

MAY 2005

Notice to Members

Notices

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Disciplinary and Other NASD Actions

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Notice to Members

MAY 2005

SUGGESTED ROUTING

Executive Representatives
Investment Banking
Legal & Compliance
Operations
Research
Senior Management

KEY TOPICS

Communications with the Public
Investment Banking
Research Analysts

GUIDANCE

Research Analysts and Research Reports

SEC Approves Amendments to Rule 2711 to Prohibit Research Analysts from Participating in a Road Show and from Communicating with Customers in the Presence of Investment Banking Personnel or Company Management about an Investment Banking Services Transaction;
Compliance Date: June 6, 2005

Executive Summary

The Securities and Exchange Commission (SEC) has approved amendments to Rule 2711 (Research Analysts and Research Reports) to further insulate research analysts from the potential influences of the investment banking department. The amendments prohibit (1) a research analyst from participating in a road show related to an investment banking services transaction and from engaging in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction and (2) investment banking department personnel from directing a research analyst to engage in sales and marketing efforts and other communications with a customer about an investment banking services transaction. The proposed rule change expressly permits analysts to educate investors and internal personnel about an investment banking services transaction, provided such communications are "fair, balanced and not misleading."

The new rule can be found in Attachment A of this *Notice* and becomes effective on **June 6, 2005**.

Questions/Further Information

Questions or comments concerning this *Notice* may be directed to Philip Shaikun, Associate General Counsel, Regulatory Policy and Oversight, at (202)-728-8451.

Background and Discussion

During the past few years, NASD has implemented a series of rules to increase the objectivity and reliability of research. While the rules generally foster objectivity through extensive conflict of interest disclosure requirements, they also prohibit certain conduct to minimize the primary source of biased research: the influences of investment banking. To that end, NASD Rule 2711 prohibits compensation paid to analysts based on their contributions to, or the success of, the investment banking department. The rule further prohibits analysts from participating in efforts to solicit investment banking business, including “pitches” to earn an underwriting mandate for a securities offering.

The new rule fortifies the wall between investment banking and research by prohibiting research analysts from participating in a road show related to an investment banking services transaction and from communicating with current or prospective customers in the presence of investment banking department personnel or company management about such an investment banking services transaction. Additionally, the rule prohibits investment banking personnel from directing a research analyst to engage in sales and marketing efforts and other communications with a current or prospective customer about an investment banking services transaction.

By prohibiting research analyst participation in road shows and from communicating with customers in the presence of investment bankers or company management, the rule will further reduce pressure on research analysts to give an overly optimistic assessment of a particular transaction. It also will remove any suggestion to investors in attendance at a road show that the analyst will give positive coverage to the issuer or that the analyst endorses all of the views expressed by the company or investment banking department personnel.

The rule expressly permits research analysts to educate investors and member personnel about a particular offering or other transaction, provided the communication occurs outside the presence of the company or investment banking department personnel. Such permissible communications to investors and internal personnel must be fair, balanced, and not misleading, taking into account the overall context in which such communications are made. Thus, the rule preserves the ability of the research analyst to give a candid assessment of a transaction or sale of securities—including investment risks—in settings where the influences of investment banking and client pressure are minimized.

Finally, the rule prohibits investment banking department personnel from directing a research analyst to engage in sales or marketing efforts and any other communication with a current or prospective customer about an investment banking services transaction. This provision eliminates any attempt by investment banking personnel to pressure a research analyst to engage in otherwise permissible communications, thereby further insulating research analysts from influences that could affect their objectivity.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

Rule 2711. Research Analysts and Research Report

(a) through (b) No change.

(c) Restrictions on Communications with the Subject Company

(1) through (4) No change.

(5) A research analyst is prohibited from directly or indirectly:

(A) participating in a road show related to an investment banking services transaction; and

(B) engaging in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction.

(6) Investment banking department personnel are prohibited from directly or indirectly:

(A) directing a research analyst to engage in sales or marketing efforts related to an investment banking services transaction; and

(B) directing a research analyst to engage in any communication with a current or prospective customer about an investment banking services transaction.

(7) Any written or oral communication by a research analyst with a current or prospective customer or internal personnel related to an investment banking services transaction must be fair, balanced and not misleading, taking into consideration the overall context in which the communication is made.

(d) through (k) No change.

Notice to Members

MAY 2005

SUGGESTED ROUTING

Legal and Compliance

KEY TOPICS

Arbitration

Dispute Resolution

Foreign Hearing Locations

GUIDANCE

Foreign Hearing Locations

SEC Approves Amendments to IM-10104 and Rule 10315 to Permit Arbitrations in Foreign Hearing Locations; **Effective June 6, 2005**

Executive Summary

The Securities and Exchange Commission (SEC) has approved amendments to IM-10104 and Rule 10315 of the *NASD Code of Arbitration Procedure* (Code) to permit parties to have their hearings in a foreign hearing location, and to allow the director of arbitration to authorize a higher or additional honorarium for the use of a foreign hearing location.¹

The text of the amendments is set forth in Attachment A. The amendments will be effective on **June 6, 2005**, and will apply to any arbitration claims filed on or after June 6, 2005.

Questions/Further Information

Questions regarding this *Notice* may be directed to Mignon McLemore, Assistant Chief Counsel, NASD Dispute Resolution, at (202) 728-8151 or mignon.mclemore@nasd.com.

Discussion

NASD has amended IM-10104 and Rule 10315 of the Code to permit parties to have their hearings in a foreign hearing location, and to allow the director of arbitration to authorize a higher or additional honorarium for the use of a foreign hearing location.

Background

In accordance with NASD Rule 10315, the director of arbitration (Director) sets the hearing location for NASD arbitration cases. Currently, for cases involving public customers who reside in the United States (U.S.), the Director generally designates the hearing location that is closest to the public customer's residence at the time of the events in dispute.² However, for claimants who reside outside of the U.S., the Director sets the hearing in the NASD hearing location that is most logical for the case. Generally, when the claimant resides outside the U.S., the Director will consider a number of factors in determining a hearing location, including the preferences of the parties, the location of counsel or witnesses, and the availability of transportation routes to cities in the U.S.

In an effort to accommodate parties who reside outside the U.S., NASD has amended the Code to permit parties to have their hearings in a foreign hearing location and to allow the Director to authorize a higher or additional honorarium for the use of a foreign hearing location.

The first foreign hearing location for NASD arbitrations will be in London. NASD has entered into an agreement with the Chartered Institute of Arbitrators (CIArb) under which CIArb will make its neutrals available for NASD's roster in London. CIArb is based in London and maintains a worldwide roster of neutrals, providing dispute resolution services for banking, finance, business, commercial, and international issues. NASD believes that its agreement with CIArb will provide those international constituents of NASD with access to a local roster of experienced neutrals,³ as well as the convenience and cost efficiency of conducting hearing sessions within a reasonable distance from their place of business or residence.

Determination of a Foreign Hearing Location

Rule 10315 permits arbitrations to be held in a foreign hearing location. Under the rule, use of a foreign hearing location will be voluntary. For an arbitration to be held in a foreign hearing location, a claimant residing outside of the U.S. will file with NASD the claim information, submission agreements, payment, and other related documents currently required by NASD rules. At this point, the claimant can request that the arbitration be held in a foreign hearing location, or NASD staff will notify the claimant of the option of using a foreign hearing location, based on a review of the claim filing information. If the claimant wishes to use a foreign hearing location, NASD staff will seek the written agreement of the respondents.

Foreign Hearing Location Surcharge

As a condition of using a foreign hearing location, the parties must agree to accept the foreign hearing location surcharge, which the Director may authorize under IM-10104. NASD will assess the daily foreign hearing location surcharge to parties agreeing to use the foreign hearing location to cover the additional daily cost of the foreign neutrals' service, which may be higher than the arbitrator honorarium rates paid by NASD. This surcharge will be used solely to pay additional honorarium to the foreign neutrals, and will not be used to cover any other NASD expenses. The amount of the surcharge will vary depending on factors such as the daily rates for neutrals in a foreign hearing location and the currency exchange rates.

This surcharge will be apportioned equally among the parties, unless they agree otherwise. However, the foreign arbitrators will have the authority to apportion the surcharge as provided in NASD Rules 10205 and 10332.⁴

Effective Date

The amendments described in this *Notice* are effective on **June 6, 2005**, and will apply to any arbitration claims filed on or after June 6, 2005.

Endnotes

- 1 Exchange Act Release No. 51324 (March 7, 2005) (File No. SR-NASD-2004-042), 70 Federal Register 12257 (March 11, 2005).
- 2 NASD Dispute Resolution maintains a roster of qualified neutrals (*i.e.*, arbitrators and mediators) in 68 cities in the U.S. and Puerto Rico, and has at least one hearing location in every state and the District of Columbia.
- 3 CIArb's neutrals are required to complete a rigorous training program and to pass testing and interview requirements before being qualified for appointment to cases. CIArb's neutrals must meet NASD's background qualification requirements. In addition, NASD has conducted training for CIArb neutrals on NASD arbitration rules and procedures.
- 4 The Code will govern all case administration in instances where the parties elect to use a foreign hearing location.

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ATTACHMENT A

New language is underlined; deletions in brackets.

Code of Arbitration Procedure

* * *

IM-10104. Arbitrators' Honorarium

All persons selected to serve as arbitrators pursuant to the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate.

The honorarium shall be \$200 for each hearing session and \$75 per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing shall be \$125.

The honorarium for travel to a canceled hearing session shall be \$50. If a hearing session other than a prehearing conference is adjourned pursuant to Rule 10319(d), each arbitrator shall receive an additional honorarium of \$100.

The Director may authorize a higher or additional honorarium for the use of a foreign hearing location.

* * *

10315. [Designation of Time and Place] Determination of Hearing Location

(a) Designation of Time and Place of Hearing

The Director shall determine the time and place of the first meeting of the arbitration panel and the parties, whether the first meeting is a pre-hearing conference or a hearing, and shall give notice of the time and place at least 15 business days prior to the date fixed for the first meeting by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this Rule. The arbitrators shall determine the time and place for all subsequent meetings, whether the meetings are pre-hearing conferences, hearings, or any other type of meetings, and shall give notice as the arbitrators may determine. Attendance at a meeting waives notice thereof.

(b) Foreign Hearing Location

(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:

(A) met NASD background qualifications for arbitrators;

(B) received training on NASD arbitration rules and procedures; and

(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of NASD.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rules 10205 and 10332.

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Notice to Members

MAY 2005

SUGGESTED ROUTING

Legal and Compliance

KEY TOPICS

Arbitration

Dispute Resolution

Mediation

GUIDANCE

Mediators as Arbitrators

SEC Approves New Interpretive Material to Rule 10308 Regarding Arbitrators Who Also Serve as Mediators;
Effective Date: May 6, 2005

Executive Summary

The Securities and Exchange Commission (SEC) has approved a new Interpretive Material (IM) to Rule 10308 of the NASD *Code of Arbitration Procedure* (Code) relating to mediators who also serve as arbitrators.¹ The amendments clarify that (1) fees for service as a mediator are not included in determining whether an attorney, accountant, or other professional derives 10 percent of his or her annual revenue from industry-related parties; and (2) service as a mediator is not included in determining whether an attorney, accountant, or other professional devotes 20 percent or more of his or her professional work to securities industry clients. IM-10308 can be found in this *Notice* as Attachment A.

The effective date of this rule change is **May 6, 2005**, for arbitrator applications received or arbitrator disclosures reviewed on or after that date.

Questions/Further Information

Questions regarding this *Notice* may be directed to Jean I. Feeney, Vice President and Chief Counsel, Dispute Resolution, at (202) 728-6959 or jean.feeney@nasd.com; or Barbara L. Brady, Associate Vice President and Director of Neutral Management, Dispute Resolution, at (212) 858-4352 or barbara.brady@nasd.com.

Background and Discussion

Rule 10308 of the Code classifies arbitrators as “public” or “non-public.” When investors have a dispute with broker-dealer firms or associated persons in NASD arbitration, they are entitled to have their cases heard by a single public arbitrator or a majority-public panel consisting of two public arbitrators and one non-public arbitrator, depending on the amount of the claim.² Several rule changes relating to arbitrator classification were approved by the SEC and implemented by NASD on July 19, 2004.³ These changes amended the definitions of public and non-public arbitrators.

In the course of implementing the 2004 arbitrator classification amendments, NASD surveyed its entire roster of arbitrators, asking questions that tracked the new definitions. In light of information contained in their responses, some arbitrators were reclassified from public to non-public or from non-public to public, and some arbitrators were dropped from the roster for various reasons.

