, Registered Representative, North Royalton, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. In light of the financial status of Frey, the fine imposed was \$2,500. Without admitting or denying the allegations, Frey consented to the described sanctions and to the entry of findings that he exercised discretion to effect transactions in the accounts of a public customer pursuant to verbal authority without prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Frey's suspension began August 18, 2003, and concluded at the close of business August 29, 2003. (NASD Case #C8B030015)

Herbert Amos Jones, Jr. (CRD #2614626, Registered Principal, Pittsburg, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Jones instructed a public customer to write a \$10,000 check made payable to him to be invested for the sole and exclusive benefit of the customer and, instead, without the customer's knowledge or consent, Jones negotiated the check

and used the funds for his personal benefit or for some purpose other than the benefit of the customer. NASD also found that Jones failed to respond to NASD requests for information. (NASD Case #C01030007)

David Christopher Kane (CRD #4514246, Registered Representative, New Baltimore, Michigan) submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Kane reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kane consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Kane's suspension began August 18, 2003, and will conclude at the close of business February 17, 2004. (NASD Case #C8A030021)

John M. Klukewycz (CRD #2477332, Registered Representative, Forest Hills, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Klukewycz failed to respond to NASD requests for information. (NASD Case #CMS030050)

Maurice Thomas Larrea (CRD #3041830, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Larrea consented to the described sanction and to the entry of findings that he provided to a public customer correspondence in the form of a letter signed by him containing the false and misleading representation that his member firm guaranteed a balance in the amount of \$410,000 in the customer's account. The findings also stated that Larrea failed and neglected to obtain approval of the correspondence from a principal at his member firm when he knew, or should have known, that approval of outgoing correspondence was required pursuant to the rules of NASD. (NASD Case #C05030037)

David Scott Leggett (CRD #1949697, Registered Principal, Louisville, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Leggett reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Leggett consented to the described sanctions and to the entry of findings that he received and accepted securities from public customers to be held in safekeeping. NASD found that Leggett failed to promptly deliver the public customers' securities to his member firm's main office for deposit into the customers' accounts. The finding also stated

that Leggett signed a Securities Pledge Agreement on behalf of his member firm between his customer and a third party, committing his member firm to certain commitments and undertakings. NASD also found that Leggett was not authorized to sign the Securities Pledge Agreement on behalf of his member firm.

Leggett's suspension began August 4, 2003, and will conclude at the close of business August 3, 2005. (NASD Case #C3A030029)

Matthew Nguyen Littauer (CRD #2027330, Registered Principal, Central Hong Kong, China) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Littauer consented to the described sanctions and to the entry of findings that he allowed a member firm to open new customer accounts using his representative number with the firm for public customers whose new accounts were solicited by persons not registered with the firm. The findings also stated that Littauer allowed the firm to use his representative number on transactions for public customers that were solicited by persons not registered with the firm and who provided the firm with instructions for the transactions. NASD also found that the firm did not have written authorization from the customer that was approved by a principal of the firm, authorizing the firm to accept the trade authorization from the unregistered person, and Littauer failed to speak with the customers about the transactions prior to their execution. Furthermore, NASD found that Littauer's actions of allowing the firm to use his registered representative number in this manner caused the firm to create and maintain inaccurate books and records reflecting that Littauer was the registered representative for the customers who solicited the new accounts and transactions.

Littauer's suspension began August 18, 2003, and will conclude at the close of business September 17, 2003. (NASD Case #CAF030037)

Martin Owen McCann, IV (CRD #2455442, Registered Principal, Fresno, California) submitted an Offer of Settlement in which he was fined \$38,841.21, including \$34,841.21 in compensation received by McCann, and suspended from association with any NASD member in any capacity for five months. The fine must be paid before McCann reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McCann consented to the described sanctions and to the entry of findings that he participated in outside business activity without providing prompt written notification to this member firm.

McCann's suspension began August 18, 2003, and will conclude January 17, 2004. (NASD Case #C01030002)

Alexys Ulando McKenzie (CRD #2642827, Registered Principal, Head of Harbour, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000, suspended from association with any NASD member in any capacity for two weeks, and ordered to pay \$78,575.53 in restitution to public customers. Without admitting or denying the allegations, McKenzie consented to the described sanctions and to the entry of findings that he charged excessive commissions and mark-downs on agency or principal transactions in highly liquid securities resulting in \$507,062.50 in commissions and mark-ups. The findings also stated that McKenzie failed to take into account the factors identified in NASD Conduct Rule IM-2440 in determining the fairness of commissions or mark-ups.

