

APRIL 2004

Notices to Members

Notices

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Notice to Members

APRIL 2004

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Senior Management

KEY TOPICS

NASD By-Laws

ACTION REQUIRED

Mail Vote

NASD Solicits Member Vote on Amendments to NASD By-Laws to Reconfigure NASD Board; **Last Voting Date: May 6, 2004**

Executive Summary

NASD invites members to vote to approve amendments to the NASD By-Laws that will: eliminate two seats on the NASD Board of Governors (NASD Board) that are currently reserved for representatives of the American Stock Exchange (Amex); eliminate the required inclusion of an Amex-affiliated Governor on the Executive Committee of the NASD Board; eliminate references to Amex from the definitional and conflict-of-interest provisions of the NASD By-Laws; and make certain clarifying amendments. The last voting date is May 6, 2004. The text of the proposed amendments follows this Notice.

Questions/Further Information

Questions concerning this *Notice* may be directed to T. Grant Callery, Executive Vice President and General Counsel, at (202) 728-8285; or Anne H. Wright, Associate Vice President and Associate General Counsel, at (202) 728-8815.

Background

On February 26, 2004, the NASD Board approved an agreement under which NASD will transfer its interest in Amex to the exchange's membership. The agreement was subsequently approved by the Amex Board of Governors and the Amex membership. The disposition of Amex represents an important step in achieving NASD's strategic goal of eliminating ownership interests in markets in order to focus on its core mission as a private-sector regulator.

04-27

The proposed amendments will reverse a number of By-Law provisions that were added in 1998, when NASD acquired Amex. The proposed changes are discussed briefly below, and the text of the proposed changes is attached as Exhibit A. In Exhibit A, proposed new language is underlined; proposed deletions are shown as struck-through text. The amendments will become effective upon the closing of the transaction.

Amendments to the NASD By-Laws

Article I (Definitions)

The amendments will eliminate references to both Amex and The Nasdaq Stock Market, Inc. (NASDAQ) from the definitions of "Industry Director," "Industry Governor," "Non-Industry Director," "Non-Industry Governor," "Public Director," and "Public Governor."

Instead of the current references to NASDAQ and Amex, these definitions will refer to "a market regulated by NASD." For example, the definition of "Industry Governor" currently includes persons with a consulting or employment relationship with NASD, NASD Regulation, NASD Dispute Resolution, NASDAQ, or Amex. Under the proposed amendments, the "Industry Governor" definition will include persons with a consulting or employment relationship with "any market regulated by NASD," a term that embraces a market NASD regulates by virtue of an ownership interest (e.g., NASDAQ), and any market with which NASD has entered a contract to provide regulatory services.

In addition, clarifying amendments are proposed for the definitions of "Non-Industry Director" and "Non-Industry Governor," which currently include an officer or employee of an issuer of securities "traded in the over-the-counter market." Since both listed and unlisted securities may be traded in the over-the-counter market, this provision has been amended to clarify that the terms "Non-Industry Director" and "Non-Industry Governor" include an officer or employee of "an issuer of unlisted securities that are traded in the over-the-counter market."

Finally, the definitions of "Floor Governor," "Amex," and "Amex Board" have been eliminated.

Article VII (Board of Governors)

The proposed amendments will eliminate two seats on the NASD Board that have been reserved for the Chief Executive Officer of Amex and an Amex Floor Governor. The elimination of these seats will permit NASD to reduce the overall size of the Board. The current authorized size of the Board is between 17 and 27 members. With the elimination of the Amex seats, the authorized size of the Board will be reduced to between 15 and 25.

Under Delaware law, the NASD Board determines how many of the authorized seats should be filled. Because smaller boards tend to function more efficiently than larger boards, the NASD Board has repeatedly stated a preference against filling all authorized seats if the other compositional requirements set forth in the By-Laws can be met without the maximum permissible number of Governors.

The proposed amendments will eliminate from Section 5 of Article VII the provision that sets the maximum permissible term of the Amex Floor Governor.

Article IX (Committees)

Article IX establishes the NASD Executive Committee, which is authorized to act on behalf of the NASD Board between meetings of the NASD Board. Currently, the committee must include six to nine members, at least one of whom must be an Amex representative, but at least two of whom may not be members of the Boards of either NASD Regulation or the Amex.

The proposed amendments will reduce the authorized size range of the committee by one, eliminate the requirement that an Amex representative be included on the committee, and eliminate the requirement that at least two members of the committee be members of neither the Amex nor NASD Regulation Boards.

Article XV (Limitation of Powers)

Subsection 4(b) of Article XV governs participation in contracts or transactions in which a Governor has a conflict of interest. However, the subsection currently does not apply to contracts or transactions between NASD, and NASD Regulation, NASDAQ, NASD Dispute Resolution, or Amex. The proposed amendments will eliminate Amex from this exemptive provision.

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**BY-LAWS OF THE NATIONAL ASSOCIATION OF
SECURITIES DEALERS, INC.**

ARTICLE I

DEFINITIONS

When used in these By-Laws, unless the context otherwise requires, the term:

* * *

(n) "Industry Director" means a Director of the NASD Regulation Board or NASD Dispute Resolution Board (excluding the Presidents) who: (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Director or 20 percent or more of the gross revenues received by the Director's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, NASD Dispute Resolution, ~~Nasdaq, or Amex (and any predecessor)~~ a market regulated by NASD, - or has had any such relationship or provided any such services at any time within the prior three years;

(o) "Industry Governor" or "Industry committee member" means a Governor (excluding the Chief Executive Officer of the NASD and the President of NASD Regulation) or committee member who: (1) is or has served in the prior three years as an officer, director or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the Governor or committee member or 20 percent or more of the gross revenues received by the Governor's or committee member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, NASD Dispute Resolution, ~~Nasdaq or Amex (and any predecessor)~~, or a market regulated by NASD, or has had any such relationship or provided any such services at any time within the prior three years;

* * *

(bb) "Non-Industry Director" means a Director of the NASD Regulation Board or NASD Dispute Resolution Board (excluding the Presidents of NASD Regulation and NASD Dispute Resolution) who is: (1) a Public Director; (2) an officer or employee of an issuer of securities listed on ~~Nasdaq or Amex~~, or a market regulated by NASD; (3) an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market; or (34) any other individual who would not be an Industry Director;

(cc) “Non-Industry Governor” or “Non-Industry committee member” means a Governor (excluding the Chief Executive Officer and any other officer of the NASD, the President of NASD Regulation), ~~any Floor Governor, and the Chief Executive Officer of Amex~~ or committee member who is: (1) a Public Governor or committee member; (2) an officer or employee of an issuer of securities listed on ~~Nasdaq or Amex~~, or a market regulated by NASD; (3) an officer or employee of an issuer of unlisted securities that are traded in the over-the-counter market; or (34) any other individual who would not be an Industry Governor or committee member;

* * *

(ee) “Public Director” means a Director of the NASD Regulation Board or NASD Dispute Resolution Board who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, NASD Dispute Resolution, or ~~Nasdaq~~ a market regulated by NASD;

(ff) “Public Governor” or “Public committee member” means a Governor or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, NASD Dispute Resolution, or ~~Nasdaq~~ a market regulated by NASD;

* * *

~~(ii) “Floor Governor” or “Amex Floor Governor” means a Floor Governor of Amex elected pursuant to Article II, Section .01(a) of the Amex By Laws;~~

~~(jj) “Amex” means American Stock Exchange LLC; and~~

~~(kk) “Amex Board” means the Board of Governors of Amex.~~

* * *

ARTICLE VII

BOARD OF GOVERNORS

* * *

Composition and Qualifications of the Board

Sec. 4. (a) The Board shall consist of no fewer than 17~~5~~ nor more than 27~~5~~ Governors, comprising (i) the Chief Executive Officer of the NASD, (ii) if the Board of Governors determines, from time to time, in its sole discretion, that the appointment of a second officer of the NASD to the Board of Governors is advisable, a second officer of the NASD, (iii) the President of NASD Regulation, (iv) the Chair of the National Adjudicatory Council, ~~(v) the Chief Executive Officer and one Floor Governor of Amex,~~ and (vi) no fewer than 12 and no more than 22 Governors elected by the members of the NASD. The Governors elected by the members of the NASD shall include a representative of an issuer of investment company shares or an affiliate of such an issuer, a representative of an insurance company, a representative of a national retail firm, a representative of a regional retail or independent financial planning member firm, a representative of a firm that provides clearing services to other NASD members, and a representative of an NASD member having not more than 150 registered persons. The number of Non-Industry Governors shall exceed the number of Industry Governors. If the number of Industry and Non-Industry Governors is ~~15 to 17~~13-15, the Board shall include at least four Public Governors. If the number of Industry and Non-Industry Governors is ~~18 to 19~~16-17, the Board shall include at least five Public Governors. If the number of Industry and Non-Industry Governors is ~~20 to 25~~18-23, the Board shall include at least six Public Governors.

* * *

Term of Office of Governors

Sec. 5. (a) The Chief Executive Officer and, if appointed, the second officer of the NASD, and the President of NASD Regulation, ~~and the Chief Executive Officer of Amex~~ shall serve as Governors until a successor is elected, or until death, resignation, or removal (or, in addition, in the case of a second officer of the NASD, until the Board of Governors, in its sole discretion, determines that such appointment is no longer advisable).

(b) The Chair of the National Adjudicatory Council shall serve as a Governor for a term of one year, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Chair of the National Adjudicatory Council may not serve more than two consecutive one-year terms as a Governor, unless a Chair of the National Adjudicatory Council is appointed to fill a term of less than one year for such office. In such case, the Chair of the National Adjudicatory Council may serve an initial term as a Governor and up to two consecutive one-year terms as a Governor following the expiration of such initial term. After serving as a Chair of the National Adjudicatory Council, an individual may serve as a Governor elected by the members of the NASD.

~~(c) The Amex Floor Governor shall serve as a Governor for a term of two years, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. An Amex Floor Governor may not serve more than three consecutive two-year terms as a Governor, unless such Amex Floor Governor is appointed to fill a term of less than one year for such office. In such case, the Amex Floor Governor may serve that initial term as a Governor and up to three consecutive two-year terms as a Governor following the expiration of the initial term.~~

(c~~d~~) The Governors elected by the members of the NASD shall be divided into three classes and hold office for a term of no more than three years, such term to be fixed by the Board at the time of the nomination or certification of each such Governor, or until a successor is duly elected and qualified, or until death, resignation, disqualification, or removal. A Governor elected by the members of the NASD may not serve more than two consecutive terms. If a Governor is elected by the Board to fill a term of less than one year, the Governor may serve up to two

consecutive terms following the expiration of the Governor's initial term. The term of office of Governors of the first class shall expire at the January 1999 Board meeting, of the second class one year thereafter, and of the third class two years thereafter. At each annual election, commencing January 1999, Governors shall be elected for a term of three years to replace those whose terms expire.

* * *

ARTICLE IX COMMITTEES

* * *

Executive Committee

Sec. 4. (a) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by the General Corporation Law of the State of Delaware and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of the NASD between meetings of the Board, and which may authorize the seal of the NASD to be affixed to all papers that may require it.

(b) The Executive Committee shall consist of no fewer than ~~six~~ five and no more than ~~nine~~ eight Governors. The Executive Committee shall include the Chief Executive Officer of the NASD, and at least one Director of NASD Regulation, ~~at least one Governor of Amex, and at least two Governors who are not members of either the NASD Regulation Board, or the Amex Board.~~ The Executive Committee shall have a percentage of Non-Industry committee members at least as great as the percentage of Non-Industry Governors on the whole Board and a percentage of Public committee members at least as great as the percentage of Public Governors on the whole Board.

(c) An Executive Committee member shall hold office for a term of one year.

(d) At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including not less than 50 percent of the Non-Industry committee members. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

* * *

ARTICLE XV

LIMITATION OF POWERS

* * *

Conflicts of Interest

Sec. 4. (a) A Governor or a member of a committee shall not directly or indirectly participate in any adjudication of the interests of any party if such Governor or committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Governor or committee member shall recuse himself or herself or shall be disqualified in accordance with the Rules of the Association.

(b) No contract or transaction between the NASD and one or more of its Governors or officers, or between the NASD and any other corporation, partnership, association, or other organization in which one or more of its Governors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Governor's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative vote of a majority of the disinterested

Governors, even though the disinterested governors be less than a quorum; or (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Governors even though the disinterested governors be less than a quorum. Only disinterested Governors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to any contract or transaction between the NASD and NASD Regulation, Nasdaq, or NASD Dispute Resolution, ~~or Amex.~~

* * *

Notice to Members

APRIL 2004

SUGGESTED ROUTING

Legal & Compliance
Operations
Senior Management

KEY TOPICS

Quotations
Rule 4613A(e)(1)

GUIDANCE

Quotation Obligations

SEC Approves Amendments to Repeal Rule 4613A(e)(1) Requiring Same-Priced Quotations on Multiple Markets; **Effective Date: March 12, 2004**

Executive Summary

On March 12, 2004, the Securities and Exchange Commission (SEC) approved amendments to repeal Rule 4613A(e)(1), which requires members that display priced quotations for a Nasdaq Stock Market, Inc. (NASDAQ) security on multiple market centers to display the same-priced quotations on each market center.¹ Rule 4613A, as amended, is set forth in Attachment A. The amendments are effective as of March 12, 2004.

Questions/Further Information

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

Background and Discussion

As originally adopted, Rule 4613A(e)(1) required members that display priced quotations for a NASDAQ security in two or more market centers to display the same priced quotations for that security in each market center. Pursuant to the Rule, members that chose to quote in multiple market centers were not permitted to display an inferior quote in any of those market centers. Rule 4613A(e)(1) was proposed as part of the Alternative Display Facility (ADF) pilot rules² because NASD believed it important to prevent fragmentation of quotations by a member (which might serve to

undermine the transparency of the best quotes in the market), given the increased potential that members might choose to dual quote on several market centers, including ADF. The provision was modeled closely after Rule 2320(g)(2), which applies to over-the-counter (OTC) securities, such as those securities quoted through the OTC Bulletin Board and the Electronic Pink Sheets.

Since its adoption, NASD has monitored the impact of Rule 4613A(e)(1) and concluded that the benefits of the same-priced quotation requirement to the trading in NASDAQ securities have been difficult to quantify. As an initial matter, the SEC's Vendor Display Rule (Rule 11Ac1-2 under the Exchange Act) generally requires that vendors provide a consolidated display of quotation information for NASDAQ securities from all reporting market centers. As such, the Vendor Display Rule ensures that quotations in NASDAQ securities from each market center are visible, thereby facilitating transparency in the market and best execution. A similar provision, however, does not apply to the OTC market, making it more important to require that members display the same priced quotation in multiple markets to promote transparency in that marketplace.