One new part of the rule provided that arbitrators who were otherwise qualified as public could not continue to serve as public if their firms derived more than 10 percent of their revenue from industry parties. Specifically, Rule 10308(a)(5)(A) was amended to read as follows:

The term “public arbitrator” means a person who is otherwise qualified to serve as an arbitrator and... (iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A)....

Some arbitrators who also serve as mediators raised a concern about the application of the above rule to their practice, because both sides in mediation normally pay a share of the mediator’s fees. They noted that the above rule change could be construed broadly enough to encompass income in the form of mediation fees paid by industry parties, meaning that these mediators would no longer qualify as public arbitrators under the new rule. A similar situation could arise with regard to Rule 10308(a)(4)(C), which classifies an arbitrator as non-public if the person devoted 20 percent or more of his or her professional work in the past two years to securities industry clients. This was not the intent of the recent rule changes. Mediators are expected to be neutral and do not represent either side in a mediation.

Therefore, NASD is issuing a clarification in IM-10308 to make clear that, so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation: (1) fees for service as a mediator are not included in determining whether an attorney, accountant, or other professional derives 10 percent of his or her annual revenue from industry-related parties under Rule 10308(a)(5)(A)(iv); and (2) service as a mediator is not included in determining whether an attorney, accountant, or other professional devotes 20 percent or more of his or her professional work to securities industry clients, for purposes of Rule 10308(a)(4)(C).

In considering this matter, NASD recognizes that parties may wish to know that an arbitrator on their list also serves as a mediator and may be familiar with the industry parties or their counsel. NASD will prepare materials to inform arbitrators of the need to disclose this fact on their disclosure forms, and will provide this information to parties on whose case the arbitrators may serve.

Effective Date Provisions

The new Interpretive Material will become effective on **May 6, 2005**. The amendments will apply to arbitrator applications received or arbitrator disclosures reviewed on or after that date. Because this Interpretive Material clarifies NASD's original intent in changing arbitrator classifications in July 2004, it will apply to all arbitrators on the NASD roster, as well as to new and pending applications. NASD Dispute Resolution staff will contact those arbitrators who were removed from the roster because of misunderstandings over the effect of mediator fees on Rule 10308(a)(4)(C) and (a)(5)(A)(iv). Other arbitrators who believe they are affected by this change may request reinstatement to the roster.

Endnotes

- 1 Exchange Act Rel. No. 51325 (Mar. 7, 2005), 70 Fed. Reg. 12522 (Mar. 14, 2005) (File No. SR-NASD-2005-007).
- 2 See Rule 10308(b). Rules governing intra-industry arbitrations use the same definitions of public and non-public, although the panel composition may vary depending on the nature of the dispute, as well as the amount in dispute. See Rule 10202.
- 3 See Securities Exchange Act Rel. No. 49573 (Apr. 16, 2004), 69 Fed. Reg. 21871 (Apr. 22, 2004) (File No. SR-NASD-2003-095), and *Notice to Members 04-49* (SEC Approves Amendments to Rules 10308 and 10312 Regarding Arbitrator Classification, Disclosures, and Challenges; Effective Date: July 19, 2004) (June 2004).

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ATTACHMENT A

New text is underlined.

IM-10308. Arbitrators Who Also Serve as Mediators

Mediation services performed by mediators who are also arbitrators shall not be included in the definition of "professional work" for purposes of Rule 10308(a)(4)(C), so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation.

Mediation fees received by mediators who are also arbitrators shall not be included in the definition of "revenue" for purposes of Rule 10308(a)(5)(A)(iv), so long as the mediator is acting in the capacity of a mediator and is not representing a party in the mediation.

Arbitrators who also serve as mediators shall disclose that fact on their arbitrator disclosure forms.

Notice to Members

MAY 2005

SUGGESTED ROUTING

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

KEY TOPICS

Debt Securities
Dissemination of Transaction
Information
Operations
Rule 6200 Series
TRACE Rules
Transaction Reporting

GUIDANCE

Corporate Debt Securities

NASD Restructures Certain TRACE Fees for Market Data and Amends the Definition of “Non-Professional” in Connection with TRACE Market Data; **Effective Date: June 1, 2005**

Executive Summary

On April 26, 2005, the SEC approved amendments to Rule 7010(k) relating to Transaction Reporting and Compliance Engine (TRACE) market data to restructure fees for TRACE market data, to amend the definition of “Non-Professional” in connection with TRACE market data, and to make other conforming or minor, technical changes to the rule (the amendments).¹ In amended Rule 7010(k)(3)(A)(ii), NASD establishes a new fee, the Vendor Real-Time Data Feed Fee, which allows TRACE data subscribers to receive a real-time feed of TRACE transaction data (Real-Time Feed) that the subscriber may use in multiple applications. The Vendor Real-Time Data Feed Fee is \$1,500 per month, except for qualifying Tax-Exempt Organizations. Amended Rule 7010(k)(3)(A)(iii) provides that qualifying Tax-Exempt Organizations will pay \$400 per month, but will be subject to significant restrictions on their use of the Real-Time Feed.

Also, NASD is eliminating two market data fees, the \$500 per month Bond Trade Dissemination Service (BTDS) Internal Usage Authorization Fee (per application or use) and the \$1,000 per month BTDS External Usage Authorization Fee (per application or use), amending the defined term Non-Professional in Rule 7010(k)(3)(C)(i) in connection with TRACE market data, and making other conforming or minor, technical amendments to Rule 7010(k).

Rule 7010(k), as amended, is set forth in Attachment A. The effective date of the amendments is **June 1, 2005**.

Questions/Further Information

Questions concerning this *Notice* should be directed to tracefeedback@nasd.com; Elliot Levine, Associate Vice President, Chief Counsel, Transparency Services, Markets, Services and Information, at 202-728-8405; or Sharon K. Zackula, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at 202-728-8985.

Discussion

The amendments restructure and streamline TRACE market data fees and otherwise amend Rule 7010(k) as follows.

New TRACE Market Data Fee. In amended Rule 7010(k)(3)(A)(ii), NASD establishes a new TRACE market data fee, the Vendor Real-Time Data Feed Fee, which is \$1,500 per month. (The fee is reduced to \$400 per month for qualifying Tax-Exempt Organizations that use the Real-Time Feed solely to provide Non-Professionals access to the TRACE market data at no charge.) The Vendor Real-Time Data Feed Fee allows TRACE data subscribers to receive a Real-Time Feed that the subscriber may use in an unlimited number of internal and external applications.²

Two TRACE Market Data Fees Terminated. The amendments terminate the BTDS Internal Usage Authorization Fee and the BTDS External Usage Authorization Fee. Both the fees, in contrast to the new Vendor Real-Time Data Feed Fee, limited a TRACE data subscriber to a single use or application of a TRACE data feed. The Vendor Real-Time Data Feed Fee replaces both fees.

Tax-Exempt Organization. The term Tax-Exempt Organization is defined in Rule 7010(k)(3)(C)(ii). Qualifying organizations that meet the requirements of the definition and the restrictions on use in Rule 7010(k)(3)(A)(iii) may acquire the Real-Time Feed at the reduced fee of \$400 per month.

Non-Professional. The definition of the term Non-Professional in Rule 7010(k)(3)(C)(i), which is used in connection with TRACE market data, is amended to permit natural persons, such as persons registered with the SEC, to use TRACE market data without charge, when the use is personal and noncommercial.³

Also, NASD made other minor, technical amendments to Rule 7010(k), which are incorporated in the amended rule text in Attachment A.

Effective Date

The effective date of the amendments is **June 1, 2005**.

Endnotes

- 1 See Securities Exchange Act Release No. 51611 (April 26, 2005), 70 Fed. Reg. 22735 (May 2, 2005) (SEC approval order) (File No. SR-NASD-2005-026).
- 2 The Vendor Real-Time Data Feed Fee in amended Rule 7010(k)(3)(A)(ii) does not include NASD's monthly charge for each desktop or other interrogation display device receiving the Real-Time Feed. See Rule 7010(k)(3)(A)(i).
- 3 Members are advised that NASD intends to file shortly a further technical amendment to the defined term Non-Professional in Rule 7010(k) to heighten uniformity across its rules and facilitate internal data collection practices. This future amendment to the term Non-Professional will not substantively affect Rule 7010(k)'s requirements, as amended.

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ATTACHMENT A

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7010. System Services

(a) through (j) No change.

(k) Trade Reporting and Compliance Engine (TRACE)

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine ("TRACE"):

System Fees	Transaction Reporting Fees	Market Data Fees
Level I Trade Report Only Web Browser Access - \$20/month per user ID Level II Full Service Web Browser Access - \$80/month per user ID	Trades up to and including \$200,000 par value - \$0.475/trade; Trades between \$201,000 and \$999,999 par value - \$0.002375 times the number of bonds traded/trade; Trades of \$1,000,000 par value or more - \$2.375/trade	BTDS Professional Real-Time Data Display - \$60/month per terminal[, except]
CTCI/Third Party - \$25/month/per firm	Cancel/Correct - \$1.50/trade	<u>Vendor Real-Time Data Feed - \$1,500/month for Real-Time TRACE transaction data, except for qualifying Tax-Exempt Organizations</u>
	"As of" Trade Late - \$3/trade	<u>Vendor Real-Time Data Feed - \$400/month for Real-Time TRACE transaction data for qualifying Tax-Exempt Organizations</u> [BTDS Internal Usage Authorization - \$500/month per application/service for Real-Time and Delayed-Time Data]
		<u>BTDS Non-Professional Real-Time Data Display - No charge</u> [BTDS External Usage Authorization - \$1,000/month per application/service for Real-Time and Delayed-Time Data] [BTDS Non-Professional Real-Time Data Display - No charge]

(1) through (2) No change.

(3) Market Data Fees

Professionals and Non-Professionals[non-professionals] may subscribe to receive Real-Time [and Delayed-Time]TRACE transaction data disseminated by NASD in one or more of the following ways for the charges specified, as applicable. Members, vendors and other redistributors shall be required to execute appropriate agreements with NASD.

(A) Professional Fees

Professionals may subscribe for the following:

(i) No change.

(ii) [Reserved.]Vendor Real-Time Data Feed Fee of \$1,500 per month for Real-Time TRACE transaction data for any person or organization (other than a Tax-Exempt Organization) that receives a Real-Time TRACE transaction data feed. The fee entitles use in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities, and the repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products. (This fee does not include per terminal charges for each interrogation or display device receiving Real-Time TRACE transaction data.)²

(iii) Vendor Real-Time Data Feed Fee of \$400 per month for Real-Time TRACE transaction data received by a Tax-Exempt Organization as defined in Rule 7010(k)(3) for the Tax-Exempt Organization to use solely to provide Non-Professionals access to Real-Time TRACE transaction data at no charge. [BTDS Internal Usage Authorization Fee of \$500 per month, per application/service for internal dissemination of Real-Time and/or Delayed-Time TRACE transaction data used in one or more of the following ways in a single application/service: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities.²]

[(iv) BTDS External Usage Authorization Fee of \$1,000 per month, per application/service for dissemination of Real-Time and/or Delayed-Time TRACE transaction data used in one or more of the following ways in a single application/service: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.³]

(B) Non-Professional Fees

There shall be no charge paid by a Non-Professional[non-professional] for receiving all or any portion of Real-Time TRACE transaction data disseminated through TRACE.

(C) Definitions

(i) "Delayed Time" as used in Rule 7010(k)(3) shall mean that period of time starting four hours after the time of dissemination by NASD of transaction data on a TRACE-eligible security, and ending at 11:59:59 p.m. Eastern Time that calendar day.]

(i) [(ii)]"Non-Professional" – [A non-professional subscriber must provide certain information to NASD and shall receive TRACE market data primarily for his or her personal, non-commercial use.] As used in Rule 7010(k)(3) a "Non-Professional" ["non-professional"] is a natural person who [is neither:] uses TRACE transaction data solely for his or her personal, non-commercial use. A Non-Professional subscriber must agree to certain terms of use of the TRACE data, including that he or she receive and use the TRACE transaction data solely for his or her personal, non-commercial use. Persons who are excluded from the definition of "Non-Professional" include a person that:

a. is not a natural person;

[a.]b. is registered or[nor] qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association, or an employee of the above and, with respect to any person identified in this subparagraph b., uses TRACE transaction data for other than personal, non-commercial use;[who uses such information primarily for business-related activities;]

[b.]c. is engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act), or an employee of the above and, with respect to any person identified in this subparagraph c., uses TRACE transaction data for other than personal, non-commercial use;[who uses such information primarily for business-related activities;]

[c.]d. is employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt[;], or any other employee of a bank, insurance company or such other organization referenced above and, with respect to any person identified in this subparagraph d., uses TRACE transaction data for other than personal, non-commercial use; or

[d.]e. is engaged in, or has the intention to engage in, any redistribution of all or any portion of the TRACE transaction data.[information disseminated through TRACE.]