McKenzie's suspension began September 2, 2003, and will conclude at the close of business September 15, 2003. (NASD Case #CAF030040)

Kelli O'Brien Milz (CRD #2956890, Registered Principal, Marietta, Georgia) submitted an Offer of Settlement in which she was fined \$20,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Milz reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Milz consented to the described sanctions and to the entry of findings that she aided and abetted unregistered broker/dealer activity by opening new accounts at her member firm for individuals from new account forms provided by a non-registered day-trading firm with Milz as the registered representative on the forms. Once the new accounts had been opened, the customers were able to trade electronically using the software and trading platforms provided by the non-registered firm. The findings also stated that Milz paid, or caused to be paid, transaction-based compensation to the non-registered firm that then made transaction-based payments to other unregistered persons and entities. NASD also found that Milz created a customer account system that allowed an unregistered individual to track commissions due to the non-registered firm. In addition, NASD found that Milz assisted in the preparation of Web sites that promoted unregistered brokerage services.

Milz' suspension began August 18, 2003, and will conclude at the close of business August 17, 2005. (NASD Case #CAF020067)

Charlie J. Montero, Jr. (CRD #1789058, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 30 days. In light of the financial status of Montero, no monetary sanctions were imposed. Without admitting or denying the allegations, Montero consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Montero's suspension began August 18, 2003, and will conclude at the close of business September 16, 2003. (NASD Case #C10030055)

Joseph Michael Mucci (CRD #2566913, Registered Representative, Matawan, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, ordered to disgorge \$6,412.39 in commissions in partial restitution to a public customer, and suspended from association with any NASD member in any capacity for six months. The fine and restitution must be paid before Mucci reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mucci consented to the described sanctions and to the entry of findings that he exercised control over the account of a public customer and effected numerous and excessive securities transactions in this account, using unsuitable levels of margin in a manner that was inconsistent with the customer's investment objectives.

Mucci's suspension began September 2, 2003, and will conclude at the close of business March 1, 2004. (NASD Case #C9B030053)

Aqil Taariq Muhammed (CRD #2379364, Registered Representative, Marietta, Georgia) 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 Muhammed, no monetary sanctions were imposed. Without admitting or denying the allegations, Muhammed consented to the described sanction and to the entry of findings that he opened an investment club at his member firm and solicited public customers to transfer \$258,263.05 from their existing securities accounts at his member firm to the investment club to be pooled for investment. The findings also stated that Muhammed entered into a "limited joint venture agreement" pursuant to which he obligated the club to invest \$350,000 without conducting any investigation to determine the potential risks of the joint venture prior to entering into the agreement and without having an adequate and reasonable basis for believing that the joint venture was suitable for investment prior to entering into the joint venture agreement. NASD also found that Muhammed entered into the agreement and failed to provide prior written notice to, and receive prior written approval from, his member firm to participate in the joint venture.

Muhammed's suspension began September 2, 2003, and will conclude at the close of business December 30, 2003. (NASD Case #C07030035)

Jeffrey Murray Nadel (CRD #1589564, Registered Representative, Norwalk, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, including disgorgement of \$1,900 of commissions, suspended from association with any NASD member in any capacity for six

months, and required to pay \$43,625, plus interest, in restitution to a public customer. The fine and restitution must be paid before Nadel reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Nadel consented to the described sanctions and to the entry of findings that he recommended that a public customer sell certain equity and mutual fund positions in the customer's account and purchase shares of a speculative security that resulted in the customer's account being highly concentrated in that security, thereby causing the account to suffer losses.

Nadel's suspension began September 2, 2003, and will conclude at the close of business March 1, 2004. (NASD Case #C11030027)

Peter Christopher Orthos (CRD #2079337, Registered Principal, Manhasset, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, jointly and severally, and suspended from association with any NASD member as a general securities principal for 15 months. Without admitting or denying the allegations, Orthos consented to the described sanctions and to the entry of findings that a member firm, acting through Orthos, failed to supervise adequately the activities of a former registered representative of the firm who engaged in excessive trading, unsuitable recommendations, and unauthorized transactions in the accounts of public customers.