Further, Rule 4613A(e)(1) resulted in problems given recent market structure developments. For example, a member may have several completely distinct business units, such as a market making unit and an electronic communications network (ECN), which are used by different types of clients and, therefore, represent separate pools of liquidity. A member may choose to display quotations relating to its market making unit on NASDAQ and its ECN on ADF. Under such circumstances, compliance with Rule 4613A(e)(1) would, in effect, require the member to consolidate these distinct business units for purposes of displaying quotations on each market, which would be contrary to the business model of the firm since these quotes represent separate liquidity pools. As an alternative, the member could establish separate broker-dealers for each business unit, which NASD believes is overly burdensome for members given the marginal benefits associated with Rule 4613A(e)(1).

For the reasons discussed above, NASD has repealed Rule 4613A(e)(1). However, NASD will continue, as it currently does today, to monitor and surveil for any potentially collusive or manipulative conduct relating to quotation activity on markets under its regulatory authority.

Endnotes

- 1 See Securities Exchange Act Release No. 49413 (March 12, 2004), 69 Fed. Reg. 12882 (March 18, 2004) (File No. SR-NASD-2003-175) (SEC Approval Order).
- 2 Exchange Act Release No. 46249 (July 24, 2002), 67 Fed. Reg. 49822 (July 31, 2002). Subsequent to the initial approval of the ADF rules, the Commission approved an initial extension of the pilot until January 26, 2004, and a subsequent extension of the pilot until October 26, 2004. Exchange Act Release No. 47633 (April 10, 2003), 68 Fed. Reg. 19043 (April 17, 2003); Exchange Act Release 49131 (January 27, 2004), 69 Fed. Reg. 5229 (February 3, 2004).

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Notice to Members

APRIL 12, 2004

INFORMATIONAL

SUGGESTED ROUTING

Legal and Compliance
Operations
Registration
Senior Management

KEY TOPICS

District Elections

District Elections

NASD Informs Members of Upcoming District Committee and District Nominating Committee Elections

Executive Summary

In early June, NASD will issue a formal *Notice to Members* soliciting candidates and explaining the process for nominating individuals to serve on both the District Committees and the District Nominating Committees.

In this election, each District Committee will have three vacancies to fill, with the exception of District 10, which will have four. The term of office for District Committee members is three years. Each District Nominating Committee will have five vacancies to fill for a one-year term.

The purpose of this *Notice* is to inform members of the upcoming vacancies in NASD's District Committees and District Nominating Committees so that they may begin to think of candidates. Individuals from member firms of all sizes and segments of the industry are encouraged to submit candidates for consideration for membership on NASD's District Committees and District Nominating Committees.

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To serve as a member of a District Committee or District Nominating Committee, an individual must: (1) be employed by an NASD member eligible to vote in the District for District Committee elections; and (2) work primarily from such NASD member's principal office or a branch office that is located within the District where the individual will serve on a Committee. NASD believes this will ensure that local interests are represented on Committees. Also, please note that individuals who have served two consecutive terms are no longer eligible to be re-elected; however, NASD encourages current and former committee members to assist NASD by soliciting candidates for both committees.

Updated Contact Information

Members are reminded of the importance of accurately maintaining with NASD their Executive Representative name, e-mail, and postal address information, as well as their firm's main postal address.¹ This will ensure that member mailings, such as this District election information, will be properly directed. Failure to keep this information accurate may jeopardize the member's ability to participate in District elections as well as other member votes. To update their Executive Representative name, e-mail, and postal addresses, firms should access the NASD Contact System (formerly known as the NASD Member Firm Contact Questionnaire or NMFCQ) located on NASD's Web Site at www.nasdr.com/ncs.asp.

Members are also reminded to maintain the mailing addresses for their firm on record in the Web CRD[®] system. To update your firm's mailing addresses in Web CRD you must file a Form BD Amendment via Web CRD. For assistance in accessing the NASD Contact System or Web CRD, you may contact our Call Center at (301) 590-6500.

Questions/Further Information

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

Endnote

¹ See also *Notice to Members 04-32* (SEC Approves Amendments to Require Quarterly Review and Update of Executive Representative Contact Information).

Notice to Members

APRIL 2004

SUGGESTED ROUTING

Advertising/Investment Companies
Debt Securities
Executive Representatives
Legal & Compliance
Mutual Funds
Registered Representatives
Senior Management
Training

KEY TOPICS

Debt Securities
Municipal Securities
Mutual Funds
Sales Practice Obligations

GUIDANCE

Sales Practice Obligations

NASD Reminds Firms of Sales Practice Obligations
In Sale of Bonds and Bond Funds

Executive Summary

As the number of retail customers investing in bonds and bond funds grows, NASD is concerned that many investors may not fully appreciate the risks and costs associated with such products.¹ It is the responsibility of firms to take appropriate steps to ensure that their registered representatives understand and inform their customers about the risks as well as the rewards of the products they offer and recommend. The purpose of this *Notice* is to remind firms that sell bonds and bond funds of their sales practice obligations in connection with such products.

Questions/Further Information

Questions or comments concerning this *Notice* may be directed to Sharon Zackula, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight (RPO), at (202) 728-8985; or Laura Gansler, Assistant General Counsel, Office of General Counsel, RPO, at (202) 728-8275.

04-30

Discussion

The number of individual investors purchasing bonds or bond funds has increased dramatically in recent years. Bonds and bond funds may be viewed—and in some cases, marketed—as low-risk, or sometimes even as risk-free alternatives to equity securities. Purchasers of bonds and bond funds often believe that their principal is safe, they are guaranteed a particular yield on their investment, and bonds are inexpensive to purchase because they do not pay a commission or other acquisition cost on the transaction.

While bonds and bond funds can play an important role in stabilizing diversified portfolios, neither product is entirely risk-free. Moreover, their terms, conditions, risks, and rewards vary widely, and in some cases, such as high-yield bonds, the risks may be substantial. NASD is concerned that some investors may not understand the risks and costs associated with bonds and bond funds. For example, a recent study by NASD indicates that 60 percent of investors do not understand that, as interest rates rise, existing bond prices fall, and that long-term bonds are more exposed to interest rate risk than short-term bonds (see “NASD Investor Literacy Research” at www.nasd.com/Investor/pdf-text/surveyexecsum.pdf). Therefore, when interest rates rise, investors who decide to sell their bond fund may not receive their full investment. In the same environment, investors who decide to sell bonds prior to a call or the maturity date also may not receive the full amount of their principal invested. Because interest rate risk is universal, it is in some ways more problematic for investors than the risk of default, at least with respect to investment grade bonds.

It is the responsibility of firms to take appropriate steps to ensure that their associated persons understand and inform their customers about the risks as well as the rewards of the products they recommend and offer. Given that interest rates are likely to rise from their current and historically low rate, NASD believes that it is imperative that investors understand the various risks, as well as the rewards, associated with debt securities. The purpose of this *Notice*, therefore, is to remind firms of their sales practice obligations in connection with bonds and bond funds. The obligations include:

- ◆ Understanding the terms, conditions, risks, and rewards of bonds and bond funds they sell (performing a reasonable-basis suitability analysis);
- ◆ Making certain that a particular bond or bond fund is appropriate for a particular customer before recommending it to that customer (performing a customer-specific suitability analysis);²
- ◆ Providing a balanced disclosure of the risks, costs, and rewards associated with a particular bond or bond fund, especially when selling to retail investors;

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- ▶ Adequately training and supervising employees who sell bonds and bond funds; and
 - ▶ Implementing adequate supervisory controls to reasonably ensure compliance with NASD and SEC sales practice rules in connection with bonds and bond funds.

The first step in meeting a firm's sales practice obligations with respect to a bond or bond fund is to ensure that the product being offered is reasonably suitable for investment in general. To make this determination, firms must carefully review and understand the terms and conditions of the product being offered. With individual bonds, for example, the firm must understand the type, term, and yield of the bond; when and if periodic interest payments will be made; if applicable, the conditions under which the issuer may call the bond or the holder may redeem the bond; the credit-worthiness of the issuer; the collateral securing the bond, if any; the costs of the transaction; and any other important features as described in the prospectus. For bond funds, it means, among other things, understanding what type of bonds the fund will purchase; the general terms, conditions, and risks of such bonds; and the costs and fees associated with purchasing and selling shares in the fund. And, in both cases, firms should also understand the tax consequences of the product.

Secondly, firms must ensure that the bonds and bond funds they recommend are suitable for the customer to whom they recommend them. To ensure that a particular investment is suitable for a specific customer, firms and their registered persons must examine a variety of factors, including the customer's financial status, the customer's tax status, the customer's investment objectives, and any other information that the firm uses or considers reasonable to use in making recommendations to that customer.³ NASD cautions firms against relying too heavily upon a customer's financial status as the basis for recommending particularly risky bonds or bond funds. A customer's net worth alone is not necessarily determinative of whether a particular product is suitable for that investor. Certain high-yield, high-risk products may be suitable for recommending to only a very narrow band of investors capable of evaluating and being financially able to bear those risks.

Thirdly, firms offering bonds and bond funds should take care to present a fair and balanced picture of the risks, costs, and benefits of investing in these products. For example, in the case of individual bonds, customers should be advised as to the credit risk, or risk of default, associated with a particular issuer, and how that risk might affect the safety of the invested principal. Customers should also be advised as to the interest rate risk, or the risk that changes in interest rates during the term of the bond might affect the market value of the bond prior to the call or maturity date. And customers should understand that these investments engender inflation risk; this is the risk that the rate of the yield to call or maturity of the investment will not provide a positive

return over the rate of inflation for the period of the investment. For example, if the rate of inflation for the period of an investment is 6 percent and the yield to maturity of a fixed income investment is 4 percent, then, although more dollars are returned to the investor in interest and principal than were invested, the value of those aggregate dollars returned is actually less than the amount originally invested. While this can be true of any investment, investors may believe that the interest rate paid on a bond or bond fund may guard against this effect in a manner superior to an investment in equity securities, which is not necessarily the case. Finally, customers should understand that when a firm buys or sells a bond, the customer is charged for the service, in the form of either a commission, or a mark-up or mark-down.⁴

In the case of bond funds, customers should be aware that return of principal is not guaranteed because of the fluctuation in the net asset value of the fund that is occasioned by changes in the price of specific bonds held in the fund and the buying and selling of bonds within the fund by its investment adviser. In addition, investors should understand that, as with direct bond ownership, bond funds have the same interest rate, inflation, and credit risks that are associated with the underlying bonds owned by the fund. Bond fund purchasers should also understand that, in contrast to owning individual bonds, there are ongoing fees and expenses associated with owning shares of bonds funds.

Firms offering bonds and bond funds should provide investors with any prospectus and other disclosure material provided by the issuer or the sponsor. However, NASD reminds firms that simply providing a prospectus does not cure unfair or unbalanced sales or promotional materials, whether prepared by the firm or the issuer.⁵

Firms should also take steps to provide appropriate training to, and supervision of, employees who sell bonds and bond funds about the characteristics, risks, and rewards of each product before they allow employees to sell that product to investors. Firms should also train employees who sell such products about the factors that would make such products either suitable or unsuitable for certain investors. In so doing, the firm's focus should not be limited only to registered representatives selling such bonds and bond funds, but should also include supervisors of registered persons selling such products.

And finally, firms should make sure that they implement adequate supervisory controls to ensure that sales of bonds and bond funds comply with all applicable NASD, MSRB, and SEC rules. Among other things, firms must ensure that their written procedures for supervisory and compliance personnel require that the appropriate reasonable-basis suitability is completed before products are offered for sale; associated persons perform appropriate customer-specific suitability analysis and such information is updated periodically; all promotional materials are accurate and balanced; and all applicable NASD, MSRB, and SEC rules are followed. In addition to establishing written procedures, firms also must document the steps they have taken to ensure adherence to these procedures.

Conclusion

There may be a widespread perception among many individual investors that bonds and bond funds are low risk, if not entirely risk-free, investments. In fact, all such products entail some risk, and in some cases, the risk may be substantial. As part of their sales practice obligations, it is the responsibility of firms to take appropriate steps to ensure that they understand and inform their customers about the risks as well as the rewards of all products that they recommend and offer, including bonds and bond funds.

Endnotes

- 1 Throughout this *Notice*, the term “bond” is used to mean all types of debt securities.
- 2 For a fuller discussion of the distinctions between “reasonable basis” and “customer specific” suitability analyses, see *NASD Notice to Members 01-23*, *Online Suitability* (April 2001), Endnote 4.
- 3 See NASD Conduct Rule 2310(b). For municipal securities, see Municipal Securities Rulemaking Board (MSRB) Rule G-19 (“Suitability of Recommendations and Transactions; Discretionary Accounts”).
- 4 Nothing in this *Notice* is meant to broaden a member firm’s obligation, under current law and rules, to disclose the amount of remuneration through mark-ups, mark-downs, or commissions. However, members do have an obligation to their customers to disclose that they do in fact receive compensation for such transactions.
- 5 See NASD Letter of Acceptance, Waiver and Consent, *Altegris Invs., Inc., and Robert Amedeo*, No. CAF030015 (April 15, 2003).

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Special Notice to Members

APRIL 8, 2004

SUGGESTED ROUTING

Legal & Compliance
Senior Management

KEY TOPICS

National Adjudicatory Council

GUIDANCE

NAC Nominations

NASD Announces Nomination Procedures for Regional Industry Member Vacancies on the National Adjudicatory Council; **Nomination Deadline: May 6, 2004**

Executive Summary

The purpose of this *Special Notice to Members* is to advise members of the nomination procedures to fill two upcoming vacancies on the National Adjudicatory Council (NAC). The three-year terms of the NAC regional Industry members from the Midwest and South Regions expire in January 2005.

Exhibit I contains information regarding the NAC regional Industry members whose terms expire in January 2005. Exhibit II contains a list of all NAC members. The procedures to fill the NAC regional Industry vacancies are outlined in Exhibit III. Also, a Candidate Profile Sheet is included in Exhibit IV.

Nomination Process

Members are encouraged to submit nominations for the upcoming NAC vacancies. To nominate a candidate, members should submit a cover letter and the Candidate Profile Sheet (Exhibit IV) to the appropriate Regional Nominating Committee Chair, the NASD District Director, or NASD Corporate Secretary (listed in Exhibit I) by **May 6, 2004**.

The completed Candidate Profile Sheets will be provided to all Regional Nominating Committee members for review. On or about **May 25, 2004**, the Regional Nominating Committee will provide NASD members with written notice of the NAC candidates that the Committee proposes for nomination to the National Nominating Committee. Pursuant to Article V, Section 5.3(a) of the NASD Regulation By-Laws, the NASD National Nominating Committee shall nominate all candidates for the NAC for subsequent appointment by the Board.

04-31

Questions/Further Information

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

National Adjudicatory Council Membership and Function

Membership

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

West Region: Hawaii, California, Nevada, Arizona, Colorado, New Mexico, Utah, Wyoming, Alaska, Idaho, Montana, Oregon, Washington, and the former U.S. Trust Territories.

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

Midwest Region: Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Illinois, Indiana, Kentucky, Michigan, and Wisconsin.

North Region: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, the District of Columbia, New Jersey, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City).

New York: The counties of Nassau and Suffolk, and the five boroughs of New York City.

We are seeking nominations for the Midwest and South Regions.