(ii) “Tax-Exempt Organization” as used in Rule 7010(k)(3) means an organization that is described in Section 501(c) of the Internal Revenue Code (26 U.S.C. §501(c)); has received recognition of the exemption from federal income taxes from the Internal Revenue Service; and obtains and uses Real-Time TRACE transaction data solely for redistribution to Non-Professionals, as defined for purposes of Rule 7010(k)(3), at no charge.

(iii) No change.

(D) No change.

(l) through (v) No change.

- 2 Under the Vendor Real-Time Data Feed Fee and service, Real-Time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing.
- [2 Under this service, Real-Time and/or Delayed-Time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing, or disseminated to any external source.]
- [3 Under this service, Real-Time and/or Delayed-Time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing.]

Notice to Members

MAY 2005

SUGGESTED ROUTING

Suggested Routing
Senior Management
Executive Representatives
Legal & Compliance
Operations

KEY TOPICS

Key Topics
Clearing Firms
Deficits in Introduced Accounts
Introducing Firms

ACTION REQUIRED

Deficits in Introduced Accounts

NASD Reminds Broker-Dealers of Their Responsibilities Regarding Deficits in Introduced Accounts; Immediate Action May Be Required to Ensure Compliance

Executive Summary

NASD is concerned that clearing firms and introducing firms are frequently failing to properly consider deficits in introduced accounts in accordance with an August 1988 interpretation published in *NASD Guide to Rule Interpretations* (May 1996). This *Notice* is intended to remind members of their responsibilities in this regard. In addition, please note that reviews for the proper handling of deficits in introduced accounts will be an integral part of NASD's examination program for both clearing and introducing firms.

Questions/Further Information

Questions concerning this *Notice* may be directed to Susan M. DeMando, Associate Vice President, Financial Operations, at (202) 728-8411; or Anne Harpster, Financial Analyst, Financial Operations, at (202) 728-8092.

Discussion

The SEC's Net Capital Rule specifies the circumstances in which a clearing firm must take a charge to its net capital for unsecured or partly secured debits.¹ Since most clearing agreements, however, usually state that clearing firms have the right to charge their introducing firms for certain losses, NASD published the following interpretation (Interpretation):

Deficits In Introduced Accounts

Deficits in unsecured and partly secured introduced accounts shall be deducted by the carrying broker-dealer and the introducing broker-dealer *when the clearing agreement*

*states that such deficits are the liability of the introducing broker-dealer.² The amount is deductible by the carrying broker-dealer upon occurrence after application of timely calls for margin, marks to market, or other required deposits which are not outstanding for more than five business days unless there is reason to believe payment will not be made. The introducing broker-dealer *must* deduct the charge on the day after it becomes a charge to the carrying broker and the carrying broker-dealer *must* advise the introducing broker-dealer *in writing on a daily basis of all such deficits to be charged.* (Emphasis added.)*

– SEC Staff to NYSE, August 1988

NASD believes that some clearing firms may fail to notify their introducing firms of the deficits to be charged, as required by the Interpretation. Even when notified, introducing firms may fail to take the capital charge. Some clearing firms appear to believe that the use of the term “when” in the Interpretation (which specifically refers to the existence of language in the clearing agreement indicating that deficits are the responsibility of the introducing firm) can be read to permit the clearing firm to determine “when” a deficit has occurred. Some clearing and introducing firms appear to have concluded that as long as they are “in discussions” as to how to collect or otherwise resolve a deficit, the clearing firm can delay providing the required notification, and the introducing firm can postpone taking the capital charge.

The Interpretation does not permit a clearing firm to delay “passing on the deficit,” nor does it permit an introducing firm to postpone taking a capital charge for deficits in introduced accounts. If the clearing agreement states that the introducing broker-dealer is responsible for customer deficits, the clearing firm and the introducing broker-dealer must comply with the conditions of the Interpretation. These conditions require that the amount (of the deficit) is deducted by: (1) the carrying broker-dealer “upon occurrence...”; and (2) the introducing broker-dealer “on the day after it becomes a charge to the carrying broker.” This language, therefore, does not permit any delay in “passing on the deficit,” as the Interpretation requires the clearing firm must advise the introducing broker-dealer in writing on a daily basis of all such deficits.

NASD believes that the delays in “passing on the deficit” may be more prevalent when the size of the deficit would cause the introducing firm to be under capital. In such cases, failure to properly inform the introducing firm of a deficit allows the clearing firm to continue to receive revenue (for example, ticket charges and/or execution fees) and permits the introducing firm to continue to conduct a securities business even though it is not in compliance with the Net Capital Rule. This conduct gives the introducing firm a competitive advantage compared to other introducing firms that voluntarily cease conducting a securities business when under capital. The economics of such situations have caused some clearing firms to regard delays in “passing on the deficit” as simple “business decisions,” rather than conduct entirely inconsistent with the Interpretation.

Action Required

Clearing firms must review their operations to ensure that they have policies and procedures in place to comply with the Interpretation. Firms must immediately correct any deficiencies noted as a result of this review. If a clearing firm designated to NASD for financial and operational purposes determines that it does not have systems in place to ensure its compliance with this *Notice* and/or cannot remedy the deficiency by **June 30, 2005**, the clearing firm must contact its district office immediately to discuss an anticipated timeframe to ensure compliance. Where necessary, NASD may impose limitations on a clearing firm's operations relative to introduced accounts until the clearing firm can demonstrate compliance with this *Notice*.

Record Retention

Clearing firms issuing deficit reports, and introducing firms receiving such reports, must maintain these records for a period of not less than three years, the first two years in an easily accessible place.³ Such reports are considered "working papers" connected with net capital computations.

Satisfaction of Deficits

NASD anticipates that deficits will be satisfied in several ways. We believe the most common will be: (1) full cash payment by the owner of the introduced account to satisfy the deficit; (2) full cash payment by the correspondent to satisfy the deficit in an introduced account; (3) a write-off of the loss by the clearing firm (*i.e.*, the write-off must be without any right/intent to re-establish the receivable or enter into any legal proceeding to collect it; and/or (4) the establishment of a payment plan (by the customer or correspondent) to satisfy the obligation.

If the correspondent satisfies the deficit by agreeing to a payment schedule, or agrees to make the clearing firm whole if the customer fails to honor a payment schedule that he/she has agreed to, then the correspondent broker-dealer must deduct the entire unpaid amount from its net worth in its net capital calculation.

If the parent or affiliate of the broker-dealer (or other third party) agrees to pay the deficit in full or through payments, the introducing firm must comply with the SEC July 11, 2003, letter titled *Recording Certain Broker-Dealer Expenses and Liabilities* (see *NASD Notice to Members 03-63*), whether or not the introducing firm and the paying party have an expense sharing agreement for other purposes.

Reporting the "Deficit" to Introducing Firms

For each correspondent, the clearing firm must report the *total deficit*, in writing, on a daily basis.⁴

Endnotes

- 1 See SEC Rule 15c3-1(c)(2)(iv)(B), Certain Unsecured and Partly Secured Receivables.
- 2 The Interpretation also states: "If the carrying broker-dealer subordinates its receivable for the deficit amount to the claims of creditors of the introducing broker-dealer, the subordinated receivable shall be deducted as a nonallowable asset by the carrying broker-dealer. The introducing broker-dealer may exclude the subordinated liability from Aggregate Indebtedness; however, it shall be considered as a liability in the determination of net worth if it is not subject to a satisfactory subordination agreement as defined in Appendix D of SEC Rule 15c3-1." The interpretation, as quoted in the body of this *Notice*, does not contain the "subordination language" as NASD has encountered few instances of subordination. This language is relevant to the discussion, however, in that it states that where no subordination agreement exists relative to a deficit in an unsecured or partly secured introduced account, it must be considered as a liability in the determination of the net worth of the introducing firm.
- 3 SEC Rule 17a-4(b)(5) requires every broker or dealer to preserve for a period of not less than three years, the first two years in an easily accessible place... "[a]ll trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such member, broker or dealer, as such."
- 4 Deficits in customers' unsecured and partly secured accounts of an introducing broker-dealer do not have to be deducted from net capital by the carrying broker-dealer, provided sufficient deposits were received from the introducing broker-dealer that can be legally applied to cover (fully secure) the applicable deficits. The introducing broker-dealer must still take the customers' deficits as a deduction in computing net capital when the clearing agreement states that such deficits are the introducing firm's responsibility. The amount of the introducing broker-dealer's deposits must also be included in the carrying broker-dealer's PAIB computation. *SEC Staff of DMR to NYSE, July 2001.*

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Notice to Members

MAY 2005

SUGGESTED ROUTING

Legal and Compliance
Registration
Senior Management

KEY TOPICS

Best Practices
Fingerprinting

GUIDANCE

Fingerprinting Procedures

NASD Suggests Best Practices for Fingerprinting Procedures

Executive Summary

NASD is issuing this *Notice to Members* to remind members to review and, as necessary, update their fingerprinting procedures to help ensure that fingerprints submitted to the Federal Bureau of Investigation (FBI) as part of the hiring process belong to the employee being hired by the member. This *Notice* also suggests best practices for members' consideration.

Questions/Further Information

Questions concerning this *Notice* may be directed to Victoria Pawelski, Assistant Chief Counsel/Assistant Director, Registration and Disclosure, Markets, Services and Information, at (240) 386-4803; or Shirley H. Weiss, Associate General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

Background and Discussion

Under the federal securities laws, certain persons employed in the securities industry are required to be fingerprinted for purposes of a criminal background check.¹ Members are responsible for obtaining a prospective employee's fingerprints and certain required identifying information.² Members then submit the prospective employee's fingerprints together with the required identifying information to NASD. NASD, in turn, submits these fingerprints to the FBI. NASD also makes the fingerprint results, which may include information about criminal charges and convictions that are required to be reported on the Form U4 (the Uniform Application for Securities Registration or Transfer), available to the employing member and regulators, consistent with applicable federal laws and FBI and NASD requirements.

Members use the fingerprint results to assist them in making informed hiring decisions. Among other things, members and NASD must determine whether a prospective employee is subject to a statutory disqualification under Article III, Section 4 of NASD's By-Laws. It is essential that the fingerprint results being reported to a member actually belong to the prospective employee, so that the person's criminal history, or lack thereof, is accurately reported to the member. Certain criminal convictions may cause an individual to be subject to a statutory disqualification. In addition, this information helps members fulfill their obligations in connection with hiring persons who are seeking to work in NASD-registered capacities. Under Rule 3010(e), members are required to ascertain by investigation the good character, business repute, qualifications, and experience of persons seeking NASD registration.

Accordingly, a member's supervisory procedures and internal controls surrounding the hiring process should attempt to ensure that the fingerprints submitted to the FBI belong to the individual seeking employment. These procedures and controls may differ, depending upon whether the member fingerprints prospective employees in-house, or requires or allows prospective employees to be fingerprinted by a third party in a separate location. Members should use all available information gathered in the hiring process (both from the Form U4 responses, if applicable, and from any other sources gathered as a result of the member's investigation of a prospective employee, including, but not limited to, any private background checks conducted by the member and communications with previous employers), to confirm that the person being fingerprinted is the same person who is seeking employment with the member.

Suggested "Best Practices"

Members' internal procedures addressing the fingerprinting of prospective employees as required under Exchange Act Section 17(f)(2) and Exchange Act Rule 17f-2 should attempt to ensure that the person being fingerprinted is the same person who is seeking employment with the member. NASD suggests the following best practices.

Members that elect to fingerprint prospective employees in-house should consider:

- ◆ training appropriate staff on how to verify the authenticity of the prospective employee's identification cards, and to roll high-resolution fingerprints that will be accepted by the FBI;
- ◆ requiring that the individual being fingerprinted present at least two forms of identification immediately before fingerprints are taken, one of which is a valid picture driver's license, state identification card, or U.S. passport; if there is any doubt about the individual's identity, consider requiring additional picture identification;
- ◆ requiring the individual to submit a signature for comparison purposes;
- ◆ including an attestation form in the fingerprint process, whereby the individual seeking to become associated attests in writing and in person that he or she is in fact the person being fingerprinted³; and

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- ◆ requiring the person rolling or otherwise taking the fingerprints to attest in writing that he or she has followed the member's compliance procedures.

Members that rely on third parties in an off-site location to collect fingerprints and to verify the identity of the person being fingerprinted should consider:

- ◆ requiring applicants to be fingerprinted at a local law enforcement office, where officers likely are trained to verify identity as well as the authenticity of identification cards presented;
- ◆ notifying local law enforcement officials to inform them of securities industry fingerprinting requirements, and to discuss reasonable identification verification procedures;
- ◆ giving applicants a list of acceptable third-party vendors that provide fingerprinting services; and
- ◆ discouraging the practice of allowing applicants to fingerprint themselves.