Orthos' suspension began August 18, 2003, and will conclude at the close of business November 17, 2004. (NASD Case #C10030060)

Anthony A. Phillips (CRD #4501026, Associated Person, Sacramento, 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, Phillips consented to the described sanction and to the entry of findings that he failed to disclose a material fact on his Form U4. The findings also stated that Phillips failed to respond to NASD requests for information. (NASD Case #C01030017)

Robert William Phillips (CRD #2216889, Registered Principal, Spring Valley, 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, Phillips 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 and exercised discretionary power in those accounts without having obtained the customers' written authorization and/or prior written authorization from his member firm to treat the accounts as discretionary. The findings also stated that Phillips recommended and engaged in transactions in the securities 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 situations, investment objectives, and needs. (NASD Case #C02030045)

David Jullian Piusiensi (CRD #4300924, Registered Representative, Cohoes, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Piusiensi consented to the described sanction and to the entry of findings that he misappropriated insurance premiums totaling \$2,320 from public customers. (NASD Case #C11030025)

Patrick Albert Quigley (CRD #2567031, Registered Representative, Tucson, 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, Quigley consented to the described sanction and to the entry of findings that he converted \$4,991 received from a public customer for his own use and benefit without the customer's prior knowledge, authorization, or consent. NASD also found that Quigley settled a customer's complaint by signing a promissory note agreeing to pay the customer \$43,432.30 without informing his member firm. (NASD Case #C3A030030)

Eugene Francis Raia (CRD #1365986, Registered Principal, Montville, 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, Raia consented to the described sanction and to the entry of findings that he appeared before NASD staff for an on-the-record interview and refused to answer any questions. (NASD Case #C9B030047)

Kenneth Mitchell Robinson (CRD #2110219, Associated Person, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Robinson consented to the described sanction and to the entry of findings that he converted approximately \$2,200 in public customer funds to his own use without authorization. (NASD Case #C07030047)

Philip Lawrence Salice (CRD #2928448, Registered Representative, Bayshore, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Salice consented to the described sanction and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #CMS030169)

Ian Jon Scott (CRD #2962358, Registered Representative, Cedarburg, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 31 days, suspended from association with any NASD member as a general securities principal for nine months, and required to requalify by exam as a general securities principal within six months. Without admitting or denying the allegations, Scott consented to the described sanctions and to the entry of findings that he failed to supervise reasonably the activities of employees of his member firm, and failed to establish, maintain, and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with securities laws, regulations, and NASD rules. The findings also stated that Scott failed to reasonably supervise and establish and maintain an adequate supervisory system with regard to investment banking activities, including the public and private offer, sale, and distribution of securities; fair pricing of securities; communications with the public; customer suitability; and penny stock disclosure requirements.

Scott's suspensions began August 1, 2003, and the suspension in any capacity concluded August 31, 2003; the suspension as a general securities principal will conclude at the close of business April 30, 2004. (NASD Case #CMS030165)

Rory James Skifton (CRD #3080208, Registered Representative, La Crosse, Wisconsin) 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, Skifton consented to the described sanction and to the entry of findings that he converted a money order belonging to a public customer to his personal use or for some purpose other than the customer's benefit. (NASD Case #C8A030060)

Gloster Knox Sonia (CRD #1802577, Registered Representative, New Orleans, Louisiana) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sonia failed to respond to NASD requests for information. NASD also found that Sonia participated in private securities transactions without prior written notice to, and approval from, his member firm. (NASD Case #C05030007)

Edward Roosevelt Tiller (CRD #2608325, Registered Representative, Piscataway, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, ordered to pay \$7,500 in partial restitution to a customer, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Tiller consented to the described sanctions and to the entry of findings that he recommended that a customer invest his lump-sum distribution in a variable annuity but did not have reasonable grounds for believing that

the recommendation and resulting transaction were suitable for the customer on the basis of the customer's financial situation, investment objections, and needs.

Tiller's suspension began September 2, 2003, and will conclude at the close of business September 15, 2003. (NASD Case #C9B030052)

Dennis Lee Thompson, II (CRD #1429850, Registered Principal, Lafayette, Louisiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, including \$1,837.79 in disgorgement of commissions earned, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Thompson consented to the described sanctions and to the entry of findings that he recommended and effected the sale of deferred variable annuity contracts to a public customer without having a reasonable basis for believing that the recommendations and sales were suitable for the customer.