Function

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

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

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

EXHIBIT I

NAC Industry Member with a Term Expiring in January 2005

Midwest Region (Districts 4 and 8)

NAC Incumbent: Douglas L. Kelly

If you are interested in nominating yourself or a colleague to represent the Midwest Region for a three-year term on the NAC, please submit a cover letter and a completed Candidate Profile Sheet (Exhibit IV) to any of the following individuals by May 6, 2004.

William K. Curtis

Regional Nominating Committee Chair

M & I Brokerage Services, Inc.
770 North Water Street
Milwaukee, WI 53202

(414) 765-7674

Thomas D. Clough

District 4 Director

NASD
12 Wyandotte Plaza
120 West 12th Street, Suite 900
Kansas City, MO 64105

(816) 421-5700

Barbara Z. Sweeney

Senior Vice President and
Corporate Secretary

NASD
1735 K Street, NW
Washington, DC 20006

(202) 728-8062

Carlotta A. Romano

Regional Director, Midwest Region

NASD
55 West Monroe Street
Suite 2700
Chicago, IL 60603-5001

(312) 899-4400

NAC Industry Member with a Term Expiring in January 2005

South Region (Districts 5, 6, and 7)

NAC Incumbent: Barbara L. Weaver

If you are interested in nominating yourself or a colleague to represent the South Region for a three-year term on the NAC, please submit a cover letter and a completed Candidate Profile Sheet (Exhibit IV) to any of the following individuals by May 6, 2004.

Dennis S. Kaminski
Regional Nominating Committee Chair

Mutual Service Corporation
One Clearlake Centre, Suite 1800
250 Australian Avenue South
West Palm Beach, FL 33401

(561) 835-4100

Warren A. Butler, Jr.
Regional Director, South Region

NASD
1100 Poydras Street
Suite 850, Energy Centre
New Orleans, LA 70163

(504) 522-6527

Virginia F.M. Jans
District 6 Director

NASD
12801 North Central Expressway
Suite 1050
Dallas, TX 75243

(972) 701-8554

David Paulukaitis
District 7 Acting Director

NASD
One Securities Centre, Suite 500
3490 Piedmont Road, NE
Atlanta, GA 30305

(404) 239-6100

Barbara Z. Sweeney
Senior Vice President and
Corporate Secretary

NASD
1735 K Street, NW
Washington, DC 20006

(202) 728-8062

EXHIBIT II

2004 National Adjudicatory Council

Geoffrey F. Aronow	Heller Ehrman White & McAuliffe LLP
A. Louis Denton	Philadelphia Corporation for Investment Services
Amy Bowerman Freed	Hogan & Hartson, L.L.P.
Kathleen M. Hagerty	Northwestern University
Douglas L. Kelly	A.G. Edwards & Sons, Inc.
David A. Lipton	Catholic University of America
Philip R. Lochner	Director of Public Companies
Judith R. MacDonald	Rothschild, Inc.
Neal E. Nakagiri	Associated Securities Corporation
James M. Rogers	J.J.B. Hilliard, W.L. Lyons, Inc.
Mark A. Sargent	Villanova University School of Law
Richard O. Scribner	Recording for the Blind & Dyslexic
Brian T. Shea	Pershing LLC
Barbara L. Weaver	Howard Weil, Incorporated

EXHIBIT III

National Adjudicatory Council Nomination Procedures

1. NASD maintains Regional Nominating Committees in the manner specified in Article VI of the By-Laws of NASD Regulation, Inc.
2. Members located in the Midwest and South Regions are hereby notified of the upcoming election of members to the National Adjudicatory Council and are encouraged to submit names of potential candidates to their respective Chair of the Regional Nominating Committee, District Director, or to NASD Corporate Secretary Barbara Z. Sweeney (see Exhibit I) by **May 6, 2004**.
3. Nominees will be asked to complete a Candidate Profile Sheet, which will be reviewed by the Regional Nominating Committee.
4. The Regional Nominating Committee shall review the background of the candidates and the description of the NASD membership provided by NASD staff and shall propose one or more candidates for nomination to the National Nominating Committee. In proposing a candidate for nomination, the Regional Nominating Committee shall endeavor to secure appropriate and fair representation of the region.
5. On or about **May 25, 2004**, the Regional Nominating Committee shall notify in writing the Executive Representatives and branch offices of the NASD members in the region of the name of the candidate it will propose to the National Nominating Committee for nomination to the National Adjudicatory Council.
6. If an officer, director, or employee of an NASD member in the region is not proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she shall send a written notice to the Regional Nominating Committee Chair or the Secretary of NASD within 14 calendar days after the mailing date of the Regional Nominating Committee's notice (#5 above) and proceed in accordance with the Contested Nomination Procedures found in Article VI of the NASD Regulation By-Laws.
7. If no additional candidate comes forward within 14 calendar days, the Regional Nominating Committees shall certify their candidates to the National Nominating Committee.

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

EXHIBIT IV Candidate Profile Sheet**Current Employment**

Name: _____ CRD#: _____

Firm: _____ #RRs at Firm: _____

Title/Primary Responsibility: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

E-mail: _____

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

Firm: _____

Title/Primary Responsibility: _____

Firm: _____

Title/Primary Responsibility: _____

General Areas of Expertise (please check all that apply)

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

Product Expertise (please check all that apply)

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

Memberships/Positions Held in Trade or Business Organizations

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

Committee Member (Identify committee: _____) Approx. Dates: _____

Arbitrator Approx. Dates: _____

Mediator Approx. Dates: _____

Expert Witness (arbitrations; disciplinary proceedings): _____ Approx. Dates: _____

Other: _____ Approx. Dates: _____

Educational Background

School: _____ Degree: _____

School: _____ Degree: _____

Notice to Members

APRIL 2004

SUGGESTED ROUTING

Legal & Compliance
Operations
Senior Management

KEY TOPICS

Executive Representative
Rule 1150

GUIDANCE

Executive Representatives

SEC Approves Amendments to Require Quarterly Review and Update of Executive Representative Contact Information; **Effective Date: May 14, 2004**

Executive Summary

On March 29, 2004, the Securities and Exchange Commission (SEC) approved a rule change to require members to review and, if necessary, update their executive representative designation and contact information on a quarterly basis.¹ New Rule 1150 is set forth in Attachment A. The rule requirements are effective as of Friday, May 14, 2004.

Questions/Further Information

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

Background and Discussion

Under Article IV, Section 3 of the NASD By-laws, members must appoint and certify to NASD one executive representative to represent, vote, and act for the member in all affairs of NASD. The executive representative must be a member of senior management and a registered principal of the member. In addition, the executive representative is required to maintain an Internet electronic e-mail account for communication with NASD and must update firm contact information.

Given the important role of the executive representative in representing, voting, and acting for the member, as well as receiving communications from NASD, NASD believes that members should review and update the executive representative designation and contact information periodically to ensure its accuracy. Accordingly, NASD has amended its rules to require that each member conduct a review and, if necessary, update its executive representative information on a quarterly basis, specifically within 17 business days after the end of each calendar quarter.² NASD is examining different methods of reminding members of the obligation to quarterly review and update the executive representative information, including the possibility of a Web page linked to the act of filing the FOCUS report that would prompt members to update such information and/or through periodic e-mail reminders to member firms.³

Effective Date

The rule amendments become effective on May 14, 2004. Members will be required to conduct the first quarterly review and update of the executive representative designation and contact information within 17 business days after June 30, 2004.

Endnotes

- 1 See Securities Exchange Act Release No. 49497 (March 29, 2004), 69 FR 17723 (April 5, 2004) (File No. SR-NASD-2003-184) (SEC Approval Order).
- 2 This review schedule is consistent with a member's quarterly FOCUS reporting schedule and a member's business continuity plan requirement to review and update emergency contact information on a quarterly basis. (See Securities Exchange Act Release No. 49537 (Apr. 7, 2004), 69 Fed. Reg. 19586 (Apr. 13, 2004) (File No. NASD-2002-108).)
- 3 Similarly, the schedule is consistent with the requirement, which becomes effective on April 16, 2004, to designate a person to receive notifications relating to continuing education, and the need to review and update such designation and contact information (see *Notice to Members 04-22* (March 2004)).
- 3 Similarly, NASD would prompt members to review and update, where necessary, their emergency contact and continuing education contact information. See *supra* note 2.

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Notice to Members

APRIL 2004

SUGGESTED ROUTING

Accounting
Financial Compliance
Operations
Senior Management

KEY TOPICS

Financial Accounting
FOCUS Reporting
Net Capital

ACTION REQUIRED

Financial Accounting

Limited Net Capital Relief from the Reclassification of Certain Equity as Liabilities in Accordance with Statement of Financial Accounting Standards No. 150

Executive Summary

In May 2003, the Financial Accounting Standards Board (FASB) released Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity* (the "Statement" or "Statement 150") as part of a broad effort to ensure that entities recognize as liabilities contractual obligations to transfer cash, other assets, or equity interests to other parties. One of the primary requirements of the Statement is the need to reclassify *mandatorily redeemable* financial instruments, generally defined as ownership interests in the issuing entity with mandatory redemption features, as liabilities.¹

This reclassification requirement is applicable to non-public entities beginning with the commencement of the first fiscal year starting after December 15, 2003.² Because of the effect of these requirements on non-public entities, particularly since many non-public companies are capitalized solely with stock that may be redeemed upon the death or retirement of a shareholder, many non-public companies requested an extension of the Statement's effective date. In a November 7, 2003, Staff Position Release (Release 150-3), the FASB decided that it *would not* revise the effective date of the Statement for non-public entities that are required to file financial statements with the Securities and Exchange Commission (SEC). As a result, the Statement provisions remain applicable to non-public broker-dealers at the start of the fiscal year that begins after December 15, 2003.

In response to a request from the Securities Industry Association (SIA), the SEC Division of Market Regulation (DMR) concluded in a February 19, 2004, No-Action Letter (No-Action Letter) that it "will not recommend enforcement action to the Commission if a broker-dealer that is a non-public entity, in calculating net capital under [Securities Exchange Act] Rule 15c3-1, adds to its regulatory net worth the carrying value of mandatorily redeemable financial instruments that FAS [Statement] 150 excludes from the firm's GAAP equity." *The No-Action Letter only provides relief from the net capital ramifications of the Statement's treatment of mandatorily redeemable financial instruments and does not extend to the accounting treatment of financial instruments (whether or not mandatorily redeemable) as set forth in the Statement.* (See Exhibit A for a copy of the No-Action Letter.) The No-Action Letter further requires that "a broker-dealer that wishes to take advantage of this relief must advise its designated examining authority of its intent." Consequently, to take advantage of the relief granted by the No-Action Letter, a member must advise NASD of its intent to rely on the No-Action Letter by **May 10, 2004**, and *prior to applying the relief.*

Questions/Further Information

Questions or comments regarding this *Notice* may be addressed to Andrew Labadie, Financial Analyst, Member Regulation, Regulatory Policy and Oversight (RPO), at (202) 728-8397; or Susan DeMando, Director, Financial Operations, Member Regulation, RPO, at (202) 728-8411.

Background and Discussion

(The following discussion serves primarily to summarize the portions of Statement 150 that pertain to mandatorily redeemable financial instruments. NASD strongly encourages firms to review Statement 150 along with this Notice in order to have a frame of reference from which to discuss the issues in Statement 150 with their outside accountants/auditors, and to determine how the firm needs to comply with the Statement's material provisions regarding mandatorily redeemable financial instruments.)

Statement 150 represents the completion of the first phase of the FASB's consideration of how best to account for financial instruments that have the characteristics of liabilities and equity, and that obligate the entity to transfer cash or other assets, or to issue equity, to the instrument holders. The FASB concluded that if an entity issues a financial instrument that requires, or may require, the issuing entity to transfer cash, assets, and/or shares of its stock to the holder of the instrument, and if the value or amount of the assets or shares are fixed upon the issuance of the instrument, or based on an index whose value is determined independently of, or inversely to, the successful operations of the entity, that entity must classify the instrument as a liability. The FASB believes that reclassification is necessary because the instrument imposes a cost on the

issuing entity to the benefit of the instrument holder, and the holder's interest in the issuing entity is contrary to those of an owner (e.g., common shareholder) exposed solely to the potential benefits and risks derived from the operation of the business.

As such, Statement 150 requires that financial instruments that are mandatorily redeemable and issued in the form of shares or other ownership interests be classified as liabilities. Ownership interests are considered mandatorily redeemable if they require the issuer to redeem the instrument by transferring its cash, assets, or other equity interests to the holder at a specified or determinable date (or dates), or upon an event certain to occur.³ However, ownership interests that are redeemable only upon the liquidation or termination of the issuing entity continue to be classified as equity.

Effective Date, Measurement, and Disclosure

Entities need to recognize mandatorily redeemable financial instruments as liabilities upon the effective date of the Statement for the particular entity, or following the effective date, upon the issuance of a mandatorily redeemable instrument. The amount to be recognized, if fixed, is the present value of the cash or assets to be exchanged. If the amount is variable, the issuer recognizes the value of the cash, other assets, or shares to be delivered as derived from the underlying index today. For example, if the financial instruments were redeemable for a number of shares determined by the value of a separate index, the amount reported as a liability would be the book value of such shares. (If the index, initially valued at \$100, increases to \$200 as of the reporting date, and during this period the book value of the entity's stock remains at \$10 per share, the reported liability would be equal to the book value of 20 shares.) If all of an entity's shares were mandatorily redeemable, the recorded value would be equal to the entity's net worth. In this case, since the entity would no longer recognize any equity, the mandatorily redeemable securities would represent the residual interest to which income or loss would be allocated and, therefore, retained earnings and other comprehensive income would be included as components of the liability balance representing such shares.

Issuers of mandatorily redeemable financial instruments are required to describe such instruments as *shares subject to mandatory redemption* on the face of the balance sheet to distinguish those instruments from other liabilities. In addition, issuers must disclose, in the notes to the financial statements, the nature and terms of, and the rights and obligations embodied in, such instruments, including information about settlement alternatives.

Application of Statement 150 to Non-Public Broker-Dealers

Because Statement 150 applies to entities that are required to file financial statements with the SEC, non-public broker-dealers are subject to Statement 150 (including the provisions regarding the reclassification of mandatorily redeemable financial instruments as liabilities) beginning with the commencement of the first fiscal year starting after December 15, 2003. In the net capital context, the reclassification of these financial instruments as liabilities reduces net worth, and without any offsetting adjustment, decreases the amount of regulatory capital. While non-public entities had requested a modification of the Statement, or at least an extension of its effective date, the FASB concluded in Release 150-3 that any entity that files financial statements with the SEC, which includes all broker-dealers, would be required to adopt the Statement in accordance with the initial "effective date" provisions.

In January 2004, the SIA submitted a letter to the DMR of the SEC requesting temporary relief for non-public broker-dealers from the effect on net capital of reclassifying mandatorily redeemable ownership interests as liabilities. In its No-Action Letter, the DMR decided that it would not recommend enforcement action to the SEC if

"...a broker-dealer that is a non-public entity, in calculating net capital under Rule 15c3-1, adds to its regulatory net worth the carrying value of mandatorily redeemable financial instruments that FAS [Statement] 150 excludes from the firm's GAAP equity."