Conclusion

NASD encourages its members to review and, if necessary, update their fingerprinting procedures so that, to the extent possible, they are able to verify the identity of persons submitting fingerprints in the employment process. Robust procedures will help reduce the possibility of an individual entering the securities industry under an assumed identity, thereby furthering NASD's goals of investor protection and market integrity.

Endnotes

- 1 Section 17(f)(2) of the Securities Exchange Act of 1934 and Exchange Act Rule 17f-2 govern the fingerprinting of securities industry personnel. Unless otherwise exempted from these requirements, every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency must: (1) require each of its partners, directors, officers, and employees to be fingerprinted; and (2) submit these fingerprints to the Attorney General or its designee (the FBI) for identification and appropriate processing.
- 2 The identifying information is required either by the FBI or NASD and generally includes the person's full name; Social Security Number; date and place of birth; physical features such as height, gender, and eye color; the firm's name, address, and CRD® number; and certain transaction identification numbers required by the FBI.
- 3 For any person seeking NASD registration, this attestation would be in addition to the attestation on the Form U4, whereby the person attests to the completeness and accuracy of the information submitted on the Form.

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Disciplinary and Other NASD Actions

REPORTED FOR MAY

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 April 2005.

Firms and Individuals Fined

Redwood Securities Group, Inc. (CRD #27536, San Francisco, California) and Aditya B. Mukerji (CRD #342216, Registered Principal, Piedmont, California) submitted an Offer of Settlement in which they were censured and fined \$16,000, jointly and severally. Without admitting or denying the allegations, the firm and Mukerji consented to the described sanctions and to the entry of findings that the firm allowed Mukerji to engage in securities activities, earn commissions, and review and approve securities transactions in his capacity as a registered principal of the firm when he was inactive for failing to fulfill his continuing education requirements. The findings stated that the firm, acting through Mukerji, allowed another individual to perform Financial and Operations Principal (FINOP) duties and submit monthly FOCUS reports as the firm's FINOP when both the individual and Mukerji were inactive.

The findings also stated that the firm, acting through Mukerji, failed to establish, maintain and enforce an adequate written supervisory control system reasonably designed to ensure compliance with the Regulatory Element of NASD's continuing education requirements. **(NASD Case #C01040024)**

Individual Fined

Shouu Chyn Kan (CRD #1690052, Registered Principal, Bayside, New York) submitted a Letter of Acceptance, Waiver, and Consent in which she was censured and fined \$10,000. Without admitting or denying the allegations, Kan consented to the described sanctions and to the entry of findings that Kan, acting on behalf of her member firm, permitted individuals to act in capacities that required registration while their registration status with NASD was deficient due to Kan's failure to submit fingerprint records on their behalf. The findings also stated that Kan, acting on behalf of her member firm, allowed individuals to "park" their registrations with her firm by maintaining their registrations as general securities representatives through their purported associations with the firm when in fact they were not actively involved in the firm's securities business or otherwise functioning as representatives of the firm. NASD found that Kan, acting on behalf of her member firm, conducted a securities business when the firm's net capital fell below the minimum amount required under SEC Rule 15c3-1. **(NASD Case #C10050015)**

Firm Expelled, Individual Sanctioned

PAZ Securities Inc. (CRD #17554, Boca Raton, Florida) and Joseph Mizrachi (CRD #337288, Registered Principal, Boca Raton, Florida). The firm was expelled from NASD membership and Mizrachi was barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm and Mizrachi failed to respond to NASD requests for information.

The firm and Mizrachi have appealed this decision to the SEC. Under NASD Rule 9370, expulsions and bars are not stayed when a matter is appealed to the SEC, unless the SEC orders otherwise. The SEC has not ordered a stay regarding the expulsion and bar imposed, and the appeal is pending. **(NASD Case #C07030055)**

Firms Fined, Individuals Sanctioned

First Global Securities, Inc. (CRD #28612, Pasadena, California) and Noble Bradford Trenham (CRD #449157, Registered Principal, Pasadena, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, and the firm and Trenham are fined \$28,500, jointly and severally. Trenham was suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, the firm and Trenham consented to the described sanctions and to the entry of findings that the firm failed to develop and implement a written anti-money laundering (AML) program in a manner that was reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. The findings also stated that the firm, acting through Trenham and other individuals, effected transactions in securities and/or induced or attempted to induce the purchase or sale of securities when the firm failed to have and maintain sufficient net capital as required. In addition, NASD found that the firm, acting through Trenham, permitted registered persons to act in capacities requiring registration while their NASD registrations were deemed inactive due to their failure to complete timely the Regulatory Element of NASD's Continuing Education requirements. NASD found that the firm, acting through Trenham, failed to develop and maintain a continuing and current education program for its covered registered persons.

Trenham's suspension begins May 16, 2005, and will conclude at the close of business June 27, 2005. **(NASD Case #C02050026)**

Sterling Financial Investment Group, Inc. (CRD #41506, Boca Raton, Florida) and Bernard Lewis Golembe (CRD #864450, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$90,000, \$37,500 of which is jointly and severally with Golembe. Golembe also was suspended from association with any NASD member in any capacity for 60 days.

Without admitting or denying the allegations, the firm and Golembe consented to the described sanctions and to the entry of findings that the firm, acting through Golembe, failed to specify a cycle for the inspection of branch offices in its written supervisory procedures, failed to conduct internal inspections of offices of supervisory jurisdiction and branch offices, failed to conduct annual compliance meetings, and failed to conduct a review of all of the businesses in which it engaged to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws, regulations, and NASD rules. The findings also stated that the firm failed to immediately display customer limit orders and failed to maintain the quote for other customer limit orders. In addition, the findings stated that the firm utilized an offering memorandum that materially misrepresented the total compensation received or to be received by the firm in connection with a private placement offering. In addition, the findings stated that the firm failed to notify NASD prior to the employment of an electronic storage media for maintaining firm records, failed to determine the true beneficial owners of certain accounts carried by the firm, and failed to review the activity in those accounts. The findings further stated that the firm failed to file customer complaints in a timely manner, failed to make reports pursuant to NASD Rule 3070(a)(4) within 10 days of registered representatives being suspended, and failed to update or timely amend Forms U4 and U5 for its registered representatives.

Golembe's suspension will begin June 15, 2005, and will conclude August 13, 2005. **(NASD Case #C07050024)**

Firms Fined

Banc of America Securities LLC (CRD #26091, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to revise its written supervisory procedures regarding SEC Rules 11Ac1-5 and 11Ac1-6, trade reporting, the Order Audit Trail SystemSM (OATSSM), and compliance with affirmative determination and bid test rule requirements 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 failed to notify customers upon request whether their orders were directed or non-

directed and the time of the transactions that resulted from such orders. NASD also found the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning SEC Rules 11Ac1-5, 11Ac1-6, trade reporting, OATS data submission, anti-intimidation and coordination, and compliance with affirmative determination and bid test requirements. The findings also stated that the firm failed to provide written notification disclosing to its customers that it was a market maker on occasions when it acted as principal for its own account. NASD also found that the firm transmitted OATS reports that contained inaccurate, incomplete, or improperly formatted data, and failed to submit required information to OATS. (NASD Case #CLG050031)

BNP Paribas Brokerage Services, Inc. (CRD #31394, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$110,000, and required to revise its written supervisory procedures with respect to the applicable securities laws, regulations, and NASD rules concerning the firm's short interest 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 its supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD rules concerning short interest reporting. (NASD Case #CLG050033)

Brookshire Securities Corporation (CRD #44347, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,171.50, including disgorgement of \$5,171.50 in commissions received. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain its required minimum net capital. (NASD Case #CFL050001)

Chevy Chase Financial Services (CRD #14894, Bethesda, Maryland) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, implement, and enforce written policies, procedures, and internal controls that were reasonably designed to achieve compliance with the Bank Secrecy Act and regulations promulgated thereunder. (NASD Case #C9A050016)

Citigroup Global Markets, Inc., (CRD #7059, New York, NY) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to

the described sanctions and to the entry of findings that it ran a national advertising campaign regarding certain mutual funds that emphasized the more recent favorable performance and de-emphasized the negative one-year performance of the funds in a manner that was unbalanced. The findings also stated that the firm failed to file with NASD advertising and sales literature concerning registered investment companies. (NASD Case #CE3050006)

Computer Clearing Services, Inc. (CRD #20776, Glendale, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures with respect to the applicable securities laws, regulations, and NASD rules concerning OATS 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 transmitted OATS reports that contained inaccurate, incomplete, or improperly formatted data. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning OATS. (NASD Case #CLG050035)

Deutsche Bank Securities, Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to pay \$323.87, plus interest, in restitution to a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in transactions for or with public customers, it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. (NASD Case #CLG050032)

Fano Securities LLC (CRD #37867, Purchase, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it accepted a public customer's short sale orders, but failed to make/annotate an affirmative determination that the firm would receive delivery of the security on behalf of the customer, or that the firm could borrow the security on behalf of the customer for delivery by settlement date. NASD also found that the firm failed to preserve the memorandum of brokerage orders in an accessible place for a period of not less than three years. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations and NASD Rules 3110(b)(1) (marking customer tickets), 3350 (bid test), 3360 (short interest reporting), and NASD Marketplace Rule 6130(d)(6)

(Automated Confirmation TransactionSM Service (ACTSM) reporting). (NASD Case #CLG050025)

Fulcrum Global Partners LLC (CRD #104455, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$17,000, and required to revise its written supervisory procedures within 30 business days with respect to applicable securities laws, regulations, and NASD rules concerning the registration of associated persons with NASD; the obligation, pursuant to the duty of best execution, to assess regularly and rigorously the quality of competing market centers trading a security; SEC Rule 11Ac1-5; transaction reporting, ACT compliance; SEC Rule 10a-1; and OATS rules.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to provide written notification disclosing to its customers that transactions were executed at an average price, and, on one occasion, failed to disclose its correct capacity in a transaction. NASD found that the firm failed to submit required information to OATS concerning new orders in OATS-eligible securities. In addition, NASD determined that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transaction in eligible securities, and whether firm executed transactions in eligible securities in a principal, riskless principal, or agency capacity. NASD found that the firm reported through ACT last-sale reports of transactions in NASDAQ National Market[®] (NNM[®]) securities that it was not required to report. NASD also found that the firm's written supervisory procedures did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning the registration of associated persons with NASD; the obligation, pursuant to the duty of best execution, to assess regularly and rigorously the quality of competing market centers trading a security; SEC Rule 11Ac1-5; transaction reporting; ACT compliance; SEC Rule 10a-1; and OATS Rules. (NASD Case #CLG050022)

Garban Corporate LLC (CRD #2762, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$11,000, and required to revise, within 30 business days, its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in NNM and NASDAQ SmallCap securities, and failed to designate the reports as late. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws

and regulations, and NASD rules concerning trade reporting. (NASD Case #CLG050029)

Ladenburg Thalmann & Co., Inc. (CRD #505, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders fully and promptly, failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price was as favorable as possible under prevailing market conditions. (NASD Case #CLG050034)

Legacy Financial Services, Inc. (CRD #38697, Petaluma California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$35,000, and required to file with NASD's Advertising Regulation Department all sales literature and advertisements at least 10 days prior to their first use for six months from the date of this AWC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it created and distributed sales literature and advertisements that failed to disclose adequately material facts regarding various investment products and strategies, and made exaggerated or unwarranted statements or claims. NASD found that the firm failed to file sales literature and advertisements concerning registered investment companies with NASD, ensure that a registered principal approved them prior to use, or retain copies of sales literature and advertisements reflecting approval by a registered principal. NASD also found that the firm failed to establish and maintain supervisory procedures reasonably designed to achieve compliance with NASD's Rule on Communications with the Public by failing to prevent a registered representative from distributing unbalanced sales literature and advertisements to the public. (NASD Case #CE2050006)

Merriman Curhan Ford & Co. (CRD #18296, 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 failed to prepare order tickets requested by NASD, failed to report the time of execution, failed to report a modifier, and reported an incorrect modifier. The findings also stated that the firm failed to establish and maintain a supervisory system reasonably designed to ensure compliance with SEC and NASD rules. (NASD Case #C01050004)

McDonald Investments Inc. (CRD #566, Cleveland, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$275,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it

failed to establish and maintain a supervisory system and written procedures reasonably designed to prevent and detect improper market timing and late trading of mutual funds. NASD found the firm failed to adequately respond to red flags regarding improper market timing by its clients. In addition, NASD found that the firm failed to enforce its supervisory system and written procedures designed to ensure that the firm correctly recorded mutual fund order receipt times in accordance with Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17-a-4 thereunder. (NASD Case #CE3050004)

Monex Securities, Inc. (CRD #30362, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,500, and fined \$7,500 jointly and severally with another individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file an application with NASD for approval of a change in ownership. In addition, NASD found that the firm permitted a registered representative to engage in activities that required registration as a general securities principal when the individual was not registered as such. NASD also found that the firm failed to complete a training needs analysis and develop a written training plan as required by the Firm Element of NASD's Continuing Education Requirement. (NASD Case #C10050012)

Newbridge Securities Corporation (CRD #104065, Fort Lauderdale, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$57,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to show the correct time of entry and the terms and conditions on the memorandum of brokerage orders. NASD found that the firm executed short sales in certain securities for the firm's proprietary accounts and failed to make/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 failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities, and whether executed transactions in eligible securities were in a principal, riskless principal, or agency capacity. In addition, NASD found that the firm failed to report to ACT the correct time of execution in last-sale reports of transaction in securities, and last-sale reports of transaction in securities.