Thompson's suspension began September 15, 2003, and will conclude at the close of business September 26, 2003. (NASD Case #C05030039)

Arthur Andrew Toth, III (CRD #2518656, Registered Principal, Pittsburgh, Pennsylvania) was barred from association with any NASD member in any capacity and ordered to pay \$8,455, plus interest, in restitution to public customers. The sanctions were based on findings that Toth solicited and induced public customers to purchase warrants by means of high-pressure sales tactics, material omissions of fact and risk, and baseless and unreasonable price predictions. The findings also stated that Toth failed to disclose to public customers the material, negative information publicly available about the issuers of warrants and the securities. (NASD Case #CAF020023).

Mark Alan Uselton (CRD #2229571, Registered Principal, Edmond, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in the capacity of financial and operations principal for six months, and suspended from association with any NASD member in the capacity of general securities principal for three months. Without admitting or denying the allegations, Uselton consented to the described sanctions and to the entry of findings that, acting on behalf of his member firm, he engaged in a securities business when the firm's net capital was below the required minimum in contravention of SEC Rule 15c3-1. The findings also stated that Uselton, acting on behalf of his member firm, failed and neglected to provide notification that his member firm's net capital was below the required minimum pursuant to SEC Rule 15c3-1. In addition, the findings stated that Uselton, acting on behalf of his member firm, failed and neglected to file an accurate FOCUS Part IIA report and to timely file its annual

audited financial statement report within 60 days. NASD also found that Uselton failed to maintain copies of the firm's general ledger and month-end trial balances.

Uselton's suspensions began August 18, 2003, and his suspension as a general securities principal will conclude at the close of business November 17, 2003; his suspension as a financial and operations principal will conclude at the close of business February 17, 2004. (NASD Case #C05030035)

Anthony Vincent Vitale (CRD #2623131, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Vitale consented to the described sanctions and to the entry of findings that he failed, within 90 seconds after execution, to transmit through ACT last-sale reports of block transactions in an Over-the-Counter (OTC) Equity security. The findings stated that, in connection with the block transactions, Vitale's member firm acted in a principal capacity and he intentionally delayed reporting the block transactions so that he, on behalf of member firm, could effect trades in securities that offset, in whole or in part, the position his member firm held as a result of the respective block transactions. NASD determined that by so delaying the trade reports, Vitale minimized the risk his member firm faced in connection with the block transactions.

Vitale's suspension began August 4, 2003, and concluded at the close of business August 29, 2003. (NASD Case #CMS030178)

Gabe P. Weinert (CRD #4620877, Registered Representative, Grosse Pointe, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, suspended from association with any NASD member in any capacity for six months, and required to re-qualify by exam before associating with any NASD member firm in any capacity. The fine must be paid before Weinert reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Weinert consented to the described sanctions and to the entry of findings that, prior to taking the Series 7 exam, he signed a document that prohibited him from leaving the testing center and from removing any materials from the testing center, and that advised him that any violation of such rules was subject to possible disciplinary action. The findings stated that during the exam, Weinert left the testing center on two occasions and took at least one piece of scratch paper with him.

Weinert's suspension began August 18, 2003, and will conclude at the close of business on February 17, 2004. (NASD Case #C8A030058)

Frank Lenord Wilson, Jr. (CRD #4160225, Registered Representative, Delafield, Wisconsin) was barred from association with any NASD member in any capacity. The sanction was based on findings that Wilson took blank checks from the checkbook of a registered representative of his member firm. The findings also stated that Wilson made the checks, totaling \$4,000, payable to himself, forged the registered representative's signature on the checks, endorsed the checks, and used the funds for his own benefit or for the benefit of someone other than the registered representative. NASD also found that Wilson attempted to misappropriate an additional \$1,855.45 from the registered representative, which was stopped when the representative discovered that the check was missing. In addition, the findings stated that Wilson failed to respond to NASD requests for information. (NASD Case #C8A030010)