The No-Action Letter states that "[t]he limitations on withdrawal of equity capital contained in paragraph (e) of Rule 15c3-1 still would apply."⁴ In addition, "[t]he amount added back to net worth also could be treated as equity in determining a broker-dealer's compliance with the debt to debt-equity total in paragraph (d) of Rule 15c3-1, provided it otherwise meets requirements of that paragraph." Further, this relief "would not affect the treatment of properly subordinated debt under Appendix D to Rule 15c3-1." Finally, the No-Action Letter states that a broker-dealer that wishes to take advantage of this relief must advise its designated examining authority of its intent. The procedures for notifying NASD are described in the following "Action Required" section.

The relief provided by the No-Action Letter is temporary and is available only during the *first* fiscal year beginning after December 15, 2003. With the commencement of the fiscal year beginning after December 15, 2004, the effects of any reclassification of mandatorily redeemable financial instruments will flow through, without adjustment, to the computation of net capital.⁵ In essence, the No-Action Letter gives non-public broker-dealers twelve months to revise the elements of their underlying capitalization that result in an unavoidable redemption obligation.

Importantly, the No-Action Letter only provides relief in the net capital context to the requirement to treat mandatorily redeemable financial instruments as liabilities, and does not relieve any broker-dealer from complying with all of the provisions of the Statement, including those that address financial instruments which, although not mandatorily redeemable, are considered liabilities as opposed to equity. Accordingly, broker-dealers must reflect mandatorily redeemable ownership interests and, if appropriate, certain other financial instruments as liabilities in their financial statements included in the FOCUS Report.

Action Required

Firms that are designated to NASD for financial surveillance purposes and that wish to avail themselves of the relief set forth in the No-Action Letter must inform NASD of this action in an e-mail from an officer of the firm. **NASD must receive this e-mail by Monday, May 10, 2004.** The reference line of the e-mail should indicate, in the following order, "*Statement 150,*" *the name of the firm,* and its *Central Registration Depository (CRD®) number.* In addition to communicating the request, the e-mail must include the following information:

- ◆ The value and number of units of mandatorily redeemable equity securities or ownership interests as of March 31, 2004, which *would be* required to be reflected as liabilities in accordance with Statement 150, even if March 31st precedes the required Statement adoption date.
- ◆ The designation of such securities or interests (e.g., common stock, preferred stock, or partnership interests).
- ◆ The identity and respective values of the equity components included in the liability related to shareholders' interests subject to a redemption feature. For example, the par value and other paid-in amounts of mandatorily redeemable instruments and the amount of retained earnings or accumulated deficit and their respective recorded values as of March 31, 2004.
- ◆ A brief description of the rights and obligations embodied in these securities or ownership interests, including information concerning settlement alternatives, and the identity of the entity that controls the settlement alternatives.
- ◆ The amount that would be paid, or the number of shares that would be issued and their fair value, determined under the conditions specified in the contract if the conditions for redemption had been fulfilled as of March 31, 2004.
- ◆ The general identity of the holders of the mandatorily redeemable securities (e.g., principals of the firm, employees, registered personnel, family members of the principals, third-party investors, and/or consultants).
- ◆ The name, position, and telephone number of the officer communicating the request.

The purpose of obtaining this information is to determine the extent to which Statement 150 affects firms and to provide NASD with a benchmark in tracking the adjustments included in the FOCUS Reports.

NASD will conclude that information is properly provided through this notification once a member firm has submitted an e-mail and has completely and accurately addressed each of the above points. E-mails must be submitted to *andrew.labadie@nasd.com*. E-mails to other addresses will not constitute proper notice to NASD. The notification to NASD and the requested information does not constitute NASD's approval of a firm's compliance with Statement 150 or provide assurance that the firm has complied with the requirements of the No-Action Letter.

FOCUS Report Disclosure Instructions

Regardless of whether firms avail themselves of the limited relief provided by the No-Action Letter, firms must reflect the recorded amounts of mandatorily redeemable ownership interests classified as liabilities in "Notes & Mortgages Payable: B Secured" of the statement of financial condition in the FOCUS Report (Line 24 of FOCUS Form II or Line 18 of FOCUS Form IIA). The value of those ownership interests that would be redeemed for cash should be included in aggregate indebtedness and reported in field 1211, and the value of interests redeemable for other assets or other equity interests should be included in field 1390, of either the Part II or IIA FOCUS filing. *(Please note that, if the entire balance of equity capital must be reclassified as liabilities in accordance with Statement 150, firms will need to record a nominal amount, such as \$1.00, in the equity section when completing the FOCUS electronically to be able to submit the filing.)* Those firms that choose to record an addition to net worth in computing net capital should reflect the amount and description of the add-back as an allowable credit on line 4 B, field 3525 in the computation of net capital.

Endnotes

- 1 For purposes of the Statement, “financial instruments” are essentially ownership interests in the issuing entity, which range from those that impose or could impose future obligations on the issuer to the benefit of the holder, to those that place the risk of the enterprise entirely on the holder (e.g., shares of common stock). “Mandatorily redeemable” means that the issuing entity will need to give cash, other assets, or other equity interests in the entity to the holder in exchange for the financial instruments upon the occurrence of an event certain to occur.
- 2 The reclassification of mandatorily redeemable financial instruments is applicable to publicly traded companies, including publicly traded broker-dealers, beginning with the commencement of the first interim period starting after June 15, 2003.
- 3 One needs to consider all provisions of a redeemable instrument in determining whether the instrument is mandatorily redeemable. A term extension option—a provision that defers redemption until a specified liquidity level is reached—or a similar provision that may delay or accelerate the timing of a mandatory redemption does not affect the classification of a mandatorily redeemable financial instrument as a liability. In addition, in Release 150-3, the FASB asserts that ownership interests that are required to be redeemed in accordance with a related agreement are to be viewed as mandatorily redeemable if the ownership interests are issued with the redemption agreement and the agreement addresses the redemption of the specific ownership interests.
- 4 For purposes of paragraph (e) of Rule 15c3-1, equity capital would include the amount of any add-back to net worth as well as the balances of the components described in subparagraph (e)(4)(ii).
- 5 For example, if a broker-dealer has a fiscal year end of July 31, it would not be required to adopt Statement 150 until August 1, 2004, and then could apply the addition to net worth from the period beginning August 1, 2004 through July 31, 2005. Those broker-dealers with a fiscal year ending November 30, and which would not be required to adopt Statement 150 until December 1, 2004, would then be able to apply the addition to net worth in accordance with the No-Action Letter from December 1, 2004, through November 30, 2005.

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Notice to Members

APRIL 2004

SUGGESTED ROUTING

Financial
Legal and Compliance
Senior Management

KEY TOPICS

Annual Audits
FOCUS Reports
Schedule I

GUIDANCE

Filing Requirements

NASD Reminds Member Firms of Their Obligations to File Certain Financial Reports

Executive Summary

Securities and Exchange Commission (SEC) Rule 17a-5 requires broker-dealers to file certain financial reports with NASD within a specified number of days following the end of the period for which the report is filed. This *Notice to Members* reminds members that such reports must be filed on a timely basis and that requests for extensions of time for filing may only be made in exceptional circumstances. Moreover, any request for an extension of time for filing must be submitted, in writing to and received by, the appropriate District Office no later than three business days prior to the due date of the report. Failure to file such reports by the due date, or the revised due date if an extension has been granted, will result in a late fee of \$100 per day for a maximum of 10 days, as described in Schedule A of NASD's By-Laws, as well as possible disciplinary action. This *Notice to Members* also reminds members that all reports will be considered timely filed only *when received at the appropriate time and at the required location*.

Questions/Further Information

Questions regarding this *Notice* may be directed to the Department of Member Regulation by contacting Susan DeMando, Director, Financial Operations, at (202) 728-8411; or Vicky Berbereri-Doumar, Senior Attorney, at (202) 728-8905.

04-35

Background

SEC Rule 17a-5 requires, among other things, broker-dealers to file monthly FOCUS Reports (Part II) and quarterly FOCUS Reports (Part II or IIA) within 17 business days after month- or quarter-end. Annual audits are due 60 calendar days after the end of the broker-dealers' fiscal year. SEC Rule 17a-10 requires broker-dealers to file Schedule I with their FOCUS Reports within 17 business days after calendar year-end. All reports are due by midnight, Eastern Standard Time (EST). A report is considered filed when received.¹ If the due date of an annual audit falls on a weekend or business holiday, the audit will be accepted up to the next business day following the weekend or holiday.²

When and Where Reports Should Be Filed

FOCUS Reports and Schedule I must be filed electronically with NASD at <https://regulationformfiling.nasdr.com> no later than midnight, EST, of the due date.

The annual audit must be filed in hard copy as follows: two copies of the audited report with the Principal Office of the SEC in Washington, DC; one copy with the appropriate Regional/District Office of the SEC; and one copy with the Principal Office of NASD at the following address:

NASD/Systems Support
9509 Key West Avenue, 4th Floor
Rockville, MD 20850
Attn: Eleanor Sabalbaro

The annual audit will be considered timely filed only if received by the due date, or revised due date if an extension has been granted, and at the appropriate address. In this regard, an annual audit filed with an NASD District Office, instead of NASD's Principal Office, will not be considered filed.

Requests for Extension of Time

Broker-dealers that are unable to meet the filing deadline for any of the reports mentioned above due to exceptional circumstances may request an extension of time pursuant to Schedule A of NASD's By-Laws by writing the appropriate District Office of NASD. The request for an extension of time must be received no later than three business days before the filing deadline.³ Note that NASD will consider a request for an extension of time only if it is submitted, and received, no later than three business days prior to the due date of the report. Pursuant to Schedule A of the NASD By-laws, reports that are not received by the due date, or the revised due date if an extension has been granted, are subject to a late fee of \$100 per day for a maximum of 10 days.⁴ NASD staff may pursue a disciplinary action in addition to the late fee.

Endnotes

- 1 SEC Rule 17a-5(a)(3) and 17a-5(n).
- 2 This does not apply to FOCUS Reports or Schedule I.
- 3 *NASD Notice to Members 01-54.*
- 4 The late fee is an administrative fee and as such is not a reportable event. Reports received late will be subject to the administrative fee. Note that the administrative fee will not be waived under any circumstances.

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Disciplinary and Other NASD Actions

REPORTED FOR APRIL

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of March 2004.

Firm and Individuals Sanctioned

Day International Securities (CRD #23405, San Jose, California), Douglas Conant Day (CRD #1131612, Registered Principal, San Jose, California), and Ronald Winston Wood (CRD #1446452, Registered Principal, Lincoln, California). The firm was fined \$53,000, jointly and severally with Day and Wood, and suspended from association with any NASD member in any capacity for 90 business days. Day was fined \$33,000, jointly and severally, and suspended from association with any NASD member in any capacity for 60 business days. Wood was fined \$53,000, jointly and severally, and suspended from association with any NASD member in any capacity for 90 business days. The sanctions were based on findings that the firm, acting through Day and Wood, held customer funds and securities, failed to establish a Special Reserve Bank Account for the Exclusive Benefit of Customers, and failed to make computations of the amounts of funds required to be deposited in such an account. The findings also stated that the respondents engaged in a securities business without maintaining the required minimum net capital. In addition, NASD found that Wood performed, and the firm and Day permitted him to perform, duties requiring registration when he was deemed inactive for failing to complete NASD's Regulatory Element of Continuing Education.

Day's suspension began March 1, 2004, and will conclude at the close of business May 24, 2004. Day International's and Wood's suspensions began March 1, 2004, and will conclude at the close of business July 7, 2004. (NASD Case #C01020023)

Firm Fined, Individual Sanctioned

Sterling Financial Investment Group, Inc. (CRD #41506, Boca Raton, Florida) and Brian Frederick Gimelson (CRD #2262474, Registered Principal, Fort Washington, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$5,000, jointly and severally. The firm was also censured and fined \$7,500 and Gimelson was suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, the firm and Gimelson consented to the described sanctions and to the entry of findings that Gimelson recklessly and/or intentionally effected agency cross transactions in a stock at or near the close of the trading day at prices higher than the prevailing national best offer, causing market appreciation in the margin accounts of several of his customers at his member firm, and, by virtue of the

manner in which Sterling's clearing firm calculated margin liabilities, decreased the amount of margin exposure in those accounts. The findings also stated that the firm failed to establish a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations concerning quotation and trading activity at or near the close of the trading day. NASD also found that the firm was unable to provide order tickets and/or confirmations for transactions in response to NASD requests. In addition, NASD found that order tickets did not indicate the account for which the trade was entered and several were not properly stamped with the time of receipt or the time of execution.

Gimelson's suspension will begin April 19, 2004, and will conclude at the close of business May 14, 2004. (NASD Case #C07040018)

Firm and Individual Fined

Dome Securities Corp. (CRD #38036, New York, New York) and Gregory Alan Joseph (CRD #1726706, Registered Principal, Bronxville, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the firm and Joseph consented to the described sanctions and to the entry of findings that the firm, acting through Joseph, permitted Joseph and another individual to act in capacities requiring registration while their registration status with NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also stated that the firm, acting through Joseph, permitted an individual to park his registration with the firm when he was not actively involved in the firm's securities business or otherwise functioning as a representative of the firm. (NASD Case #C10040015)

Firms Fined

ABN Amro Incorporated (CRD #15776, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$32,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction ServiceSM (ACTSM) last sale reports of transactions in NASDAQ National Market[®] (NNM[®]), SmallCapSM (SCSM), and OTC Equity securities. The findings also stated that the firm failed to designate through ACT last sale reports in NNM securities as late. In addition, NASD found that the firm incorrectly designated as ".T" through ACT last sale reports of transactions in OTC Equity securities executed during normal

market hours. Furthermore, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning ACT reporting obligations. (NASD Case #CMS040010)

AXA Advisors, LLC (CRD #6627, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000, \$7,500 of which was jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed an individual, while not registered with NASD as a principal, to act in that capacity by actively engaging in the management of the firm. (NASD Case #C10040012)

Domestic Securities, Inc. a/k/a Attain-ENC (CRD #34721, Montvale, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning SEC Rule 11Ac1-5 within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect information as to the number of covered orders, the cumulative number of shares of covered orders, and the average realized spread for execution of covered orders. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning SEC Rule 11Ac1-5. (NASD Case #CMS040011)

Ladenburg Capital Management, Inc. (CRD #14623, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$42,500, and ordered to pay \$911, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file, and to timely file, amended Uniform Applications for Securities Industry Registration or Transfer (Forms U4) concerning customer complaints and arbitration statements of claim against registered representatives employed by the firm. The findings also stated that the firm failed to file, and to timely file, amended Uniform Termination Notices for Securities Industry Registration (Forms U5). NASD found that the firm failed to report arbitration awards rendered against the firm and a registered representative within 10 business days to NASD's 3070 Complaint Reporting System. In addition, NASD found that the firm did not properly accept transactions in ACT in which it acted as the contra-party to the transaction by failing to accept trades in ACT with the required ".S" short sale

indicator. Moreover, NASD found that the firm failed to obtain best execution in sale transactions, resulting in losses to public customers. Furthermore, NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with NASD's By-Laws and rules addressing the filing of amended Forms U4 and Forms U5 in the event of customer complaints or arbitration claims. **(NASD Case #CLI040003)**