NASD also determined that the firm failed to submit required information concerning orders and executions to OATS and transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. Furthermore, the findings stated that the firm failed to provide written notification disclosing to its customer the correct reported

trade price when it acted as principal for its own account, and made available a report on orders in securities that included incorrect information. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning trade reporting, short sales, locked and crossed markets, registration, firm quote, OATS, and the confidential treatment of nonpublic information and recordkeeping. (NASD Case #CLG050024)

North American Clearing, Inc. (CRD #39118, Longwood, Florida) submitted an Offer Of Settlement in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to respond to NASD requests for information. NASD found that the firm's books and records were inconsistent with the information reported by the firm to ACT, and when trade information was changed, the firm failed to maintain a record of the original data. NASD also found the firm failed to append the "SLD" modifier to transactions, and the report and execution times in the firm's records indicated that the last-sale reports of transactions not reported within 90 seconds after execution were not designated as such and did not include the time of execution. The findings also stated that the firm's written supervisory procedures did not reflect the actual procedures the firm had for compliance with trade-reporting rules. In addition, NASD also determined that the firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations concerning trade reporting and proper maintenance of the firm's books and records. (NASD Case #CMS040018)

Online Brokerage Services (CRD #104281, Waterville, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$37,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it raised \$2,270,000 for its general operating capital from private placement securities offerings that the firm represented were exempt from SEC registration when in fact none of the self-offerings offered and sold was registered with the SEC. NASD found that the firm failed to make an offer of rescission to purchasers who invested in the self-offering when material terms of the offering changed, including changes in the offering price, the minimum purchase required of investors, the minimum and maximum amounts of the offering, and changes in the offering period. The findings also stated that the firm failed to file promptly with NASD documents and information relating to its self-offerings and failed to prepare and maintain an adequate written AML compliance program. (NASD Case #C8A050021)

Sterne, Agee & Leach, Inc. (CRD #791, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$11,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm submitted OATS reports with respect to equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD; although the reports were repairable, the firm did not correct or replace any of them. NASD also found that the firm failed to enforce its written supervisory procedures with respect to OATS, which specified that rejected ROEs were to be reviewed on a daily basis. **(NASD Case #CLG050023)**

Sturdivant & Co., Inc. (CRD #24583, Voorhees, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it issued research reports that failed to disclose the percentage of all securities rated by the firm as "buy," "hold/neutral," or "sell," and the percentage of companies within each of those rating categories for whom the firm provided investment banking services preceding issuance of the reports. NASD found that the firm issued research reports that failed to contain a statement attesting that no part or that part or all of the research analyst's compensation was, is, or will be, directly or indirectly related to the specific recommendations or views expressed by the research analyst in the research report and a statement identifying the source, amount, and purpose of such compensation and further disclosing that the compensation could influence the recommendations or views expressed in the research report. The findings also stated that the firm failed to adopt and implement written supervisory procedures that were reasonably designed to ensure compliance with the provisions of NASD Rule 2711. **(NASD Case #C9B050017)**

The Leaders Group, Inc. (CRD #37157, Littleton, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to develop and implement a written AML program and internal controls reasonably designed to achieve and monitor compliance with the requirement of the Bank Secrecy Act, 31, U.S.C §5311, et seq., and the regulations promulgated thereunder. **(NASD Case #C3A050014)**

Individuals Barred or Suspended

Harry Anthony Alessi IV (CRD #1615360, Registered Representative, Maple Shade, 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, Alessi consented to the described sanction and to the entry of findings that he received more than \$18,000 in cash from a public customer who had been issued a day-trading margin call. NASD found that Alessi used the cash received from the customer to purchase cashier checks drawn to the order of his member firm, temporarily retained some of the funds, and later remitted the checks with a copy of the margin call to his member firm to meet the day-trading margin call that had been issued to the customer, thereby structuring the deposit to evade the reporting requirements of 31 U.S.C. 55313(a). **(NASD Case #C9A050015)**

Abigail Rubio Ancheta (CRD #4632532, Registered Representative, Glendale, California) submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ancheta consented to the described sanction and to the entry of findings that she willfully misrepresented material facts on her Form U4. NASD also found that Ancheta failed to respond to NASD requests for information. **(NASD Case #C02040040)**

Todd Edward Arseneau (CRD #4249183, Registered Representative, Herscher, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. After consideration of sanctions previously imposed by Arseneau's firm, Arseneau was given credit for serving 20 business days of the suspension; accordingly, he is required to serve 10 business days of NASD's suspension. The fine must be paid before Arseneau reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Arseneau consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer on a life insurance illustration form and a life application supplement without the customer's knowledge or consent.

Arseneau's suspension began April 18, 2005, and concluded at the close of business April 29, 2005. **(NASD Case #C8A050018)**

Christopher Stuart Bell (CRD #1211481, Registered Representative, Syracuse, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Bell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bell consented to the described sanctions and to the entry of findings that he forged the signatures of public customers on automatic extension forms that he filed with the Internal Revenue Service.

Bell's suspension begins May 16, 2005, and will conclude at the close of business November 15, 2005. (NASD Case #C9B050018)

Akeem Folajimi Bello (CRD #2461569, Registered Representative, Chapel Hill, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$26,718.92, including disgorgement of \$26,718.92, and suspended from association with any NASD member in any capacity for one year. In light of the financial status of the respondent, the fine of \$26,718.92 was imposed. The fine must be paid before Bello reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bello consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to public customers. NASD also found that Bello engaged in outside business activities for compensation without providing prompt written notice to his member firm.

Bello's suspension begins May 16, 2005, and will conclude at the close of business May 15, 2006. (NASD Case #C10050011)

Rodney Douglas Bowman (CRD #1619178, Registered Representative, Wilmington, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bowman consented to the described sanctions and to the entry of findings that he failed to respond to NASD's requests for information. (NASD Case #C07050023)

Paul Roger Burgeson (CRD #35538, Registered Representative, Holdrege, Nebraska) 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, Burgeson consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without notifying or receiving prior written approval by his

member firm. NASD also found that Burgeson failed to respond to NASD requests for information. (NASD Case #C04050010)

Alberto Paredes Butingan (CRD #2797291, Registered Representative, San Diego, 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 three months. The fine must be paid before Butingan reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Butingan consented to the described sanctions and to the entry of findings that he willfully misrepresented material facts on his Form U4.

Butingan's suspension began April 18, 2005, and will conclude July 17, 2005. (NASD Case #C02050022)

Daniel John Cassin (CRD #1946651, Registered Representative, Westfield, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cassin consented to the described sanction and to the entry of findings that he forged signatures to letters and checks relating to an insurance claim. (NASD Case #C11050006)

Paul Ernesto Chang (CRD #4235370, Registered Representative, Pembroke Pines, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Chang reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Chang consented to the described sanctions and to the entry of findings that he misrepresented the maturity date of a government bond in a correspondence and portfolio list provided to the customer after the bond was purchased.

Chang's suspension began April 18, 2005, and will conclude at the close of business October 17, 2005. (NASD Case #C07050018)

Grace S. Chen (CRD #2435758, Registered Representative, Arcadia, California) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Chen consented to the described sanctions and to the entry of findings that she engaged in securities transactions that were not approved by her member firm, and failed to provide her member firm with prompt written notice of the transactions and the compensation she received.

Chen's suspension began April 4, 2005, and concluded at the close of business April 15, 2005. (NASD Case #C02050019)

Lance Neal Dahmer (CRD #1615284, Registered Representative, Wadsworth, Illinois) was fined \$5,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify as a general securities representative. The sanction was based on findings that Dahmer engaged in outside business activities without providing prompt written notice to his member firm.

Dahmer's suspension began April 18, 2005, and will conclude at close of business June 16, 2005. (NASD Case #C8A030086)

Michael Davidson (CRD #2271320, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Davidson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Davidson consented to the described sanctions and to the entry of findings that Davidson, acting on behalf of his member firm, failed to maintain net capital while conducting a securities business, and overstated its net capital in its monthly FOCUS Report.

Davidson's suspension begins May 16, 2005, and will conclude July 15, 2005. (NASD Case #C10050009)

Roger Lee DeBock, Jr. (CRD #1763458, Registered Representative, San Diego, 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 60 calendar days. The fine must be paid before DeBock reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, DeBock consented to the described sanctions and to the entry of findings that he borrowed \$40,000 from a public customer contrary to his member firm's written procedures prohibiting registered persons from borrowing money from customers.

DeBock's suspension began April 18, 2005, and will conclude June 16, 2005. (NASD Case #C02050020)

Mark Joseph Deves (CRD #1977959, Registered Principal, Colorado Springs, Colorado) was fined \$18,541, including disgorgement of commissions received in the amount of \$8,541, and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Deves participated in outside business activities without prior written notice to his member firm.

Deves' suspension began May 2, 2005, and will conclude May 1, 2006. (NASD Case #C3A040043)

Richard Drayton Jr. (CRD #715580, Registered Representative, Philadelphia, Pennsylvania) 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 two years. The fine must be paid before Drayton reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Drayton consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to and approval from his member firm.

Drayton's suspension began April 4, 2005, and will conclude at the close of business April 3, 2007. (NASD Case #C9A050010)

Ray Rajnian Dubey (CRD #3149758, Registered Representative, Greenbelt, Maryland) 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 business days. The fine must be paid before Dubey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dubey consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed to provide prompt written notice to his member firm.

Dubey's suspension begins May 16, 2005, and will conclude at the close of business June 24, 2005. (NASD Case #C07050017)

Irvin Erwin (CRD #1179977, Registered Representative, Newtonville, 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, Erwin consented to the described sanctions and to the entry of findings that a public customer gave him a \$175 premium payment to be applied to the customer's property and casualty policy, but he never applied the payment as directed; instead, he took the funds for his own use without the customer's consent or authority. (NASD Case #C9B050021)

Asad Farraj (CRD #2570810, Registered Representative, Brooklyn, 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 45 calendar days. Without admitting or denying the allegations, Farraj consented to the described sanctions

and to the entry of findings that he failed to disclose a material fact on his Form U4 in a timely manner.

Farraj's suspension begins May 16, 2005, and will conclude at the close of business June 29, 2005. (NASD Case #C10050010)

Robert Michael Graves Jr. (CRD #2093814, Registered Representative, Heath, Texas) submitted an Offer of Settlement in which he 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, Graves consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction with a public customer without providing written notice to his member firm. NASD also found that Graves recommended an unsuitable security to a public customer. In addition, the findings stated that Graves participated in outside business activities without prior written notice to his member firm. NASD also found that Graves received a loan from a public customer, which violates his member firm's policy prohibiting the receipt or solicitation of loans from customers.

Graves' suspension begins May 16, 2005, and will conclude at the close of business June 10, 2005. (NASD Case #C06050002)

Ebony Chantel Hanson (CRD #4756825, Associated Person, Woodbridge, Virginia) 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, Hanson consented to the described sanction and to the entry of findings that she willfully failed to disclose a material fact on her Form U4. The findings also stated that Hanson failed to respond to NASD requests for information. (NASD Case #C9A50013)

James Louis Hesdra (CRD #2515939, Registered Representative, Howell, 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, Hesdra consented to the described sanctions and to the entry of findings that, while registered with a member firm, he impersonated another registered representative while soliciting clients to open new accounts or to engage in securities transactions; listed the representative as the registered representative of record on new account forms and order tickets when Hesdra was aware that he, rather than the representative, had opened the new accounts or handled the securities transactions in question; and forged the representative's signature as the registered representative of record on new account forms. NASD also found Hesdra, in participation with other registered representatives and

associated persons of his member firm, misrepresented to customers that he was selling them shares of stock, and thereafter diverted those customer's checks away from his member firm in order to convert those funds. The findings also stated that Hesdra failed to respond truthfully to questions during an NASD on-the-record interview. (NASD Case #CLI050005)

Samuel Davis Hughes (CRD #1928041, Registered Representative, Panama City, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hughes engaged in unauthorized transactions in a customer account and recommended unsuitable variable annuity switches and purchases. NASD found that Hughes misled a public customer by making material misrepresentations and omissions. The findings also stated that Hughes reallocated customer funds without the knowledge or consent of the customer and failed to respond to NASD requests for information (NASD Case #C07040067)

William Howard James, III (CRD #3137607, Registered Representative, Bethlehem, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, James consented to the described sanction and to the entry of findings that he engaged in business activities for compensation outside the scope of his member firm without providing his firm prompt written notice of the activities. The findings also stated that James failed to respond to NASD requests for information and to appear to testify as required. (NASD Case #C9A050014)

Jane Rosenberg Kornblut (CRD #731026, Registered Principal, Highland Park, Illinois) submitted an Offer of Settlement in which she was fined \$5,000 and suspended from association with any NASD member in a supervisory capacity for five business days. Without admitting or denying the allegations, Kornblut consented to the described sanctions and to the entry of findings that she failed to supervise a registered representative.