Individuals Fined

Christopher Joseph Cox (CRD #2723225, Registered Principal, Baldwin, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Cox consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce special procedures for supervising the telemarketing activities of all of his member firm's registered representatives as required by NASD's Taping Rule. The findings also stated that Cox allowed the registered representatives in the firm's main office and branch offices to have control over the firm's taping system, therefore failing to ensure the tape recording of all telephone conversations between the firm's registered persons and existing and potential public customers. NASD also found that the firm was only taping conversations of three registered representatives and not the remaining six registered representatives. In addition, NASD found that Cox failed to ensure that all tape recordings were retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place, and failed to catalogue all of the retained tapes by registered person and date. (NASD Case #C10030064)

Vladimir Eydelman (CRD #2697580, Registered Representative, Long Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$10,000, and ordered to pay \$23,845.65 in restitution to public customers. Without admitting or denying the allegations, Eydelman consented to the described sanctions and to the entry of findings that he charged excessive commissions and mark-downs on agency or principal transactions in highly liquid securities that resulted in \$102,500 in commissions and mark-downs. The findings also stated that Eydelman failed to take into account the factors identified in NASD Conduct Rule IM-2440 in determining the fairness of mark-ups and mark-downs when establishing the amount of the commission or mark-down. (NASD Case #CAF030041)

Decisions Issued

The following decisions have been issued by the DBCC or the Office or Hearing Officers and have been appealed to or called for review by the NAC as of August 1, 2003. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Brookes McIntosh Bendetsen (CRD #1374304, Registered Principal, Burlingame, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Bendetsen signed the name of a public customer to a margin agreement for the customer's trust account. The findings also stated that Bendetsen recommended to a public customer and effected in the customer's account short sales and purchases of shares of stock and the writing of a series of purchases and sales of option contracts, without having a reasonable basis for believing that the transactions were suitable for the customer based on the facts disclosed by the customer as to other security holdings, financial situation, and needs. NASD also found that Bendetsen created and provided to a public customer false account statements relating to the customer's account at his member firm.

Bendetsen has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C01020025)

Andrew Christopher Knight (CRD #3011465, Registered Representative, Port Chester, New York) was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 business days. The sanctions were based on findings that Knight willfully failed to disclose material information on his Form U4.

This decision has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. (NASD Case #C10020060)

Ronney Arun Sahai (CRD #1551326, Registered Principal, Ridgewood, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sahai forged, or caused to be forged, the signatures of public customers on documents pertaining to investments. The findings also stated that Sahai engaged in unauthorized transactions on behalf of a public customer. In addition, Sahai failed to respond to NASD requests for information.

Sahai has appealed this decision to the NAC, and the sanctions are not in effect pending consideration of the review. (NASD Case #C9B020032)

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.

Raymond Blake Gibson (CRD #3035781, Registered Representative, Raleigh, North Carolina) was named as a respondent in an NASD complaint alleging that he received in excess of \$34,000 from insurance policyholders for premium payments and converted the funds to his own use without authorization. The complaint also alleges that Gibson failed to respond to NASD requests for information. (NASD Case #C07030049)

Mia H. Gilchrist (CRD #2894991, Registered Representative, Mount Laurel, New Jersey) was named as a respondent in an NASD complaint alleging that she submitted to her member firm the purported request of a public customer to change the address of record for the account of the customer, without the customer's authorization. The complaint also alleges that Gilchrist, without the authorization or knowledge of a public customer, caused money market funds in the account of the customer to be liquidated and a check in the amount of \$3,232.04 to be issued and sent to the new address of record for the account. In addition, the complaint alleges that Gilchrist falsified, or caused to be falsified, the purported endorsement of the customer on the check, and caused it to be deposited to the securities account of another customer. The complaint further alleges that Gilchrist failed to respond to NASD requests for information. (NASD Case #C9A030026)

Stratos Hatzikontos (CRD #2599724, Registered Representative, Fresh Meadows, New York) was named as a respondent in an NASD complaint alleging that he recommended public customers invest in a company represented as a bona fide company when, in fact, it was fictitious, and received \$40,000 from the customers for the investment. The complaint also alleges that Hatzikontos misappropriated the funds for his own use and benefit. In addition, the complaint alleges that Hatzikontos prepared, or caused to be prepared, and issued false and fictitious account statements to the public customers that purported to represent the performance of their investment in the fictitious company. Furthermore, the complaint alleges that Hatzikontos failed to respond to NASD requests for information and documentation. (NASD Case #C10030065)