May, Davis Group, Inc. (CRD #35622, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$30,000. In light of the financial status of the firm, a fine of \$30,000 has been imposed. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected distributions of warrants in securities, and that during the course of the distributions the firm continued to bid for and induce others to purchase the securities. The findings also stated that the firm effected sales of securities to customers at prices that were unfair. **(NASD Case #C9A040003)**

Natexis Bleichroeder Inc. (CRD #1101, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$26,000, and required to revise its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning riskless principal trade reporting and ACT short sale reporting within 30 business days. 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 and failed to report each of the transactions to ACT with a short sale modifier. NASD also found that the firm was a registered market maker in the securities, and, when an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size, it failed to execute the orders upon presentation and thereby failed to honor its published quotation. The findings also stated that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in eligible securities. The findings further stated that the firm incorrectly reported to ACT the second leg of four "riskless" principal transaction(s) in NNM securities and incorrectly designated the capacity of such transaction(s) as principal. Furthermore, NASD found that the firm failed to report to ACT the correct symbol indicating whether a transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities. NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning riskless principal trade reporting and ACT short sale reporting. **(NASD Case #CMS040009)**

North Coast Securities Corp. (CRD #35982, San Francisco, 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 executed sales of unregistered securities on behalf of a public customer and failed to ascertain whether the stock was freely tradable. The findings also stated that the firm failed to have adequate supervisory procedures in place relating to the prevention of the sale of unregistered securities. NASD also found that the firm allowed a registered representative to engage in sales away from the firm, for compensation, without properly supervising his participation in those sales that entailed fraudulent omissions and the sale of unregistered securities. **(NASD Case #CAF040019)**

TSD Trading, LLC (CRD #23510, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$11,000, and required to revise its written supervisory procedures with respect to securities laws, regulations, and NASD rules concerning short sales within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected short sales in certain securities for the firm's proprietary account(s) and failed to make or annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by settlement date. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning short sales and did not include written supervisory procedures providing for an affirmative determination for Over-the-Counter Bulletin Board securities. **(NASD Case #CMS040012)**

Wellington Investment Services Corp. (CRD #23018, Brookfield, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,500, \$7,500 of which was jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to maintain a Checks Received and Forwarded Blotter for a real estate lease offering. The findings also stated that the firm, acting through an individual, failed to provide a needs analysis, training plan, and proof of attendance for its Firm Element of Continuing Education for the years 2001 and 2002. NASD also found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws, regulations, and NASD rules with respect to the Firm Element of Continuing Education and the Anti-Money Laundering Compliance Program. Furthermore, NASD found that the firm failed to submit timely to NASD its quarterly customer complaint summary and failed to report timely to NASD customer complaints on its quarterly customer complaint summary. **(NASD Case #C8A040008)**

Individuals Barred or Suspended

Laurie Sue Almack (CRD #3141791, Registered Representative, Alexandria, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Almack consented to the described sanction and to the entry of findings that she prepared and submitted documents bearing the forged signature of a public customer of her member firm's banking affiliate in order to effect the withdrawal of \$4,500 from the customer's bank account without the customer's knowledge and consent. The findings also stated that Almack converted the customer funds and deposited the funds into her checking account for her own use or benefit, and not for the benefit of the customer. (NASD Case #C8A040005)

Joseph Daniel Benter (CRD #2169897, Registered Representative, Wichita, Kansas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and barred from association with any NASD member in any capacity. The fine must be paid before Benter reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Benter consented to the described sanctions and to the entry of findings that he controlled the account activity for the trust account of a public customer and effected excessive transactions in the account with will and reckless disregard for the customer's interests and stated objectives in order to generate commissions for himself. (NASD Case #C04040008)

Elena Laura Bianchi (CRD #1675129, Registered Representative, Houston, Texas) submitted an Offer of Settlement in which she was fined \$7,500 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Bianchi consented to the described sanctions and to the entry of findings that she effected securities transactions in the accounts of public customers through the use of discretion. The findings also stated that Bianchi failed to obtain written authorization from the customers to use discretion in their accounts and failed to obtain acceptance in writing by her member firm of the accounts as discretionary.

Bianchi's suspension began April 19, 2004, and will conclude at the close of business May 14, 2004. (NASD Case #C06030024)

Michael Scott Blanchard (CRD #4617872, Associated Person, Denver, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Blanchard reassociates with any member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or

denying the allegations, Blanchard consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Blanchard's suspension began April 5, 2004, and will conclude at the close of business April 4, 2005. (NASD Case #C3A040012)

Christopher John Borgo (CRD #2377439, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$30,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Borgo consented to the described sanctions and to the entry of findings that he opened accounts for the children of a public customer and, pursuant to instructions from the customer, executed transactions in the accounts without the authorization of the account holders to accept instructions from the public customer. The findings also stated that Borgo testified falsely under oath in an NASD on-the-record interview.

Borgo's suspension began April 5, 2004, and will conclude at the close of business May 3, 2004. (NASD Case #C07040021)

Craig Alan Brandwein (CRD #2451375, Registered Principal, Smithtown, 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, Brandwein consented to the described sanction and to the entry of findings that he failed to supervise adequately registered representatives in the sale of unregistered stock to the investing public. The findings also stated that Brandwein failed to conduct adequate due diligence of the stock and failed to discover that there were no registration statements filed or in effect pursuant to the Securities Act of 1933. NASD also found that Brandwein failed to detect or follow up on certain red flags including a dramatic increase in the sales volume of the stock by his registered representatives. In addition, NASD found that Brandwein failed to respond to an NASD request to appear and give testimony. (NASD Case #CAF040018)

Delroy Anthony Bryan (CRD #1354165, Registered Representative, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Bryan reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bryan consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed to provide written notice to his member firm.

Bryan's suspension began March 15, 2004, and will conclude at the close of business June 14, 2004. (NASD Case #C07040016)

Robert Joseph Calamunci, Sr. (CRD #1618899, Registered Principal, Tinton Falls, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$13,460.15, which represents disgorgement of commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Calamunci consented to the described sanctions and to the entry of findings that he recommended numerous Class B mutual fund transactions to public customers that were unsuitable. The findings also stated that, had Class A shares been recommended instead of Class B shares, the customers would have (1) been eligible to receive breakpoints on Class A share purchases; (2) paid lower 12b-1 fees; and (3) avoided being subject to contingent deferred sales charges.

Calamunci's suspension began March 1, 2004, and concluded at the close of business March 12, 2004. (NASD Case #C9B040007)

Saleem Sadiq Chaudhry (CRD #2112352, Registered Representative, Fort Lauderdale, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chaudhry consented to the described sanction and to the entry of findings that he failed to respond to an NASD request for information. (NASD Case #C07040019)

Rudell Chisolm (CRD #1179953, Registered Representative, Newark, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chisolm consented to the described sanction and to the entry of findings that she created a false document when she photocopied a customer's signature from an existing firm document and affixed it to an insurance form without the customer's permission or knowledge. (NASD Case #C9B040012)

Joseph Donald Columbo (CRD #823524, Registered Principal, Melville, New York) submitted an Offer of Settlement in which he was fined \$50,000, suspended from association with any NASD member as an equity trader and as a general securities principal for six months, and required to requalify by exam as an equity trader before again serving in that capacity. Without admitting or denying the allegations, Columbo consented to the described sanctions and to the entry of findings that a member firm, acting through Columbo, participated, directly or indirectly, in undertakings involving the sale of Brady Bonds and interests in Brady Bonds with a view to the distribution of the securities, thereby acting as underwriters in the sale of unregistered securities. The findings also stated

that the firm, acting through Columbo, knowingly or recklessly charged fraudulently excessive markups in the sale of Brady Bonds. NASD also found that Columbo failed to enforce the firm's procedures related to its review of corporate debt and municipal securities transactions.

Columbo's suspensions began April 5, 2004, and will conclude at the close of business October 4, 2004. (NASD Cases #CAF030011/C10030017)

Aaron Denzil Conant (CRD #3115032, Registered Representative, Bonney Lake, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Conant reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Conant consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to exercise discretion in the accounts.

Conant's suspension began April 5, 2004, and will conclude at the close of business April 4, 2005. (NASD Case #C3B040005)

Charles David Condo (CRD #1089606, Registered Representative, Cleveland, Tennessee) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for four months, and ordered to pay \$7,040, plus interest, in restitution to public customers. Without admitting or denying the allegations, Condo consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior notice to, and approval from, his member firm.

Condo's suspension began March 15, 2004, and will conclude at the close of business July 14, 2004. (NASD Case #C05030056)

William Joseph Dacey (CRD #1024366, Registered Representative, Melrose, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$16,500, including disgorgement of commissions received, and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Dacey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dacey consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, without providing written notice to, or receiving approval from, his member firm.

Dacey's suspension began March 15, 2004, and will conclude at the close of business May 13, 2004. (NASD Case #C11040007)

Gabriel Danastor (CRD #3092123, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Danastor consented to the described sanction and to the entry of findings that he arranged for an impostor to take the Series 65 qualification exam on his behalf. (NASD Case #C10040008)

Ralph Joelly Davila (CRD #3250349, Registered Representative, Bronx, 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, Davila consented to the described sanction and to the entry of findings that he plead guilty to felony charges and failed to respond to NASD requests for information. (NASD Case #C10040007)

Raymond Albert Devivo (CRD #2489322, Registered Principal, Naples, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Devivo consented to the described sanction and to the entry of findings that he failed to respond to an NASD request for information. (NASD Case #C07040014)

Chris Feriante (CRD #2711932, 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. In light of the financial status of Feriante, no monetary sanction was imposed. Without admitting or denying the allegations, Feriante consented to the described sanction and to the entry of findings that he operated a bill-paying service whereby he would provide accounts-payable services to clients. The findings also stated that Feriante received \$263,000 from a public customer, mishandled the customer's funds, and, with the exception of \$75,270, caused the funds to be sent to a third party for the benefit of someone other than the customer. (NASD Case #C06040004)

Kathleen Ann Fisler (CRD #857566, Registered Representative, White Bear Lake, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which she was suspended from association with any NASD member in any capacity for one year. In light of the financial status of Fisler, no monetary sanctions were imposed. Without admitting or denying the allegations, Fisler consented to the described sanction and to the entry of findings that she gave public customers checks totaling \$275,900 in an attempt to prevent them from complaining due to losses in their securities accounts and/or to reimburse them for losses and/or margin debt.

Fisler's suspension began March 15, 2004, and will conclude at the close of business March 14, 2005. (NASD Case #C04040006)

Michael Boydd Fruin (CRD #1006912, Registered Representative, New Franklin, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fruin consented to the described sanction and to the entry of findings that he converted \$50,000 of public customers' funds intended for investment in non-securities products by depositing a check endorsed by the customers into his personal bank account without the knowledge, consent, or authorization of the customers. The findings also stated that Fruin failed to respond to NASD requests for information. (NASD Case #C04040009)

David Lloyd Garver (CRD #1027088, Registered Representative, Lebanon, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Garver, no monetary sanction has been imposed. Without admitting or denying the allegations, Garver consented to the described sanction and to the entry of findings that he engaged in an outside business activity, for compensation, without providing prompt written notice to his member firm.

Garver's suspension began April 5, 2004, and will conclude July 4, 2004. (NASD Case #C9A040004)

Juan Gascot-Jimenez (CRD #1385156, Registered Representative, Isla Verde, Puerto Rico) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gascot-Jimenez consented to the described sanction and to the entry of findings that he took the Series 7 exam while in possession of a piece of paper containing information relevant to the exam that he failed to turn over to the testing center staff and reviewed several times during the exam. (NASD Case #C07020018)

Thomas Edward Godfrey (CRD #4047995, Registered Representative, Sugar Hill, Georgia) 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 45 days. The fine must be paid before Godfrey reassociates with any NASD member in any capacity following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Godfrey consented to the described sanctions and to the entry of findings that he recommended that a public customer purchase Class C shares of mutual funds although the customer was entitled to a free exchange into Class A shares of these funds, causing her to liquidate her existing mutual fund shares

for \$142,174 to purchase the Class C shares. The findings also stated that the customer was subjected to higher annual expenses than those charged for Class A shares of the same funds, and Godfrey and his member firm earned commissions that would not have been paid if the customer had exercised a free exchange into Class A shares of the same funds.

Godfrey's suspension began March 15, 2004, and will conclude at the close of business April 28, 2004. (NASD Case #C07040015)

Vincent John Glinski (CRD #2206595, Registered Principal, Dix Hills, New York), Howard Francis Curd (CRD #1786714, Registered Principal, Manhasset, New York), and Joseph Patrick Shanahan (CRD #836265, Registered Principal, New York, New York) submitted Offers of Settlement in which Glinski was fined \$20,000 and suspended from association with any NASD member in any capacity for six months. Curd was fined \$50,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam for the Series 24 license before acting again in a principal capacity. Shanahan was fined \$7,500, suspended from association with any NASD member in a general securities principal capacity for 25 business days, and required to requalify by exam for the Series 24 license before acting again in a principal capacity.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Glinski prepared research reports on a company traded on the NNM that were disseminated to the investing public through his firm's Web site, blast faxes, and mailing lists and, in each report, failed to disclose the true financial condition of the company and other material information about the company. The findings also stated that Glinski's research reports contained exaggerated, unwarranted, and misleading statements about the company, including favorable recommendations and target price projections. NASD also found that Curd and Shanahan failed to obtain the signature or initials of a firm principal indicating approval of the research reports it disseminated and failed to file any of the research reports and the actual or anticipated date of first use with NASD's Advertising Regulation Department. In addition, NASD found that Curd failed to establish, maintain, and enforce written supervisory procedures and systems to supervise the activities of registered representatives and associates reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. Moreover, NASD found that Curd and Shanahan failed to review research reports prior to distribution and knew, or should have known, of red flags in that the reports failed to disclose material facts and contained material misrepresentations. Furthermore, NASD found that Curd, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection

with the purchase or sale of securities and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The findings also stated that Curd filed an SEC Form 5 and failed to report shares of the security held in which he was a beneficial owner and failed to file an SEC Form 4 disclosing changes in beneficial ownership of securities of the issuer. NASD also found that Curd failed to ensure that e-mails, order tickets, new account forms, and corporate resolutions were preserved.

Glinski's suspension began April 5, 2004, and will conclude at the close of business August 4, 2004. Curd's suspension began April 5, 2004, and will conclude at the close of business April 4, 2005. Shanahan's suspension began April 5, 2004, and will conclude at the close of business May 10, 2004. (NASD Case #CAF030056)

Isaac Charles Grossman (CRD #2905125, Registered Representative, Parkland, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Grossman consented to the described sanctions and to the entry of findings that he opened two accounts for the children of a public customer and, pursuant to instructions from the customer, executed transactions in the accounts without the authorization of the account holders to accept instructions from the public customer.