Kornblut's suspension began April 18, 2005, and concluded April 22, 2005. (NASD Case #C8A040047)

Ambrose Kinho Ku (CRD #4278720, Associated Person, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ku consented to the described sanction and to the entry of findings that he transferred funds and securities from a public customer's account without the customer's knowledge or consent. (NASD Case #C02050017)

Paul Joseph Leahy (CRD #2581030, Registered Representative, Staten Island, New York) was barred from association with any NASD member in any capacity and ordered to pay \$67,179, plus interest, in restitution to a public customer. The sanctions were based on findings that Leahy, while exercising effective control over a public customer's account, effected, or caused to be effected, numerous and excessive securities transactions without having reasonable grounds for believing that such transactions were suitable for the customer in view of the size and frequency of the transactions, the nature of the account, and customer's financial situation, investment objectives, and needs. NASD also found that Leahy failed to respond to NASD requests for documents and information. (NASD Case #C9B040092)

Arthur Conrad Levy (CRD #2199632, Registered Representative, Palm Beach Gardens, 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, Levy consented to the described sanction and to the entry of findings that he falsified business records at his member firm. (NASD Case #C07050011)

Talbot Heber Lloyd (CRD #2552848, Registered Representative, Draper, Utah) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000, including disgorgement of his financial benefit of \$45,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Lloyd consented to the described sanctions and to the entry of findings that he engaged in outside business activities without first providing written notice to the member firms with which he was associated.

Lloyd's suspension begins May 16, 2005, and will conclude November 15, 2005. (NASD Case #C3A050016)

Guang Lu (CRD #2691821, Registered Representative, Gaithersburg, Maryland) was barred from association with any NASD member in any capacity. The SEC affirmed the sanction imposed by the NAC. The sanction was based on findings that Lu failed to notify his member firm that he was exercising discretion in an account maintained by another firm, and also failed to notify the firm at which he was trading of his association with a member firm. The findings stated that Lu exercised discretion in the account of a public customer without prior written authorization from the customer and his member firm. The findings also stated that Lu failed to provide accurate information on his Form U4. (NASD Case #C9A020052)

Donald Scott Martin (CRD #1363706, Registered Representative, Lancaster, Ohio) was fined \$5,000 and suspended from association with any NASD member in any

capacity for 90 days. The fine must be paid before Martin reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. The sanctions were based on findings that Martin affixed a public customer's signature on a facsimile to an annuity company requesting that the annuity company stop payment on the proceeds from an annuity that was in the name of the customer's mother and of which the customer was a beneficiary, without the customer's knowledge or consent.

Martin's suspension began April 18, 2005, and will conclude July 17, 2005. (NASD Case #C8A040087)

Anthony Lawrence Mascia (CRD #1297801, Registered Representative, Fair Lawn, 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 60 days. The fine must be paid before Mascia reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mascia consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Mascia's suspension begins May 16, 2005, and will conclude at the close of business July 14, 2005. (NASD Case #C10050014)

Anthony Stephen McComas (CRD #708707, Registered Representative, Guaynabo, Puerto Rico) was barred from association with any NASD member in any capacity and ordered to pay \$466,827 in restitution to a public customer. The sanctions were based on findings that McComas converted \$466,827 of a customer's funds to his own use and benefit without the customer's knowledge, authorization, or consent. The findings also stated that McComas failed to respond to NASD requests for information. (NASD Case #C07040072)

Thomas Martin Nockold (CRD #3257874, Registered Principal, Cypress, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nockold consented to the described sanction and to the entry of findings that he engaged in a scheme to misappropriate funds of his employer totaling \$5,870. The findings also stated that Nockold falsified documents to conceal his actions. (NASD Case #C02050018)

Thomas Ortiz-Stronza (CRD #2938100, Registered Representative, Caguas, Puerto Rico) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and

ordered to pay \$32,588.20 in restitution to public customers. Without admitting or denying the allegations, Ortiz-Stronza consented to the described sanctions and to the entry of findings that he changed the address on a customer account, provided false and misleading account statement to a customer, and forged customer signatures. NASD also found that Ortiz-Stronza misappropriated funds from customers in the amount of \$32,588.20. **(NASD Case #C07050021)**

John Padilla (CRD #2326449, Registered Representative, Trenton, 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 six months. The fine must be paid before Padilla reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Padilla consented to the described sanctions and to the entry of findings that he engaged in business activities for compensation outside the scope of his member firm without providing his firm with prompt written notice of these activities.

Padilla's suspension begins May 16, 2005, and will conclude at the close of business November 15, 2005. **(NASD Case #C9B050019)**

Salvatore Puccio (CRD #2416853, Registered Representative, Staten Island, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that he opened an undisclosed securities account while he was associated with a member firm and sold securities away from his member firm. The findings also stated that Puccio failed to respond to NASD requests for information. **(NASD Case #C07040071)**

Dulce Maria Salaverria (CRD #4724934, Associated Person, Maracaibo, Venezuela) was barred from association with any NASD member in any capacity. The sanction was based on findings that Salaverria submitted a falsified examination score report to her employing member firm. **(NASD Case #C07040077)**

Jesus Francisco Schettino (CRD #4718500, Associated Person, Anaheim, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Schettino willfully failed to disclose material information on a Form U4. **(NASD Case #C02040043)**

Steven Keith Schroeder (CRD #4177966, Registered Representative, N. Barrington, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Schroeder forged the

signatures of public customers and their trustee to life insurance assignment forms involving insurance policies without the knowledge and consent of the customers and their trustee. The findings stated that Schroeder pledged the life insurance policies as collateral for a loan made to a company principally owned and operated by him, and affixed the signature of a loan officer of the bank that made the loan to his company to a release of one of the life insurance assignment forms without the loan officer's knowledge and consent. NASD also found that Schroeder failed to respond to NASD requests for information. **(NASD Case #C8A040092)**

Laurence Bryan Schweiger (CRD #736288, Registered Principal, Plantation, 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, Schweiger consented to the described sanction and to the entry of findings that he participated in private securities transactions without prior written notice or approval from his member firm. **(NASD Case #C07050012)**

Houston Miller Scott (CRD #2533881, Registered Representative, Richmond, 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 Scott reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scott consented to the described sanctions and to the entry of findings that he signed the name of a public customer on variable life insurance policy forms without the customer's permission or knowledge.

Scott's suspension began April 18, 2005, and will conclude at the close of business June 16, 2005. **(NASD Case #C9B050015)**

Russell Forrest Shortt (CRD #4532777, Registered Representative, Cedar Bluff, 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 six months. The fine must be paid before Shortt reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Shortt consented to the described sanctions and to the entry of findings that he willfully failed to amend his Form U4 to disclose a material fact.

Shortt's suspension began April 18, 2005, and will conclude at the close of business October 17, 2005. **(NASD Case #C9A050012)**

Ramiro Jose Surganes (CRD #1660839, Registered Principal, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in all capacities for 30 days. Without admitting or denying the allegations, Surganes consented to the described sanctions and to the entry of findings that he utilized discretion in a public customer's account without having said discretion reduced in writing and without having the account approved as discretionary by his member firm.

Surganes' suspension began April 4, 2005, and concluded at the close of business May 3, 2005. (NASD Case #C07050014)

Christopher Cosme Tavares (CRD #2975868, Registered Principal, Lake Worth, Florida) submitted an Offer of Settlement in which he was fined \$20,000, suspended from association with any NASD member in any capacity for 90 days, and required to re-qualify by examination before again acting in any capacity requiring registration. The fine must be paid before Tavares reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Tavares consented to the described sanctions and to the entry of findings failed to include a disclosure concerning the risks that might impede the achievement of the price target contained in the report, failed to make certain disclosures are required by NASD Rule 2210. NASD determined the disclosure was not presented in a clear, comprehensive, and prominent fashion. NASD determined that the research report omitted material facts, which causes it to be misleading; contained exaggerated, unwarranted, or misleading statements; and failed to provide a sound basis for evaluating the facts NASD found respondent failed to have his member firm adopt and implement written supervisory procedures reasonably designed to ensure that the firm and its employees complied with the provision of Rule 2711.

Tavares' suspension begins May 16, 2005, and will conclude at the close of business August 13, 2005. (NASD Case #CAF040083)

Sean Teamor (CRD #3126324, Registered Representative, Escondido, 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 one year. The fine must be paid before Teamor reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Teamor consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

Teamor's suspension begins May 16, 2005, and will conclude at the close of business May 15, 2006. (NASD Case #C02050025)

James Earl Tettenborn (CRD #812837, Registered Representative, Lincoln, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before Tettenborn reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Tettenborn consented to the described sanctions and to the entry of findings that he borrowed \$5,000 from a public customer contrary to his member firm's written procedures.

Tettenborn's suspension began April 18, 2005, and concluded at the close of business May 13, 2005. (NASD Case #C04050011)

Mark Kevin Thomas (CRD #2368025, Registered Representative, Las Vegas, Nevada) 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, Thomas consented to the described sanction and to the entry of findings that he willfully misrepresented a material fact on his Form U4. (NASD Case #C02050021)

Darrel Thomas Uselton (CRD #2051430, Registered Principal, San Juan Capistrano, California) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any principal capacity for six months. The fine must be paid before Uselton reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Uselton consented to the described sanctions and to the entry of findings that he executed an "Asset and Stock Purchase Agreement" whereby he, as chairman and chief executive officer of two companies, sold all of the assets of a member firm to another member firm and sold 82 percent of the equity ownership a member firm to a non-registered entity firm. The findings also stated that Uselton failed and neglected to file an application with NASD for prior approval of these transactions.

Uselton's suspension began April 18, 2005, and will conclude at the close of business October 17, 2005. (NASD Case #C05040086)

Ralph Louis Vestuti Jr., (CRD #1976025, Registered Principal, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any NASD member for two years. The fine shall be due and payable either immediately upon reassociation with a member firm following the two-year suspension, or prior to any application or request from relief from any statutory disqualification. Without admitting or denying the allegation, Vestuti consented to the described sanctions and to the entry of findings that he effected purchase transactions and sell transactions for his own benefit in an error account of his member firm. The findings also stated that he was not authorized to conduct transactions in his account but he did so because he did not have funds to pay for the transactions.

Vestuti's suspension began April 4, 2005, and will conclude at the close of business April 3, 2007. **(NASD Case #C07050015)**

Michael Allen Von Kanel (CRD #2241483, Registered Representative, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to pay \$28,000, plus interest, in restitution to a public customer in the event that he either applies for or requests relief from any statutory disqualifications resulting from this or any other event or proceeding. Without admitting or denying the allegations, Von Kanel consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. In addition, NASD found that Von Kanel failed to disclose material information on his Form U4. The findings also stated that Von Kanel falsified documents in order to obtain public customer funds for investment in private securities transaction by creating loan requests without the knowledge or authority of the customers. **(NASD Case #C05050009)**

Raymona Katina Williams (CRD #4843869, Associated Person, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Williams reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that she willfully failed to disclose a material fact on her Form U4.

Williams' suspension began April 18, 2005, and will conclude April 17, 2006. **(NASD Case #C9A050011)**

Shannon Bolt Withem (CRD #4486600, Registered Representative, Canton, Michigan) 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, Withem consented to the described sanction and to the entry of findings that he withdrew \$1,000 from the bank account of a public customer at his member firm's affiliate without the knowledge and approval of the customer and converted the funds to his own personal use. **(NASD Case #C8A050017)**

Complaints Filed

NASD issued the following complaints. 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.