James Paul Hood (CRD #4467331, Registered Representative, Forth Worth, Texas) was named as a respondent in an NASD complaint alleging that he assisted a public customer in opening a new bank account at the parent

company of his member firm and, without the customer's knowledge or consent, issued ATM cards on the customer's account and began making unauthorized withdrawals on the same day the account was opened. The complaint also alleges that Hood authorized automatic bank drafts by several of his creditors to pay his personal expenses and bills. Furthermore, the complaint alleges that Hood caused \$19,380.91 to be withdrawn from the customer's account without the customer's authorization, knowledge, or consent. In addition, the complaint alleges that Hood failed to respond to NASD requests for information. (NASD Case #C06030017)

Kirlin Securities, Inc. (CRD #21210, Syosset, New York), Paul Thomas Garvey (CRD #1214388, Registered Representative, Orinda, California), and Brian Francis McEnery (CRD #2735200, Registered Representative, San Francisco, California) were named as respondents in an NASD complaint alleging that they charged excessive commissions or mark-downs on principal or agency transactions in highly liquid securities. The complaint also alleges that the firm's registered representatives, including Garvey and McEnery, determined the amount to be charged on each of the transactions and knew, or should have known, the relevant factors enumerated in NASD Conduct Rule IM-2440 and should have considered them in determining the fairness of the charges. In addition, the complaint alleges that the charges on the transactions were excessive in light of the type of securities involved, the availability of the securities in the market, the price of the securities, the amount of money involved in the transactions, disclosures to the customer, the pattern of charges, and the nature of the firm's business. Moreover, the complaint alleges that the firm failed to maintain and enforce a supervisory system reasonably designed to achieve compliance with NASD rules relating to charges to customers. Furthermore, the complaint alleges that the firm's written procedures did not include the factors enumerated in Conduct Rule IM-2440, and, one year later, the written procedures reflected the enumerated factors but failed to explain how the factors should be taken into account. (NASD Case #CAF030039)

Legend Merchant Group, Inc., f/k/a IAR Securities Corp. (CRD #5155, New York, New York) and Edward Andrew Sita (CRD #1509735, Registered Principal, Staten Island, New York) were named as respondents in an NASD complaint alleging that the firm, acting through Sita, in connection with an inducement or an attempt to induce the purchase or sale of a security or with the offer, sale, and purchase of a security, and through means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly employed a device, scheme, contrivance, and artifice to defraud and manipulative, deceptive, or other fraudulent device or contrivance; 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 operate as a fraud or deceit upon investors, or prospective investors, of a private placement. The complaint also

alleges that the firm, acting through Sita, made a material misrepresentation in a private placement memorandum (PPM) that stated that the firm had no material restriction and/or limitations on its ability to participate in private placements when, in fact, NASD did not permit the firm to participate in private placement offerings until a later date when NASD approved the firm's request for a modification of its membership agreement. In addition, the complaint alleges that the firm, acting through Sita, failed to disclose material facts in the PPM or in the PPM Supplement and knew, or should have known, that omissions in the PPM and the PPM Supplement were material. Furthermore, the complaint alleges that the firm, acting through Sita, participated in a private offering even though the firm's membership agreement did not permit the firm to engage in such activities. **(NASD Case #C10030058)**

Chris Michael Manettas (CRD #2274927, Registered Representative, East Quogue, New York) was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, transactions in the accounts of public customers that were excessive in frequency in view of the customers' financial circumstances and investment needs. The complaint also alleges that Manettas engaged in this trading activity without reasonable grounds for believing that the level of activity was suitable for the customers based upon the customers' financial situation and investment needs. In addition, the complaint alleges that Manettas purchased large numbers of shares of speculative technology securities on margin in the accounts of public customers that were incompatible with the customers' financial situation. Moreover, the complaint alleges that Manettas effected, or caused to be effected, sales in the accounts of public customers without their knowledge, authorization, or consent. Furthermore, the complaint alleges that Manettas exercised discretion in the accounts of public customers without the prior written authorization of the customers or the prior written acceptance of the account as discretionary by his member firm. **(NASD Case #C10030059)**

Matityahu Meshizahav (CRD #2834481, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he withdrew \$20,500 from the account of a public customer and converted the funds to his own use and benefit without the customer's authorization. The complaint also alleges that Meshizahav failed to respond to NASD requests for a written statement, documentation, and information. **(NASD Case #C10030063)**