Grossman's suspension began April 5, 2004, and concluded at the close of business April 12, 2004. (NASD Case #C07040022)

Scott Philip Harris (CRD #705489, Registered Representative, Livingston, 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, Harris consented to the described sanction and to the entry of findings that he recommended and effected various unsuitable transactions in the account of a public customer. These transactions were unsuitable based on the concentration of speculative securities, the amount of margin utilized, and the customer's financial situation, investment objective, and needs. The findings also stated that Harris settled public customer complaints without his member firm's knowledge or approval. NASD also found that Harris submitted false and/or misleading written responses to NASD requests for information. (NASD Case #C9B040014)

David Charles Hawkinson (CRD #1963106, Registered Representative, Galesburg, Illinois) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hawkinson consented to the described sanction

and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The findings also stated that Hawkinson failed to respond to NASD requests for information. **(NASD case #C8A030104)**

Louis Anthony Helfer (CRD #859561, Registered Principal, Summit, New Jersey) 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 four months, and ordered to pay \$5,975, plus interest, in restitution to public customer. Without admitting or denying the allegations, Helfer consented to the described sanctions and to the entry of findings that he knowingly and intentionally entered priced limit orders in NASDAQ securities for his own account into an electronic communications network (ECN) at prices that Helfer knew would improve, and were intended to improve, the National Best Bid or Offer (NBBO) in such securities, in that the full price and size of such orders would be reflected in the public quotation system as the best prices and sizes at which a market participant was willing to buy or sell such securities. The findings also stated that, after having entered such orders, Helfer knowingly and intentionally entered orders to buy or sell shares of such securities in his trading account at his member firm because he knew, and intended, that they would be routed to market makers whose automated execution systems were programmed to buy or sell, and did buy and sell, such securities on an automated basis at prices equal to the NBBO and in an amount greater than the NBBO. NASD also found that, by knowingly and intentionally engaging in this course of conduct, Helfer bought (sold) shares of these securities at prices that were lower (higher) than he would otherwise have been able to buy (sell) shares of these securities, but for his entry of the orders into the ECN. In addition, NASD found that immediately after Helfer received the executions of the orders he had entered for his trading account at his member firm, he intentionally and knowingly canceled 21 of the 30 priced limit orders that he had entered into the ECN, obtaining a financial benefit of approximately \$5,975.

Helfer's suspension began March 15, 2004, and will conclude at the close of business July 14, 2004. **(NASD Case #CMS040014)**

Jaime Robert Hellman (CRD #2477891, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$17,138.75, including disgorgement of \$12,138.75 in commissions received, and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Hellman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hellman consented to the described sanctions and to the entry of findings that he effected securities transactions

away from his member firm, for compensation, and failed to provide written notification to, or receive approval from, his member firm.

Hellman's suspension began April 5, 2004, and will conclude July 4, 2004. **(NASD Case #C10040016)**

Daniel S. Jaume (CRD #4102156, Registered Principal, Lake Hiawatha, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Jaume reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jaume consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information.

Jaume's suspension began March 15, 2004, and will conclude at the close of business June 14, 2004. **(NASD Case #C9B040010)**

Elena Jenkins (CRD #4384862, Registered Representative, Memphis, Tennessee) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member. Without admitting or denying the allegations, Jenkins consented to the described sanctions and to the entry of findings that she directed a \$2,900 withdrawal to be made from the account of a public customer at her member firm and instructed that the funds be deposited into her personal checking account, thereby converting the funds to her own use and benefit without the customer's knowledge or consent. The findings also stated that Jenkins gave a public customer a handwritten guarantee against losses incurred from investment in a security. **(NASD Case #C05040014)**

Michael Edward Joie (CRD #2736854, Registered Principal, North Massapequa, 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, Joie consented to the described sanction and to the entry of findings that he intentionally failed to attend an NASD on-the-record interview. The findings also stated that Joie informed NASD that he would not agree to participate in any future NASD on-the-record interview. **(NASD Case #CMS040025)**

Kelley Charles Judd (CRD #2307042, Registered Representative, Palm Desert, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Judd reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Judd consented to

the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written or oral notification to, and receiving approval from, his member firm.

Judd's suspension began April 5, 2004, and will conclude at the close of business May 4, 2004. **(NASD Case #C02040009)**

Roger Angelo Kapsalis (CRD #2159293, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two months. In light of the financial status of Kapsalis, no monetary sanction has been imposed. Without admitting or denying the allegations, Kapsalis consented to the described sanction and to the entry of findings that he either intentionally or recklessly failed to disclose materially adverse information to public customers in connection with his recommendations that customers purchase a security. The findings also stated that Kapsalis either intentionally or recklessly failed to disclose to public customers his financial incentive for recommending the stock.

Kapsalis' suspension began April 5, 2004, and will conclude at the close of business June 4, 2004. **(NASD Case #C3A030041)**

Brian Aaron Kerns (CRD #4339980, Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kerns consented to the described sanction and to the entry of findings that he caused the transfer of \$88,340 from bank accounts of public customers of his member firm's banking affiliate without the knowledge and approval of the customers to a separate bank account over which he executed control, thereby converting the funds to his own personal use. The findings also stated that Kerns failed to respond to an NASD request for information. **(NASD Case #C8A040006)**

Cary Lee Kolopsky (CRD #2688014, Registered Principal, Huntington, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 15 months. The fine must be paid before Kolopsky reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kolopsky consented to the described sanctions and to the entry of findings that he effected the sale of securities from the account of a public customer knowing that the sale would be cancelled and allocated to another customer, an affiliate of the securities issuer, who did not have eligible shares to sell at the time of the sale but was in the process of registering a substantial number

of shares of the security that he owned with the Securities and Exchange Commission (SEC). The findings also stated that Kolopsky cancelled the sale of securities from the one customer's account and allocated the sale to the other customer's account after his shares were registered with the SEC. NASD also found that Kolopsky facilitated this cancellation and allocation by improperly writing "wrong account number on original ticket" in the "Remarks" section of the Cancel and Rebill form when that was not the actual reason why the transaction had been reversed. In addition, NASD found that Kolopsky knew, or should have known that, by allocating the sale to the one customer's account, he was enabling the customer to circumvent the requirements of SEC Rule 144 because the customer was not entitled to sell any shares because they were not yet registered.

Kolopsky's suspension began March 15, 2004, and will conclude at the close of business June 14, 2005. **(NASD Case #C10040009)**

Donald Michael Lacovazzi (CRD #1282380, Registered Representative, Burlington, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$9,000, \$6,222 of which represents partial disgorgement of his commissions, ordered to disgorge the balance of commissions in the amount of \$12,344, plus interest, to the estate of a public customer, and suspended from association with any NASD member in any capacity for 10 business days. Satisfactory proof of payment of the disgorgement must be made before Lacovazzi reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lacovazzi consented to the described sanctions and to the entry of findings that he recommended to a public customer that he switch the variable annuity he had purchased to another variable annuity, resulting in surrender charges of \$12,344 to the customer. The findings also stated that Lacovazzi made this recommendation without having a reasonable basis for believing that the recommendation was suitable based upon his client's investment objectives, financial situation, and needs.

Lacovazzi's suspension began April 5, 2004, and concluded at the close of business April 16, 2004. **(NASD Case #C11040009)**

Gordon Philip Lewis (CRD #1443906, Registered Representative, Lakeport, California) and **Robert Jess Bise, Jr. (CRD #1437310, Registered Principal, Kelseyville, California)** submitted an Offer of Settlement in which Lewis was barred from association with any NASD member in any capacity, and Bise was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Bise reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lewis and Bise consented to the

described sanctions and to the entry of findings that Lewis recommended unsuitable investments to a public customer, and effected purchases and sales of securities in her account without reasonable grounds for believing his recommendations were suitable for the customer based upon her other securities holdings, financial situation, and needs. NASD also found that Lewis prepared and submitted order tickets in connection with the unsuitable recommendation to his member firm that falsely represented that the purchases were unsolicited when, in fact, they were solicited. The findings also stated that, in connection with the losses that the customer suffered in her account based upon his recommendations, Lewis paid \$24,000 to the customer without disclosing the payment to his member firm. In addition, the findings stated that Bise failed to reasonably supervise the activities of Lewis to detect and prevent the unsuitable recommendations.

Bise's suspension began April 5, 2004, and will conclude at the close of business October 4, 2004. (NASD Case #C01030026)

John Joseph Liselli (CRD #1885832, Registered Principal, Littleton, Colorado) 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 Liselli reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Liselli failed to disclose material information on his Form U4.

Liselli's suspension began March 15, 2004, and will conclude at the close of business June 14, 2004. (NASD Case #C3A040008)

Stephen Michael Magee (CRD #2469731, Registered Principal, Portland, Oregon) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Magee consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear and give testimony.

Magee's suspension will begin April 19, 2004, and will conclude at the close of business October 18, 2005. (NASD Case #CMS030197)

Cara Ann Miller (CRD #2968371, Registered Representative, Florence, Kentucky) was barred from association with any NASD member in any capacity. The sanction was based on findings that Miller converted \$7,322.58 of public customer funds without the customers' knowledge or consent. (NASD Case #C05030051)

Russell Wayne Miller (CRD #3219969, Registered Representative, Cibola, Texas), Robert Cowan Hess (CRD #2871722, Registered Representative, South Amboy, New Jersey), and Joseph Scott Glodek (CRD #2024287, Registered Principal, Chester, New Jersey) submitted an Offer of Settlement in which Miller and Hess were each fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Miller or Hess reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Glodek was fined \$5,000 and suspended from association with any NASD member in a principal capacity for 55 days. The sanctions were based on finding that Miller and Hess recommended to a public customer numerous purchase and sale transactions in various securities, without having reasonable grounds for believing that such transactions were suitable for the customer in light of the size of the transactions, the customer's financial situation, investment objectives, needs, and/or the nature of the securities. The findings also stated that Glodek failed to reasonably supervise Miller and Hess to prevent their violations and to achieve compliance with applicable securities laws, regulations, and NASD rules.

Miller's and Hess' suspensions began April 5, 2004, and will conclude at the close of business May 14, 2004. Glodek's suspension began April 5, 2004, and will conclude May 29, 2004. (NASD Case #C9B030041)

Frank R. Minkewicz, Jr. (CRD # 3083234, Registered Representative, Virginia Beach, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Minkewicz reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Minkewicz consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on various documents relating to a variable annuity application, thereby falsifying the records of his member firm.

Minkewicz' suspension began March 15, 2004, and will conclude at the close of business May 13, 2004. (NASD Case #C07040017)

Don Alan Morris (CRD #1766760, Registered Representative, Singer Island, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Morris consented to the described sanctions and to the entry of findings that he effected the sale of a corporate bond from the brokerage accounts of a public customer without the customer's prior knowledge, authorization, or consent.

Morris' suspension began April 5, 2004, and will conclude at the close of business April 19, 2004. (NASD Case #C07040020)

Jeffrey George Nunez (CRD #1580759, Registered Representative, New York, 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, Nunez consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear and provide testimony. (NASD Case #CMS040020)

Stephen Michael O'Donnell (CRD #1931363, Registered Representative, Brooklyn, New York) was fined \$95,364, ordered to pay \$106,781, plus interest, in restitution to a public customer, and barred from association with any NASD member in any capacity. The sanctions were based on findings that O'Donnell failed to disclose material information when soliciting and recommending shares of securities to public customers, failed to disclose to public customers the risks of investing in a security, and failed to disclose that his compensation was strongly tied to his sale of the stock. NASD also found that O'Donnell committed fraud by omitting material information while making recommendations to public customers, in that he knew it was misleading to make stock recommendations to public customers without disclosing either the risks of investment or information pertaining to the company's profitability. (NASD Case #C3A030039)

Thomas James O'Neill (CRD #724885, Registered Supervisor, Billings, Montana) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that O'Neill exercised discretion in the accounts of public customers without prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. The findings also stated that O'Neill recommended frequent purchase and sale of stocks for the account of a public customer, including the purchase and sale of volatile, high-risk stocks, without reasonable grounds for believing that such recommendations were suitable for the customer upon the basis of the facts disclosed by her as to her other security holdings, her financial situation, and needs. NASD also found that O'Neill failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C3B030022)

Paul John Pallo (CRD #1068684, Registered Principal, Mahwah, New Jersey) submitted a Offer of Settlement in which he was fined \$10,000, including \$5,000 in disgorgement of commissions, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Pallo consented to the described sanctions and to the entry of findings that he recommended and effected the purchase of Class B mutual fund shares in the

accounts of public customers without having reasonable grounds for believing that such transactions were suitable for the customers in view of the amount of shares purchased and the nature of the transactions, and in light of the customers' financial situation, investment objectives, circumstances, and needs. The findings also stated that Pallo's recommendations were unsuitable in that he should have recommended that the customers purchase Class A mutual fund shares given the amount invested so that the customers would have been eligible to receive breakpoints on Class A shares purchases, paid lower 12b-1 fees, and avoided being subject to contingent deferred sales charges. NASD also found that Pallo recommended and effected unsuitable mutual fund switch 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 nature of the recommended transactions, and in light of the customer's financial situation, investment objectives, circumstances, and needs. The findings further stated that these transactions were unsuitable in that the customer incurred unnecessary expenses because the investment objectives of the Class A shares that were sold were nearly identical to the Class A shares that were purchased.

Pallo's suspension began April 4, 2004, and will conclude at the close of business April 16, 2004. (NASD Case #C9B030051)

George Arturo Perez (CRD #2349953, Registered Representative, South Orange, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Perez failed to respond to NASD requests for information. The findings also stated that Perez willfully failed to disclose material information on his Form U4. (NASD Case #C9B030032)

Gary Joseph Redding (CRD #2236814, Registered Representative, Centereach, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Redding submitted a materially false Form U4 to NASD and willfully failed to amend his Form U4 to disclose material information. The findings also stated that Redding failed to respond to NASD requests for information. (NASD Case #CLI030021)

Neal Wade Schmidt (CRD #1947144, Registered Representative, Bismarck, North Dakota) 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 Schmidt reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schmidt consented to the described sanctions and to the entry of findings that he failed to update and disclose material information on his Form U4.

Schmidt's suspension began March 15, 2004, and will conclude at the close of business September 14, 2004. (NASD Case #C04030052)

Robert Eugene Schnelle (CRD #414544, Registered Representative, Danville, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schnelle consented to the described sanction and to the entry of findings that he received \$5,442 from a public customer to be applied to an existing life insurance policy of the customer, applied only \$1,442 to the policy, and misappropriated the remainder without the customer's knowledge or consent. In addition, NASD found that a public customer gave Schnelle \$4,100 to be invested in a universal variable life insurance policy and, without the customer's knowledge and authorization, cashed the checks and misused the funds by commingling the funds with funds belonging to either Schnelle or other members of the public. (NASD Case #C8A040009)

Lawrence Michael Schwartz (CRD #1818360, Registered Representative, Huntington, 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, Schwartz consented to the described sanction and to the entry of findings that he forged checks totaling \$713,000 from the bank account of a customer of a bank affiliate of Schwartz' member firm by completing and signing the customer's name to the checks. The findings also stated that Schwartz failed to respond to an NASD request to provide a written statement. (NASD Case #C10040014)

Thomas Alfred Sewall (CRD #2298117, Registered Representative, Houston, Texas) submitted an Offer of Settlement in which he was fined \$65,300, including disgorgement of \$55,300 in commissions, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Sewall reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sewall consented to the described sanctions and to the entry of findings that he engaged in an outside business activity, for compensation, without providing written notice to his member firm.