Peter Christian Dunne (CRD #2538317, Registered Representative, Nesconset, New York) was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, two transactions in the account of a customer without the customer's prior knowledge, authorization, or consent. The complaint also alleged that Dunne willfully failed to amend his Form U4 in a timely manner. **(NASD Case #CLI050004)**

Marcos Arrington Godfrey (CRD #4230793, Registered Representative, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he misused customer funds, totaling \$600, that were intended as a payment for the purchase of an annuity for the benefit of customer. Godfrey accepted the cash, but he did not use the customer funds to purchase the annuity as intended. The complaint also alleges that Godfrey failed to respond completely to NASD requests for information. **(NASD Case #C84050019)**

Steward Michael Hammerle (CRD #1008986, Registered Representative, Philadelphia, Pennsylvania) was named as a respondent in an NASD complaint alleging that without the knowledge or consent of a public customer, he submitted a letter to his member firm that reflected the customer's purported signature and a statement with the intention for the checks, if issued and negotiated, to be applied for his benefit. The complaint also alleges that Hammerle failed to respond to NASD requests for documents and information and to appear for testimony. **(NASD Case #C9A050017)**

Martin Ray Hershner (CRD #2860663, Registered Representative, Lexington, Ohio) was named as a respondent in an NASD complaint alleging the conversion and misuse of customers' funds totaling \$25,670. The complaint also alleges that Hershner refused to respond to NASD requests for information. (NASD Case #C8A050020)

Tyler McClintock Kerrigan (CRD #2970266, Registered Representative, New Orleans, Louisiana) was named as a respondent in an NASD complaint alleging an unsuitable recommendation of variable annuities. The complaint also alleges that Kerrigan used sales literature without obtaining prior approval. (NASD Case #C05050008)

Jordan Elijah Scales (CRD #4419495, Registered Representative, Coral Springs, Florida) was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, stock purchases in customer accounts without the customers' prior knowledge or authorization. The complaint also alleges that Scales failed to respond to NASD requests for information. (NASD complaint # C07050019)

Mitchell Aaron Weisberg (CRD #1882341, Registered Representative, Deerfield Beach, Florida) was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, stock purchases in customer accounts without the customers' prior knowledge or authorization. The complaint also alleges that Weisberg failed to respond to NASD requests for information. (NASD complaint # C07050020)

Westminster Financial Securities, Inc. (CRD #20677, Dayton, Ohio), Andrew Tzanides (CRD #1444656, Registered Representative, Cresskill, New Jersey), and Christopher John Broderick (CRD #2592177, Registered Principal, Dayton, Ohio) were named as respondents in an NASD complaint alleging that the firm and Broderick failed to supervise by permitting securities transaction with markups and markdowns that were excessive and unfair. The complaint also alleges that the firm failed to establish, maintain, and enforce an adequate supervisory system that was reasonably designed and adequate procedures for reviewing markups and markdowns assessed on government securities transaction. The complaint further alleges that Tzanides refused to appear for an on-the-record interview. (NASD Complaint #C8A050016)

Firms Expelled for Failure to Request Termination of their Suspension

The following firms were expelled from membership in NASD for failure to request termination of their suspension within six months of receiving notice of their suspension. The action was based on the provisions of NASD Rule 9552. The effective date of the expulsion is listed after the entry.

American International Securities, Inc.
New York, New York
(January 21, 2005)

Epsilon Management Services, Inc.
Wellesley, Massachusetts
(September 8, 2004)

Geek Securities, Inc.
Boca Raton, Florida
(January 7, 2005)

Native American Securities, Inc.
New York, New York
(January 21, 2005)

Touchtrade.com Inc.
Salt Lake City, Utah
(December 20, 2004)

Firms Suspended for Failure to Supply Financial Information

The following firms were suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 9552. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

BMS International Inc.
Berglangebach, Germany
(April 12, 2005)

FM Pacific Capital Management, Inc.
City of Industry, California
(April 12, 2005)

Heritage Securities Corp.
Addison, Texas
(April 12, 2005)

Mount Yale Securities, LLC
Denver, Colorado
(April 12, 2005)

National Clearing Corp.
Sherman Oaks, California
(April 12, 2005)

Stephen L. Schechter & Co. Inc.
London, England
(April 12, 2005)

The Transportation Group (Securities) Limited
New York, New York
(April 12, 2005 – April 22, 2005)

Individuals Suspended Pursuant to NASD Rule 9552 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.)

Gorin, Keith Adam
Coral Springs, Florida
(March 28, 2005)

Moriera, Anny C.
New York, New York
(March 28, 2005)

Ozimkowski, Edward George
Deerfield Beach, Florida
(March 28, 2005)

Smith II, Kenneth A.
Fresno, California
(March 29, 2005)

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

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Chien, William Pang
Plantation, Florida
(April 1, 2005)

Crihfield, Mark Keith
Germantown, Tennessee
(April 12, 2005)

Daniels, William James
Pasadena, Maryland
(March 23, 2005)

Enright, William Patrick, Jr.
Phoenix, Arizona
(March 30, 2005)

Filippucci, James Michael
South Miami, Florida
(April 7, 2005)

Lowman, Kenneth Troy
Ellicott City, Maryland
(March 23, 2005)

Van Ann, Brian Jon
West Palm Beach, Florida
(April 8, 2005)

Wyllie, Carl Vernon
Omaha, Nebraska
(April 5, 2005 - April 8, 2005)

NASD Charges Oppenheimer & Co. with Thwarting Investigation, Late and Inaccurate Reporting of Thousands of Muni Bond Transactions

Firm Also Charged with Failing to Retain Email for More Than 20 Months

NASD charged Oppenheimer & Co., Inc., formerly known as Fahnstock & Co., Inc., with failing to cooperate in an NASD investigation; failing to retain business-related electronic mail, as required by federal securities law and NASD rules; and violating Municipal Securities Rulemaking Board (MSRB) rules by failing to report some bona fide municipal bond transactions, reporting others that were never effected, and reporting thousands of other trades late and inaccurately.

“Oppenheimer's failure to fully and accurately report municipal bond transactions deprived the investing public and market participants of critical information,” said NASD Vice Chairman Mary L. Schapiro. “And all firms have a fundamental obligation to cooperate fully with NASD in its investigations.”

NASD charged Oppenheimer, headquartered in New York City, with multiple violations of its obligation to report municipal securities transactions to the MSRB timely and accurately. NASD found that between January 2003 and May 2004, Oppenheimer failed to report more than 6,100 municipal bond transactions with other dealers to the MSRB on a timely basis—and, in many cases, the reports were inaccurate when they were finally made. Oppenheimer also inaccurately

reported the price, time, and other required details of hundreds of municipal bond transactions with retail customers in May and June 2003.

In addition, Oppenheimer is charged with reporting more than 1,300 retail municipal bond transactions that were never effected, and failing to report over 700 completed transactions with retail customers.

NASD also charged Oppenheimer with violating its obligation to cooperate with an NASD investigation in two ways. First, NASD requested information from Oppenheimer in September 2004 concerning Oppenheimer's retention of electronic communications for 20 employees, most of whom traded municipal securities and were thus critical to NASD's investigation into the trade reporting problems. Despite one extension of time to respond and repeated communications with NASD, Oppenheimer never provided NASD with the information requested.

Second, in August 2003, NASD requested that Oppenheimer provide certain trade confirmations for municipal securities transactions NASD was investigating. NASD, on several occasions, reiterated its request for Oppenheimer to produce the confirmations. Despite those repeated requests, NASD did not receive the requested documents for more than a year after the original request.

NASD charged that from July 1, 2002, through at least the first quarter of 2004, Oppenheimer failed to retain and preserve electronic communications between its employees, instead allowing its employees to delete emails. Firms are obligated under federal securities laws and NASD Rules to retain electronic communications for at least three years. Oppenheimer also was charged with supervisory failures regarding its email-retention system and procedures, and its municipal bond trade reporting system.

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

Waddell & Reed, Inc., Agrees to Pay \$5 Million Fine, up to \$11 Million in Restitution to Settle NASD Charges Relating to Variable Annuity Switching

Former Waddell & Reed President, Sales Manager Suspended, Each Fined \$150,000

Firm to Pay Additional \$2 Million Fine to Coalition of State Securities Regulators

NASD resolved its action against Waddell & Reed, Inc., of Overland Park, KS, arising from thousands of variable annuity exchanges made as part of the firm's national switching campaign.

Under the terms of the settlement with NASD and a separate agreement with a coalition of state regulatory authorities, Waddell & Reed will repay up to \$11 million to more than 5,000 customers whose annuities were exchanged by the firm. The firm will pay a fine of \$5 million to NASD and a fine of \$2 million to state regulators.

"Placing the client's interests first and assessing the suitability of any recommendation are two of the fundamental principles under which every firm must operate in every securities transaction," said NASD Vice Chairman Mary Schapiro. "Waddell & Reed violated these principles by engaging in a deliberate campaign, motivated by its own business interests and not those of its clients, to switch customers from one variable annuity to another. These switches were recommended without regard to whether the transactions were in the customers' best interests and caused investors to incur substantial unnecessary expenses."

In a complaint filed in January 2004, NASD charged Waddell & Reed with violating its obligations under NASD's suitability rule by failing to take reasonable steps to ensure that recommended variable annuity exchanges were in the best interests of customers. According to the complaint, between January 2001 and August 2002, the firm engaged in an aggressive campaign to switch customers from variable annuity contracts issued by United Investors Life Insurance Co. (UILIC) to similar annuities provided by Nationwide Insurance Co. The switching campaign was initiated after Waddell failed to obtain an agreement from UILIC to receive a share of annual mortality and expense (M&E) fees collected by UILIC from Waddell's customers. Waddell approached Nationwide, which agreed to a fee sharing arrangement.

NASD charged that following that agreement, Robert Hechler, then the firm's president, and other senior managers encouraged the sales force to engage aggressively in switching

customers and made statements to them that, as one broker noted, were intended to “prod and scare” the sales force into making switches. During this campaign, some advisors expressed concern that these switches were not in the best interests of their clients.

Despite repeated requests from Waddell’s sales force and its supervisors, the firm failed to supply sufficient guidance for the sales force to use in determining the suitability of the exchanges, such as analytical tools or other mechanisms that would measure the cost and the potential long-term benefit or detriment of an exchange for each customer. Waddell failed to take into account relevant objective factors including age, sex, surrender charges, M&E charges, policy features (including annuitization rates), and the costs and benefits of the particular optional policy features chosen by the customers.

NASD determined that many customers were likely to lose money through these switches, thereby raising concerns about the suitability of these transactions. In addition, customers incurred close to \$10 million in surrender charges as a result of the switches, while Waddell made money through commissions charged on each exchange, as well as through the fee sharing arrangement with Nationwide. Finally, more than 700 customers were switched into one Nationwide annuity product that provided greater compensation to Waddell’s sales force, but provided fewer benefits and less flexibility than another Nationwide annuity being sold by Waddell.

Under the terms of the settlement, Waddell & Reed will repay customers 100 percent of all surrender charges they incurred in the exchanges, and will compensate the purchasers of the more expensive annuity by repaying the cost difference between the two products. Waddell & Reed will, at its own expense, retain an independent consultant to implement the repayment plan.

In addition, without admitting or denying the allegations, the firm consented to the entry of NASD’s findings of supervisory failures and record keeping violations and agreed to pay NASD a fine of \$5 million.

The settlement also imposes a six-month suspension and \$150,000 fine on former Waddell & Reed President Robert Hechler. Hechler, who neither admitted nor denied the charges, consented to the entry of NASD’s findings that he caused the firm’s suitability violations by aggressively encouraging the exchanges.

Former Waddell & Reed National Sales Manager Robert Williams, without admitting or denying the charges, consented to a six-month suspension as a supervisor and a \$150,000 fine for supervisory failures in connection with the exchanges. NASD found Williams was involved in the effort to

aggressively encourage the sales force to switch customers from UILIC to Nationwide annuities, was aware of instances where inappropriate switches were made, and failed to take reasonable action to supervise the firm’s switching activities.

NASD wishes to acknowledge the significant assistance and cooperation provided by state securities and insurance regulators in connection with this matter.

Information for investors considering switching their variable annuities is available on NASD’s Web site in the Investor Alert *Should You Exchange Your Variable Annuity?* For brokers, NASD provides an informational video webcast examining suitability considerations in variable annuities exchanges, *Understanding Variable Annuities: Exchange Suitability Issues*.

NASD Fines Raymond James \$750,000 for Fee-Based Account Violations

Settlement Also Requires \$138,000 in Restitution to Customers

NASD censured and fined Raymond James & Associates, Inc., and Raymond James Financial Services, Inc., \$750,000 for violations relating to the firms’ fee-based brokerage business. The firms will also pay restitution totaling \$138,000.

In a fee-based account, a customer is charged an annual fee that is either fixed or a percentage of the assets in the account, rather than a commission charge for each transaction as in a traditional brokerage account.