Michael Bernard O'Hare (CRD #2522972, Registered Representative, Bridgewater, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended and effected purchase and sale transactions in the account of a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size, frequency, and concentration of the speculative securities; the nature of the recommended transactions; and the customer's financial situation, investment objectives, circumstances, and needs. **(NASD Case #C9B030045)**

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

National Capital, LLC
Oklahoma City, Oklahoma
(July 21, 2003)

Firm Expelled for Failure to File Annual Audit Reports Pursuant to NASD Rule 9544

Werbel-Roth Securities, Inc.
Boca Raton, Florida
(July 15, 2003)

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.

Fuerst Securities Corporation
Grand Junction, Colorado
(June 23, 2003)

Suspension Lifted

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

Oakdale Financial Group LLC
New York, New York
(June 24, 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.)

Fearn, Kevin M.
Delaware, Ohio
(July 30, 2003)

Yen, Don Joe
Dallas, Texas
(July 29, 2003)

Marsh, Jr., Willie T.
Buffalo, New York
(July 14, 2003)

Young, Ernest
Chicago, Illinois
(July 16, 2003)

Shain, Russell
Brooklyn, New York
(July 28, 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.)

Berkman, Jay
Weston, Connecticut
(July 14, 2003)

Hafen, Roy
Las Vegas, Nevada
(June 12, 2003)

Coulter, Conrad L.
Newport Beach, California
(July 10, 2003)

Reardon, Michael D.
Jasper, Georgia
(July 14, 2003)

Daly, Paul M.
Highland Beach, Florida
(July 29, 2003)

Smith, Jr., James L.
Jackson, Tennessee
(July 23, 2003)

Emslie, Patrick
Tucson, Arizona
(July 23, 2003)

Sullivan, Frank
Patchogue, New York
(July 2, 2003)

Fischer, Francois
Valley Stream, New York
(July 25, 2003)

Szilagyi, Melissa M.
Brookfield, Illinois
(July 1, 2003)

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

Garceran, Carlos Antonio
Mendham, New Jersey
(June 27, 2003)

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

Avery, Leroy
West Allis, Wisconsin
(July 21, 2003)

Perez, Raul D.
Hollywood, Florida
(July 21, 2003)

Bialecki, Jay A.
Sunbury, Ohio
(July 21, 2003)

Richardson, Jeffrey A.
Columbus, Ohio
(July 21, 2003)

Donnerstag, Harold P.
Matawan, New Jersey
(July 9, 2003)

Stein, Jack H.
W. Palm Beach, Florida
(July 21, 2003)

Gallagher, William J.
Glendale, California
(July 21, 2003)

Worrell, Kevin D.
Queens Village, New York
(July 9, 2003)

Kao, Coleman
Pasadena, California
(July 21, 2003)

NASD Files Enforcement Actions Involving Unsuitable Sales of Mutual Funds

NASD has announced five new enforcement actions as part of its ongoing focus on the sale of Class B mutual fund shares. Four of these cases are settlements in which the individuals agreed to suspensions from the securities industry for up to nine months, and fines totaling almost \$120,000. The fifth action is a complaint where the broker is contesting the charges.

In each of the settled cases, the brokers violated NASD's suitability rule by recommending their customers purchase of B share mutual funds instead of A shares. The purchase of A shares would have eliminated or reduced front-end sales charges through breakpoint discounts available at various dollar amounts; resulted lower ongoing expenses than those available through B shares; and would have avoided the contingent deferred sales charges associated with B shares. The differences between A and B share mutual funds are explained more fully in an Investor Alert recently published by NASD: Investor Alert - Class B Mutual Fund Shares: Do They Make the Grade?

"In recommending mutual funds with different classes to investors, the broker must put his customer first. It is critical that a broker consider the costs of A shares versus B shares for the customer, and not the profit for the broker," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "NASD will continue to bring sales practice cases such as these when investors are sold mutual fund products that are unsuitable."