Sewall's suspension began March 15, 2004, and will conclude at the close of business March 14, 2005. (NASD Case #C06030030)

Yury Shapiro (CRD #4507669, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shapiro consented to the described sanction and

to the entry of findings that he arranged for an impostor to take the Series 6 and Series 63 qualification exams on his behalf. (NASD Case #C10040006)

Thomas Matthew Smith (CRD #704047, Registered Principal, San Rafael, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for two months, suspended from association with any NASD member in a supervisory capacity for six months, required to requalify as a Series 24 general securities principal prior to any association with any NASD member in a supervisory capacity, and required to not directly supervise brokers who recommend or trade in equities. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he failed to supervise reasonably so as to prevent a registered representative's fraudulent sales practices and recommendations of securities to public customers. The findings also stated that Smith approved all orders for purchase of securities submitted by a registered representative without properly reviewing them for suitability, and failed to question contradictory information regarding the investment objectives of some of the customers and to ascertain from the customers whether the security was suitable for them.

Smith's suspension in all capacities began March 15, 2004, and will conclude at the close of business May 14, 2004. Smith's suspension in a supervisory capacity began March 15, 2004, and will conclude at the close of business September 14, 2004. (NASD Case #CMS040017)

Nelson Eugene Terry (CRD #2311378, Registered Principal, Dallas, Texas) was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid when and if Terry seeks to return to the securities industry. The sanctions were based on findings that Terry, acting on behalf of his member firm, engaged in a securities business while failing to maintain sufficient net capital. The findings also stated that Terry failed to maintain and keep current accurate books and records. NASD also found that Terry failed to file an accurate and timely FOCUS Part IIA Report.

Terry's suspension began March 1, 2004, and will conclude at the close of business May 31, 2004. (NASD Case #C06030015)

Eleanor Poulsen Tweed (CRD #1246659, Registered Supervisor, Chandler, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tweed consented to the described sanction and to the entry of findings that she knowingly provided false information to a public customer concerning the value of securities held in accounts in the customer's name or under his control. The findings also stated

that Tweed's representations were oral, materially misstated the accounts' values, and were made in order to conceal from the customer the actual value of the accounts. (NASD Case #C3A040010)

Sandra Marie Welsh (CRD #2853318, Registered Representative, Warminster, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Welsh consented to the described sanction and to the entry of findings that she forged the name of a former public customer of her member firm on a fictitious letter created by a co-worker for the purpose of the co-worker obtaining reimbursement from the firm for tuition-related expenses. (NASD Case #C9B040015)

Decision Issued

The following decision has been issued by the District Business Conduct Committee (DBCC) or the Office of Hearing Officers (OHO) and has been appealed to or called for review by the National Adjudicatory Council (NAC) as of March 5, 2004. 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 *Notice to Members*.

Alvin Waino Gebhart Jr. (CRD #1005905, Registered Principal, Fallbrook, California) and **Donna Traina Gebhart (CRD #2708528, Registered Principal, Fallbrook, California)**
A. Gebhart was fined \$100,000 and suspended from association with any NASD member in any capacity for one year. D. Gebhart was fined \$7,500 and suspended from association with any NASD member in any capacity for seven months. The sanctions were based on findings that A. Gebhart and D. Gebhart offered and sold unregistered securities and negligently failed to disclose material information to public customers while recommending the purchase of securities. The findings also stated that the respondents participated in private securities transactions without providing written notice to, and receiving approval from, their member firm.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C02020057)

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.

Richard Juan Adams (CRD #2896069, Registered Representative, Houston, Texas) was named as a respondent in an NASD complaint alleging that he received \$2,000 from a public customer to invest in an individual retirement account (IRA) but failed to open an IRA or invest the funds in any IRA or growth and income fund. The complaint also alleges that Adams failed to respond to NASD requests for information. (NASD Case #C06030025)

Kathleen Marie Biggs-Drake (CRD #4300338, Registered Representative, Port Charlotte, Florida) was named as a respondent in an NASD complaint alleging that she received a signed blank check from a public customer who instructed Biggs-Drake to complete it for \$100 and use the proceeds to purchase prepaid gasoline cards for the customer. The complaint also alleges that Biggs-Drake failed to follow the customer's instructions and made the check payable to herself for \$1,000. In addition, the complaint alleges that Biggs-Drake failed to respond to NASD requests to provide testimony. (NASD Case #C07040028)

John David Buglisi (CRD #2977744, Registered Representative, Lido Beach, New York) was named as a respondent in an NASD complaint alleging that he engaged in purchase and sale transactions in the accounts of public customers without their prior knowledge, authorization, or consent. (NASD Case #CLI040001).

Clyde Allen Christensen (CRD #1505051, Registered Representative, Vancouver, Washington) was named as a respondent in an NASD complaint alleging that he received \$105,000 from public customers to be used to purchase securities and, instead, deposited the funds in accounts that he controlled. The complaint also alleges that Christensen subsequently returned \$20,899.87 of the funds to customers, thereby converting \$84,100.13 of the customers' funds to his own use and benefit without the customers' knowledge, authorization, or consent. The complaint further alleges that Christensen failed to respond to NASD requests for information. (NASD Case #C3B040006)

Mitchell Todd Galloway (CRD #2990335, Registered Representative, Cedar Hill, Texas) was named as a respondent in an NASD complaint alleging that he engaged in outside business activities without notice to his member firm. The complaint also alleges that Galloway recommended that a public customer surrender a variable annuity and use the proceeds to purchase a fixed annuity, incurring the maximum surrender fees of nearly \$6,000, without reasonable grounds for believing his recommendation was suitable based on the customer's financial situation and needs. Furthermore, the complaint alleges that

Galloway failed to respond to NASD requests for information. (NASD Case #C06040003)

Kyle Allen Grossart (CRD #1113760, Registered Representative, Granite Bay, California) was named as a respondent in an NASD complaint alleging that he purchased \$90,000 of money market fund Class A shares in the account of a public customer without the knowledge or consent of the customer, generating \$3,600 in commissions, of which Grossart received \$1,440. (NASD Case #C01040003)

Michael John Hanchar (CRD #2051679, Registered Principal, Parker, Colorado) was named as a respondent in an NASD complaint alleging that he obtained possession and control of the funds of public customers by causing the redemption of mutual fund shares owned by the customers, directing that the redemption proceeds be wired to bank accounts of other customers at his member firm, and then causing all or a portion of such funds to be wired to a bank account in his name and under his control. The complaint also alleges that Hanchar withdrew redemption proceeds of approximately \$772,200, and improperly transferred for his own benefit approximately \$713,000. In addition, the complaint alleges that Hanchar failed to respond to NASD requests for information. (NASD Case #C3A040009)

Richard Hennion (CRD #1315386, Registered Principal, Totowa, New Jersey) was named as a respondent in an NASD complaint alleging that, while exercising effective control over the account of a public customer, he effected, or caused to be effected, transactions in the account without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions, concentration of speculative securities, the nature of the account, and the customer's financial situation, investment objectives, and needs. The complaint also alleges that Hennion exercised discretion in the account of a public customer without prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. (NASD Case #C9B040013)

Gary David Kneller (CRD #1836439, Registered Principal, Marietta, Georgia) was named as a respondent in an NASD complaint alleging that he received \$500,000 from a public customer for a purported securities trading program. The complaint also alleges that the customer learned that her investment principal had been lost although she had received \$96,000 in payments from the investment, leaving her with a loss of \$404,000, plus interest. In addition, the complaint alleges that Kneller entered into a settlement agreement with a public customer in connection with legal action initiated by the customer and failed to disclose the legal action and the settlement agreement to his member firm. Furthermore, the complaint alleges that Kneller failed to respond to NASD requests for information. (NASD Case #C07040024)

Thomas John Linda (CRD #2404854, Registered Principal, Melville, New York) was named as a respondent in an NASD complaint alleging that he either intentionally or recklessly failed to disclose to public customers that his compensation would include a sales credit. The complaint also alleges that Linda, while using the means and instrumentalities of interstate commerce to offer securities for sale, omitted to state material facts necessary in order to make the statements made in connection with such offers, in light of the circumstances in which they were made, not misleading. The complaint further alleges that Linda, while using the means and instrumentalities of interstate commerce to offer securities for sale, made material misrepresentations in the form of price predictions to induce transactions, and transactions did occur. (NASD Case #C3A040007)

Ronald James Marszalek (CRD #2891521, Registered Representative, Joliet, Illinois) was named as a respondent in an NASD complaint alleging that he affixed the signature of his branch manager on documents intended to correct the middle initial of a customer's name and to change the customer's address on the customer's account at the member firm, without the branch office manager's knowledge or consent. The complaint also alleges that Marszalek purchased securities for the joint account of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to Marszalek to exercise discretion in said account. Furthermore, the complaint alleges that Marszalek transferred, or caused the transfer of, securities from the joint account of public customers to the securities account of another customer without the knowledge or consent of the customers and in the absence of written or oral authorization to Marszalek to exercise discretion in the account of the public customers. Moreover, the complaint alleges that Marszalek sold, or caused the sale of, securities from the account of a public customer for \$14,712.27, received \$12,212.27 from the customer, and subsequently used the funds for his own personal benefit or for some purpose other than the benefit of the customers. (NASD Case #C8A040004)

Patrick Roger Morrison (CRD #3159281, Registered Representative, Huntington Station, New York) was named as a respondent in an NASD complaint alleging that he submitted to his member firm a change of address form for a public customer changing her residential address to another address, falsely telling his firm that it was the customer's work address, thereby causing his firm to maintain false records in violation of SEC Rule 17a-3(a)(9). The complaint also alleges that Morrison forged the customer's signature on her customer account agreement, option agreement, and margin account agreement, and submitted requests to the firm to issue checks totaling \$61,700 to the customer without her knowledge, authorization, or consent. In addition, the complaint alleges that Morrison had the checks sent to the falsified address, forged the

customer's endorsement on the checks, endorsed the checks to be payable to himself, and deposited the funds into his personal bank account, thereby making improper use of the customer's funds. Moreover, the complaint alleges that Morrison exercised discretionary trading authority in the account of a public customer without prior written authorization from the customer and written acceptance of the discretionary trading account by his member firm. Furthermore, the complaint alleges that Morrison, in connection with an inducement or attempt to induce the purchase or sale of a security or with the sale or purchase of a security, and through means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly employed a device, scheme, contrivance, or artifice to defraud; employed manipulative, deceptive, or other fraudulent device or contrivance; and engaged in acts, practices, or courses of business that operated as a fraud or deceit upon investors or prospective investors. The complaint also alleges that Morrison effected unauthorized transactions in the account of a public customer and failed to respond to NASD requests to appear and complete on-the-record testimony. (NASD Case #CLI040002)

Raymond Louis Natili, III (CRD #2202614, Registered Representative, Greensboro, North Carolina) was named as a respondent in an NASD complaint alleging that he recommended and effected purchases of Class B mutual fund shares in accounts owned by public customers, causing the customers to pay more than \$27,000 in contingent deferred sales charges and Natili to earn \$17,910 in net commissions. The complaint also alleges that, because the buy transactions occurred within a 10-month period, the purchases could have been aggregated by a Letter of Intent and Natili would have earned only \$4,667 in net commissions on the transactions. The complaint also alleges that Natili made the recommendations to purchase, and subsequently to sell, Class B shares without having reasonable grounds for believing the recommendations and resultant transactions were suitable for the customers on the basis of their financial situation and needs. (NASD Case #C07040025)

David N. Pitts (CRD #3216375, Registered Representative, Cincinnati, Ohio) was named as a respondent in an NASD complaint alleging that he caused \$219,162.12 to be withdrawn from the accounts of public customers without the knowledge or consent of the customers and used the funds for his own benefit or for the benefit of individuals other than the customers. The complaint also alleges that Pitts failed to respond to NASD requests for documents and information. (NASD Case #C8B040005)

Andrew Vincent Reid (CRD #2407747, Registered Principal, New Orleans, Louisiana) was named as a respondent in an NASD complaint alleging that he received a \$10,090.58 check from a public customer for investment, failed to forward the check to his member firm, and, instead, deposited the check into his personal bank account, thereby converting the funds to his own use and benefit without the customer's knowledge or consent. The complaint also alleges that Reid failed to respond to NASD requests for information. (NASD Case #C05040011)

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

Paragon Capital Markets, Inc.
East Hanover, New Jersey
(February 26, 2004)

Summit Trading, Inc.
Coral Springs, Florida
(February 26, 2004)

Phillip Louis Trading, Inc.
Red Bank, New Jersey
(February 26, 2004)

WIN Capital Corp.
Bayville, New York
(February 26, 2004)

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.)

Bush, Brandon T.
Boca Raton, Florida
(February 23, 2004)

McDonald, Stephen M.
Daniel Island, South Carolina
(March 3, 2004)

Carrea, Anthony J.
Chesapeake, Virginia
(February 23, 2004)

McMaster, Samuel A.
Albuquerque, New Mexico
(February 27, 2004)

Carroll, Kim S.
Lake Forest, California
(February 27, 2004)

Menlove, Troy R.
Sandy, Utah
(February 24, 2004)

Frambes, Steven C.
Dunn Loring, Virginia
(February 4, 2004)

Wolf, Tim Lee
Chandler, Arizona
(February 18, 2004)

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.)

Anderson, Rene E.
Palm Beach Gardens, Florida
(February 23, 2004)

Andre, Antoine
Dania, Florida
(February 5, 2004)

Barber, Christopher Layne
Wake Forest, North Carolina
(February 4, 2004)

Del Valle, Jose E.
Rio Piedras, Puerto Rico
(February 23, 2004)

Gardner, Walter R.
Little Rock, Arkansas
(February 18, 2004)

Grist, Deborah L.
Chicago, Illinois
(March 3, 2004)

Heimbach, Charles T.
Tampa, Florida
(February 23, 2004)

Regan, Jr., Henry Paul
Miami, Florida
(February 20, 2004)

Tanwir, Khurram
New York, New York
(February 25, 2004)

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

Antonelli, Nicholas M.
Commack, New York
(February 26, 2004)

Ashbaker, Daniel J.
O'Fallon, Illinois
(February 26, 2004)

Belden, Wendell D.
Tulsa, Oklahoma
(February 26, 2004)

Biebel, Richard D.
Montclair, New Jersey
(February 26, 2004)

Bowen, Phillip E.
Webster Groves, Missouri
(February 26, 2004)

Cavaliere, James
Staten Island, New York
(February 26, 2004)

Ihrie, Michael C.
Germantown, Tennessee
(February 26, 2004)

Thompson, Paul
Bayfield, Colorado
(February 26, 2004)

Winkler, Stuart E.
Brooklyn, New York
(February 26, 2004)

NASD Charges Three Brokers with Suitability Violations for Recommending Investment Purchases Using Mortgage Proceeds

NASD has taken separate enforcement actions against three brokers for making unsuitable recommendations to customers, urging them to purchase investments using proceeds obtained from cash-out home mortgage refinancing. NASD also issued an *Investor Alert* to help highlight the dangers associated with mortgaging a home to fund investments. NASD is concerned that investors who purchase investments with mortgage proceeds and use their investment returns to make the mortgage payments could default on their home loans if their investments decline and they are unable to meet their monthly mortgage payments. Investors can learn more about the risk of the use of mortgage proceeds for investing by reading *Betting the Ranch: Risking Your Home to Buy Securities* (www.nasd.com/investor/alerts/alert_betting_ranch.htm).

Today's enforcement actions include two settlements and the filing of a complaint:

- James A. Kenas of Coeur d'Alene, ID, and formerly a registered representative with WMA Securities, Inc., was suspended for 6 months for violating NASD's Suitability Rule by recommending that his customers purchase mutual fund shares, when the only funds available to those customers for the purchases were from mortgaging their home.
- Steve C. Morgan of Loveland, CO, and a registered representative associated with Washington Square Securities at the time of conduct, suspended for 6 months and ordered to pay restitution to customers of more than \$15,000, which must be paid to the customers before he re-enters the securities business. NASD found that Morgan recommended that a retired couple purchase a variable annuity even though they were financially unable to make the purchase except by mortgaging their home.
- Jamie A. Engelking of Denver, CO, and a registered representative formerly associated with First Union Securities, was charged in a complaint with recommending the purchase of a variable annuity using mortgage proceeds which were the only funds available for the investment.

"A recommendation by a securities firm or a broker that an investor mortgage his home to buy securities raises all kinds of regulatory red flags," said Mary L. Schapiro, NASD's Vice Chairman. "NASD will always ask whether it is appropriate to recommend that you risk your home to seek investment returns."

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.

In settling these charges, Kenas and Morgan neither admitted nor denied the allegations.

NASD Fines Ameritrade, Datek, and iClearing \$10 Million for Improperly Extending Credit and Allowing Trades that Avoided NASD Day Trading Margin Rules

NASD has fined Ameritrade, Inc., Datek Online Financial Services, LLC (Datek), and iClearing, LLC, \$10 million for improperly extending credit to customers in violation of federal securities laws. As a result of a merger effective September 2002, Datek and iClearing became affiliates of Ameritrade, Inc., of Omaha, NE.

NASD determined that the firms permitted cash account customers to purchase and sell securities in a series of trades without requiring full cash payment for each purchase in violation of Federal Reserve Regulation T. Regulation T requires that customers trading in cash accounts make full cash payment for each separate purchase without regard to unsettled proceeds of any securities sold. Specifically, the firms allowed their customers to make purchase transactions based on proceeds due from unsettled trades. Ameritrade, Datek, and iClearing permitted this to occur in over 2 million transactions in 30,000 customer cash accounts. NASD further found that Ameritrade, Datek, and iClearing permitted day trading in cash accounts that, in many instances, would have required \$25,000 minimum equity under NASD rules and should have occurred only in a margin account. NASD rules require a minimum of \$25,000 of equity in a customer's account if the customer is a "pattern day trader." A pattern day trader is an individual that executes four or more day trades within five business days.

"As day trading again becomes popular, firms must adhere to the requirements of Regulation T and require customer payment for their securities," said Mary L. Schapiro, NASD Vice Chairman. "The sanctions imposed here today reflect not only the importance of these rules but the firms' failure to timely respond to NASD's concerns."

NASD informed Datek and iClearing that these practices violated Regulation T and the firms failed to comply with repeated NASD warnings. Specifically, NASD informed Datek and iClearing in October 2001 that day trading in cash accounts without requiring full cash payment for each purchase prior to its sale violated Regulation T. In addition, NASD provided Datek and iClearing with two Federal Reserve opinions that supported its position. NASD then informed Datek and iClearing of potential disciplinary action if the firms continued to permit their

customers to trade in this manner. Despite these warnings, Datek and iClearing continued to permit customers to use unsettled proceeds to fund purchases in cash accounts.

Before their merger Datek informed Ameritrade that NASD had expressed concern about trading in cash accounts and stated that the action violated Regulation T. In addition, in July and August of 2002, Datek gave Ameritrade three letters it had received from NASD informing the firm that it was violating Regulation T and instructing Datek and iClearing to cease the activity. NASD also instructed Ameritrade in August 2002 in writing to immediately cease such activity and instructed the firm in December to immediately implement a process to prevent such trading. However, Ameritrade did not completely prevent this type of trading until May 2003.

In September 2003 NASD issued an Investor Alert to remind investors about the risks associated with trading on margin. The Investor Alert, "Investing with Borrowed Funds: No 'Margin' for Error," can be found at: www.nasd.com/Investor/Alerts/alert_borrowed_funds.htm.

In settling this matter, Ameritrade, Datek, and iClearing neither admitted nor denied the charges.

NASD Charges Advantage Trading Group, Inc. and its Trade Desk Manager with Creating False Trading Records to Mislead Investigation

NASD filed a complaint charging Advantage Trading Group, Inc., of Longwood, FL, and Wendy L. Epps, the firm's Trade Desk Manager, with the creation of false books and records in connection with NASD's investigation of trade reporting violations. NASD also charged the firm with trade reporting violations and failing to maintain and preserve books and records in accordance with NASD rules and federal securities laws. The firm and Epps were also charged with failing to supervise the trade reporting function and the maintenance of books and records.

NASD determined that representatives of Advantage Trading created false order tickets in response to an NASD request for information. The false order tickets were provided to NASD and identified as the firm's official records. The firm subsequently provided a second set of order tickets with different information on the same transactions. In subsequent correspondence and during sworn testimony, representatives of Advantage consistently maintained that the original order tickets were generated directly from the firm's computer system when, in fact, the order tickets were created after the receipt of NASD's inquiry letters.

The two sets of records were inconsistent with the information reported by Advantage to the Automated Confirmation Transaction Service (ACT). Consequently, the regulatory audit

trail was adversely affected. The investigation further revealed that Advantage failed to properly maintain the necessary records and record electronic information in a non-erasable, non-rewritable format.

NASD also determined that Epps oversaw the production of the false order tickets and provided inaccurate and misleading testimony to NASD on two separate occasions. Epps was also the designated supervisor responsible for the underlying trade reporting violations.

Under NASD rules, the individuals and firms 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 Fines AXA Advisors \$250,000 for Failure to Waive Sales Charges on Customers' Mutual Fund Transfers; AXA to Pay Restitution to Customers

NASD has censured and fined AXA Advisors, LLC, \$250,000 for failing to obtain sales charge waivers for mutual fund customers through net asset value (NAV) transfer programs. NASD also found that AXA, located in New York City, failed to have an adequate supervisory system in place to identify and provide customers with sales charge waivers to which they were entitled.

Some mutual fund families offer NAV transfer programs that eliminate front-end mutual fund sales charges for certain customers. Under the programs, customers who redeem fund shares for which they paid a sales charge may use the proceeds within prescribed time periods to purchase Class A shares of a new mutual fund at NAV; that is, without paying another front-end sales load. Investors who qualify for NAV transfer programs have no reasonable basis to purchase any class of shares other than Class A shares. NAV transfers are explained more fully in an Investor Alert, "Net Asset Value Transfers: Look Before You Leap Into Another Mutual Fund," www.nasd.com/Investor/Alerts/alert_nav_transfers.htm.

AXA failed to identify certain NAV transfer programs and give customers their benefits. As a result, eligible investors purchased Class A shares and paid front-end sales charges that they should not have paid, or purchased Class B shares, which subjected them to contingent deferred sales charges and higher fees. Specifically, AXA failed to identify NAV transfer programs offered by Pacific Investment Management Company LLC (PIMCO) and Eaton Vance Distributors, Inc. The PIMCO transfer program was described in PIMCO's Shareholder's Guide, and the Eaton Vance program was described in its funds' prospectuses.

"When investors are eligible for a discount or sales charge waiver, securities firms must provide them, without exception," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "Securities firms must have the necessary systems and procedures to identify these transfer programs and deliver their benefits to customers. To this end, NASD is initiating a broad-based review to determine whether other firms are meeting their obligations to provide sales charge waivers to their customers."

NASD determined that, from February 2000 through July 2003, AXA earned more than \$700,000 in revenue on more than \$18 million invested by the customers of the firm in two different mutual fund families offering NAV transfer programs—PIMCO and Eaton Vance. As part of the settlement, AXA was ordered to provide full restitution to all customers who paid sales charges on purchases that were subject to these programs from February 2000 through February 2004. AXA is also required to retain an independent consultant to review and recommend revisions to its supervisory and compliance procedures and systems in this area.

NASD also charged AXA and Erik Mosholt, a Senior Vice President of the firm's Investment Products Group, with supervisory violations. AXA failed to have adequate systems or procedures in place to identify and determine the availability of NAV transfer programs. In fact, this group, whose responsibilities included conducting due diligence concerning all third-party mutual funds sold by the firm, did not have any written procedures regarding the functions for which the group was responsible. Mosholt and AXA were jointly fined \$50,000, and Mosholt was censured.

In settling these charges, AXA and Mosholt neither admitted nor denied the allegations.

NASD Fines, Suspends Former SSB Research Analyst Christine Gochuico for Misleading Reports on Winstar; Sanctions to Include Additional 18-Month Bar From Appearing on Research

NASD announced that Christine Gochuico, a former vice president and telecommunications research analyst for Salomon Smith Barney, Inc. (SSB), settled charges relating to misleading research by agreeing to a \$100,000 fine and a six-month suspension from the securities industry. For an additional 18 months following her suspension, Gochuico is prohibited from allowing her name to appear on, or otherwise be publicly associated with, any broker-dealer's research report, advertisement, or sales literature.

The sanctions imposed stem from a September 2002 NASD complaint filed against SSB, Gochuico, and Jack Grubman, formerly Managing Director of SSB's Equity Research Department. Charges in the complaint related to the firm's issuance of misleading research reports on Winstar Communications, Inc.—a company with which SSB had a significant investment banking relationship. (See NASD News Release - 09/23/02.) SSB settled the case when it was first filed while Grubman settled at a later date. (See NASD News Release - 04/28/03.)

NASD charged that, between January and April 2001, Gochuico assisted Jack Grubman in analyzing Winstar and drafting research reports that contained misleading statements and omissions and an unreasonable price target for the company. During that time period, Salomon's research reports recommended a purchase of Winstar with a "Buy" rating and a target price of \$50 per share—while the price of Winstar fell more than 99 percent, from approximately \$20 per share to \$0.14 per share. Gochuico's conduct violated NASD's advertising rules, which require that, among other things, published research reports have a reasonable basis, present a fair picture of the investment risks and benefits, and not make exaggerated or unwarranted claims.

NASD also charged that Gochuico assisted in publishing research reports that recommended Winstar at the same time that she was privately expressing doubts and discussing risks about the company. On Feb. 28, 2001, when Winstar was trading at approximately \$13 per share, an institutional investor sent the following e-mail to Gochuico, questioning the use of certain assumptions in Winstar's discounted cash flow model:

"Why do you guys use 12% perpetual FCF [free cash flow] growth for your terminal multiple?? Seems a little high to me, especially considering that the US and World economy has at best 3% LT [long term] sustainable growth rate...."

Gochuico immediately replied:

"There really is no good reason - except the unwillingness to change our Target Price for optics; although I would admit \$50 per share is shall we say - extremely aggressive."

Gochuico violated the NASD rule which requires that conduct be consistent with just and equitable principles of trade and high standards of commercial honor, and NASD's advertising rule that prohibits misleading statements and exaggerated and unwarranted statements. Gochuico agreed to the settlement without admitting or denying the allegations.

NASD Fines Robertson Stephens and Former VP \$350,000 for Attempting to Coerce Investment Banking Fees; Also Charges Former Managing Director

Cites Threat to Drop Research Coverage if \$1 Million Fee Demand Not Met

NASD announced that, as part of its continuing regulatory focus on investment banking and research analyst activities, it has censured and fined Robertson Stephens, Inc., and its former senior investment banker, Richard (Kevin) Davies, a total of \$350,000 for threatening to discontinue research coverage of a public company unless that company paid Robertson Stephens \$1 million in investment banking fees.

NASD found that Davies threatened ResMed, Inc., a public company located near San Diego, CA, by telling a ResMed official that he would instruct Robertson Stephens' research analyst to discontinue research coverage if ResMed did not pay Robertson Stephens \$1 million to participate as a secondary manager in ResMed's planned convertible bond offering in 2001. NASD separately filed a complaint against Hany Awadalla, a former Managing Director of Robertson Stephens, related to the same misconduct.

The actions of Robertson Stephens and Davies violate NASD's rule requiring all firms and associated persons to adhere to high standards of commercial honor and just and equitable principles of trade. This coercive conduct also has the potential to undermine competition for investment banking services.

"Brokerage firms and their executives cannot use threats regarding research activities as a way to exact investment banking business," said Mary L. Schapiro, NASD's Vice Chairman and President of Regulatory Policy and Oversight. "Coercion of this type cannot be allowed to determine whether research coverage of a public company will continue. Investors are entitled to research that is based on the merits and that is not influenced by improper threats."

NASD found that in early June 2001, ResMed's Vice President and Corporate Secretary contacted Davies by telephone to offer Robertson Stephens the opportunity to participate as a secondary manager in the convertible bond offering. During the negotiations, Davies told the ResMed Vice President that unless Robertson Stephens was paid \$1 million to participate in the offering, he would instruct the firm's research analyst to drop coverage of ResMed and that Robertson Stephens would not participate in the offering. At this time, Robertson Stephens rated ResMed as a "Buy."

Despite the threat, ResMed personnel decided to end the negotiations, and Robertson Stephens did not participate in the convertible bond offering that was announced by ResMed on June 11, 2001. On June 20, 2001, Robertson Stephens issued a research report changing its rating on ResMed from a "Buy" to a "Market Perform." The report stated that the changed rating was based on an analysis of valuation criteria. This was the last research report on ResMed that Robertson Stephens published.

As part of its settlement with NASD, Robertson Stephens, which is no longer in business, was censured and fined \$275,000. Davies was censured and fined \$75,000. In settling this matter, Robertson Stephens and Davies neither admitted nor denied NASD's findings.

In July 2002, FleetBoston Financial Corporation, Robert Stephens' parent company, announced its intention to wind down the firm. Robertson Stephens subsequently withdrew from NASD in May 2003.

NASD also announced that, in a related matter, it has filed a complaint against Hany Awadalla, a former Managing Director in Robertson Stephens' mergers and acquisitions group. The complaint alleges that Awadalla, in assisting Davies in the fee negotiations with ResMed, made a similar threat to the same ResMed official. The complaint charges that this was an attempt by Awadalla to obtain a larger fee for Robertson Stephens' investment banking services than ResMed was willing to pay. NASD charged that, by virtue of his conduct, Awadalla failed to observe high standards of commercial honor and just and equitable principles of trade.

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