The cases announced today are:

- ◆ **Qimat R. Goyal, associated with Marsco Investment Corp., of Roseland, NJ,** was fined \$48,346 and suspended for nine months for unsuitable mutual fund B share recommendations to five customers. Goyal's suspension began August 18, 2003, and will conclude at the close of business May 17, 2004. (NASD Case #C9B030046)
- ◆ **Keith Korch, associated with Tucker Anthony, Inc.'s Sturbridge, MA office,** was fined \$60,000 and suspended for 30 days for recommending the purchase of \$3.5 million of mutual fund B shares to a customer. Given the dollar amount invested, the investor would have been able to purchase the A shares without any up-front sales charge. Korch's suspension began July 21, 2003, and concluded at the close of business August 19, 2003. (NASD Case #C11030022)

- ◆ **James Wheeler and James Wheeler & Co., Inc., of Denver, CO:** a fine of \$8,600 to be paid by the firm, a suspension of Wheeler for 10 business days and various remedial undertakings, including a requirement that before recommending B shares in the future the firm prepare and give to the customer an analysis of the relative costs of the two classes. The respondents recommended unsuitable purchases of B shares in 20 funds from 15 fund families to a customer who should have purchased A shares. Wheeler's suspension began August 18, 2003, and concluded at the close of business August 29, 2003. (NASD Case #C3A030033)
- ◆ **Robert Barmen, associated with UBS Financial Services, Inc.'s Pittsburgh, PA office,** was fined \$2,500 and suspended for 10 business days for unsuitable mutual fund B share recommendations to a customer. Barmen's suspension began September 2, 2003, and will conclude at the close of business September 15, 2003. (NASD Case #C9A030025)
- ◆ **Paul Pallo, a registered representative with Staten Securities of Staten Island, NY,** was charged in a complaint with selling mutual fund B shares to two customers when Class A shares would have been more suitable. (NASD Case #C9B030051)

Under NASD rules, an individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, order to pay restitution, censure, suspension, or bar from the securities industry.

NASD Charges Louisiana Broker With Unsuitable Sales of Variable Annuities and Mutual Funds of More Than \$6 Million

NASD has charged John Steven Blount of Lake Charles, LA, with unsuitable sales of variable annuities and mutual funds to 11 customers totaling over \$6 million. These unsuitable sales generated almost \$220,000 in commissions. Blount's conduct involved a scheme to defraud investors and to frustrate attempts by his employer to supervise his activities. The transactions took place between 1998 and 2001, while Blount was a registered representative of NY Life Securities, Inc.

Blount's customers were older, conservative investors who were generally seeking current income from their investments. NASD's complaint charges that Blount's investment recommendations exposed his customers to excessive market risk, lacked sufficient liquidity, and failed to address the customers' needs for current income.

In one instance, the customer was a 62-year-old retiree who wished to keep his principal investment safe, and had told Blount that he anticipated the need within a few months for \$50,000 to buy a car and to make home repairs. Despite the customer's near-term need for liquidity, Blount recommended that the customer invest almost all of his liquid assets in a variable annuity contract that imposed surrender charges for early withdrawals during the first six years of the contract. Furthermore, Blount recommended allocating the investment to high-risk sub-accounts that were not consistent with the customer's desire to keep his principal safe. In order to buy a car and make home repairs, the customer was forced to draw on his home equity and subsequently had to take early withdrawals from his variable annuity to make the resulting loan payments.

The complaint also charges that Blount misrepresented material features of the variable annuities in order to induce customers to purchase the products. Additionally, in an effort to circumvent his firm's review of annuity and mutual fund transactions, Blount directed his sales assistant to falsify firm records regarding customers' financial situations and investment objectives.

"Our continuing examination focus on variable annuity sales and today's enforcement action should leave no doubt about our continuing serious concerns over how these products are sold," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "Brokers selling these complex products must be especially mindful of investors' risk tolerance and liquidity needs when recommending them as investments."

This case was brought in connection with an ongoing series of NASD special examinations and investigations that have focused on the sale of variable annuity products, and have resulted in over 75 annuity-related disciplinary actions taken by NASD since the beginning of 2001. As part of its overall focus on the sales of variable annuity contracts, NASD has issued educational alerts to both investors and firms to help ensure that these products are properly sold, which can be found at:

www.nasdr.com/alert_exchange_lifeinsurance.htm

www.nasdr.com/pdf-text/9935ntm.pdf and,

www.nasdr.com/pdf-text/0044ntm.pdf.

Under NASD rules, an individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, order to pay restitution, censure, suspension, or bar from the securities industry.