“Fee-based accounts can be appropriate for many investors,” said NASD Vice Chairman Mary L. Schapiro. “But they are not automatically appropriate for everyone. Firms should not recommend these accounts without first making a determination, by looking at traditional suitability factors as well as the customer’s trading history, that the account is appropriate in light of the services provided, the projected cost to the customer, alternative fee structures available and the customer’s preference. They also should periodically review these accounts after they are opened to see that they remain appropriate.”

NASD found that from April 2001 through December 2004, the Raymond James firms failed to establish and maintain a supervisory system, including written procedures, reasonably designed to review and monitor their fee-based brokerage business. In addition, the firms also violated NASD rules by recommending and opening fee-based brokerage accounts for customers without first determining whether these accounts were appropriate and by allowing those accounts to remain open.

The Raymond James firms began offering their customers fee-based brokerage accounts in early 2001. Their fee-based account business grew rapidly, increasing from some 8,600 accounts and \$1.8 billion in assets at the end of 2001 to more than 27,000 accounts and close to \$5.5 billion in assets by the end of August 2004. But NASD found that the Raymond James firms did not implement any supervisory system or written procedures geared toward their fee-based brokerage accounts. Instead, they continued to rely on their existing supervisory system, which was directed towards its commission-based business. The firms never conducted an initial or periodic supervisory review of their customers' fee-based brokerage accounts to determine whether those accounts were appropriate for the particular customers. In addition, the Raymond James firms never monitored their fee-based brokerage accounts for inactivity and improperly allowed certain fee-based accounts to remain open.

NASD also found that the Raymond James firms did not require their brokers to determine whether a fee-based brokerage account was appropriate for a customer before opening the account. As a result, Raymond James' registered representatives recommended and opened fee-based accounts for customers without having reasonable grounds for believing that such accounts were appropriate.

Between early 2001 and December 31, 2003, the Raymond James firms recommended and opened fee-based accounts for approximately 2,913 existing customers who had commission-based accounts for more than one year without executing a trade in the account. Based on the customers' trading history, Raymond James should have known these customers were "buy and hold" customers and that fee-based accounts may not have been appropriate for them. Of these 2,913 customers, 190 never executed a trade in their fee-based accounts, yet they paid Raymond James total fees of approximately \$138,000. Those customers will be receiving restitution under NASD's settlement.

NASD's disciplinary action describes three specific examples of customers for whom the firm inappropriately recommended and opened fee-based accounts:

- Customer WH opened a traditional commission-based account in 1993. Between 1993 and 2001, WH never engaged in any securities transactions in the account. In 2001, WH's account, valued in excess of \$420,000, was converted into a fee-based account. Through the end of 2003, WH never engaged in any securities transactions in the fee-based account, but paid total fees of approximately \$6,000.
- Customer IS opened a commission-based account in 1984. The only transactions in the account occurred between July 1996 and January 1997, when IS purchased

nine securities, totaling \$47,650. In 2001, IS's account, valued in excess of \$70,000, was converted into a fee-based account. Before IS's fee-based account was closed in 2003, the account generated approximately \$2,546 in fees to the firm, without IS making any trades in the account.

- Customer RW opened a commission-based IRA account in 1988. The only transactions in the account occurred in 1998, when RW purchased a small amount of stock. RW made no trades in the account after 1998. In 2001, RW's account, valued in excess of \$160,000, was converted into a fee-based account. RW did not make any trades in his fee-based account before he converted it in 2003 back to a commission-based account. During the time the fee-based account remained open, it generated approximately \$3,780 in fees to the firm.

In addition, NASD found that more than 13 percent of the customers in Raymond James' Passport Brokerage accounts—the firms' primary fee-based brokerage account—made no trades in their accounts in 2001. The percentage of Passport Brokerage accounts that made no trades increased to 14.2 percent in 2002 and 16.6 percent in 2003. Yet Raymond James did not conduct any supervisory review or monitoring of these accounts to determine whether they were, or continued to be, appropriate for the customers.

Raymond James also was found to have used advertising and sales literature that emphasized the benefits of fee-based accounts without adequately discussing the fees and restrictions associated with those accounts. NASD further found that some of the advertising and sales literature pieces were inaccurate and misleading.

The firms have notified NASD that they are in the process of terminating their fee-based brokerage programs and will completely discontinue their fee-based brokerage business by July 1, 2005. As part of the sanctions imposed by NASD—in the event that either of the Raymond James firms involved in today's action continues with any fee-based brokerage business after July 1, 2005—the firm must retain an independent consultant to make recommendations regarding establishing, maintaining, and enforcing a supervisory system and written procedures relating to its fee-based brokerage business that are designed to achieve compliance with applicable securities laws and NASD Rules.

In settling these matters, the firms neither admitted nor denied the charges, but consented to the entry of NASD's findings.

In November 2003, NASD issued *Notice to Members 03-68*, reminding firms that before opening a fee-based account, they must have "reasonable grounds for believing that a fee-

based program is appropriate for that particular customer," taking into account the services provided, the projected cost to the customer, alternative fee structures available, and the customer's fee structure preferences. The *Notice* also reminded firms that after a fee-based account has been opened, firms should implement procedures requiring a periodic review to determine whether the fee-based account remains appropriate for each of their customers.

Former Knight Trader Joseph Leighton Barred, Ordered to Pay \$4 Million to Settle Charges of Fraudulent Trades with Institutional Customers

Actions Follow SEC, NASD Settlements with Knight and NASD Charges against Firm Officials

The Securities and Exchange Commission (SEC) and NASD announced parallel enforcement actions against Joseph Leighton, formerly the leading institutional sales trader at Knight Securities, L.P. (now known as Knight Equity Markets, L.P.). Leighton has been barred from the securities industry and will pay more than \$4 million to settle charges that he made millions of dollars in fraudulent trades with Knight's institutional customers.

Leighton's monetary sanction includes disgorgement of more than \$1.9 million in ill-gotten profits; prejudgment interest of more than \$660,000; an SEC civil penalty of \$750,000; and an NASD fine of \$750,000. The disgorgement, prejudgment interest, and civil penalty will be paid into a Fair Fund established by the SEC for compensating investors harmed by Leighton's fraud. In December 2004, Knight paid more than \$79 million to settle SEC and NASD charges against the firm arising from Joseph Leighton's fraudulent and deceptive conduct. More than \$66 million was paid into the Fair Fund.

"Fraudulent trading of this magnitude—extracting millions of dollars in excess profits from institutional investors over a period of nearly two years—merits the strongest possible sanctions," said NASD Vice Chairman Mary Schapiro. "Joseph Leighton is paying the highest price NASD can impose—a permanent bar from the industry."

In March 2005, NASD charged former Knight CEO Kenneth Pasternak and John Leighton, the former head of Knight's Institutional Sales Desk, with supervisory violations in connection with Joseph Leighton's fraudulent trades. John Leighton is Joseph Leighton's brother. John Leighton and Pasternak are contesting the NASD charges.

From January 1999 to September 2000, Joseph Leighton was responsible for generating nearly \$135 million in trading profits for Knight—approximately 30 percent of the trading profits of Knight's entire Institutional Sales Desk. NASD found and the SEC alleged that Joseph Leighton generated approximately \$41 million dollars in excessive profits by pricing trades with institutional customers in a manner contrary to customers' expectations and industry custom, and using deceptive trading practices to disguise his pricing and the amount of Knight's profits. Joseph Leighton left Knight in 2000.

Joseph Leighton's institutional customers believed that the prices they paid for trades were based upon Knight's cost in acquiring (or selling) shares to fill their orders. Instead, Joseph Leighton had Knight acquire (or sell) a stock position after he received an institutional customer's order, and then waited until the price of the stock moved before executing trades to fill the customer's order, creating greater profits for Knight at the expense of his customer. If the price of the stock moved in favor of Knight's position, Joseph Leighton delayed executions and traded with his customers at prices reflecting the positive price movement. If the price of the stock moved against Knight's position, Joseph Leighton executed trades with customers based upon prices at an earlier time, which were more advantageous to Knight.

NASD found that Joseph Leighton did not disclose to customers how he priced trades, or the fact that he was not pricing trades based on Knight's costs. His course of trading deceived customers about Knight's cost of acquisition (or sale) and the profits he was making on trades with them. Leighton used that deception to make tens of millions of dollars in excessive profits for Knight at his customers' expense.

NASD also found that Joseph Leighton engaged in fraudulent trading in his proprietary "back book" account at Knight. Leighton received a greater payment for trading profits generated in his back book account than he did for customary trades with Knight's institutional customers. Without disclosing it to his institutional customers, Leighton traded with them in his back book account, taking the opposite side of trades with them at prices that were extremely profitable for him and disadvantageous to his customers.

In settling this matter with NASD, Joseph Leighton neither admitted nor denied the charges, but consented to the entry of NASD's findings. Without admitting or denying the allegations in the SEC's complaint, Leighton consented to the SEC's entry of its judgment and administrative order.

Ladenburg Thalmann Agrees to Repay \$1.2 Million to Customers Overcharged in Proceeds Transactions

NASD Fines Firm \$275,000, Orders Review of Proceeds Rule Compliance Policies

NASD announced that Ladenburg Thalmann & Co. of New York, NY, agreed to refund \$1.2 million, plus interest, to customers who were overcharged in “proceeds transactions”—transactions in which a customer sells securities through a broker and uses the proceeds to pay for other securities purchased at or about the same time.

NASD also fined Ladenburg \$275,000 and required the firm to retain an independent consultant to make recommendations for ensuring compliance with NASD’s Proceeds Rule.

NASD found that between May 2001 and May 2004, Ladenburg violated NASD’s Proceeds Rule and the federal securities laws by charging more than 3,300 customer accounts excessive commissions on more than 5,300 proceeds transactions, resulting in overcharges totaling \$1.2 million.

“As this case demonstrates, firms need to monitor commission charges carefully when a customer is using some or all of the proceeds from a sale to purchase another stock,” said NASD Vice Chairman Mary Schapiro. “In this case, Ladenburg’s systems fell far short of the mark.”

NASD’s Proceeds Rule requires that if a customer sells securities through a broker and uses the proceeds to pay for other securities purchased at or about the same time, the broker must calculate his commission in the same way as if the customer had purchased for cash. The rule also limits the aggregate commissions for a proceeds transaction to no more than 5 percent of the amount reinvested, except in special circumstances.

NASD found that Ladenburg misinterpreted the Proceeds Rule to apply only to same-day transactions. The firm established its internal controls to monitor only for same-day sell-and-reinvestment trades, a fact that was communicated to the firm’s registered representatives. Ladenburg’s written supervisory procedures failed to mention the Proceeds Rule, explain a proceeds transaction, or explain how the commission on a proceeds transaction should be calculated.

In the more than 5,300 transactions at issue, the firm’s brokers solicited the customers to sell and buy securities. NASD found that, in every one of those transactions, the customer’s sale and subsequent buy transactions occurred one day apart. Because the transactions did not occur on the same day, Ladenburg’s internal controls did not identify them as

proceeds transactions and did not cap the commissions at 5 percent. Instead, Ladenburg collected commissions on the sale and subsequent purchase that exceeded the cap in each of the transactions.

NASD found that in some instances where the broker solicited both transactions together, the customer agreed to the sell transactions but told the broker he would call back the next day with respect to the subsequent purchase. In other instances, the broker solicited both transactions together but recommended that the customer wait to reinvest the proceeds until the market declined, and the customer agreed. Occasionally, the broker solicited the sell transaction and told the customer he would call back the next day with a specific buy recommendation. But in every case, Ladenburg’s brokers failed to disclose to their customers that they might pay higher commissions—and therefore a potentially higher overall price for the security—by waiting a day to reinvest the proceeds from their stock sale.

In addition, NASD found that Ladenburg failed to establish and maintain an adequate supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with the Proceeds Rule, and required Ladenburg to retain an independent consultant to review and make recommendations concerning the adequacy of Ladenburg’s current policies and procedures relating to the firm’s compliance with NASD’s Proceeds Rule.

In settling these matters, Ladenburg neither admitted nor denied the charges, but consented to the entry of NASD’s findings.

NASD Sanctions First Command Broker for Deceptive Conduct

Broker Suspended, Fined for Unsuitable Sales to Military Personnel

NASD imposed a 10-month suspension and a \$25,000 fine against Louis E. Stough, a former broker with First Command Financial Planning Inc., in connection with a series of unsuitable recommendations and sales involving liquidation of investments in the firm’s Systematic Investment Plans.

First Command is a Fort Worth, TX broker-dealer that specializes in sales to military personnel. Last December, NASD ordered First Command to pay \$12 million dollars in fines and restitution for misleading statements in the sale of Systematic Investment Plans. To date, First Command has issued more than 8,000 restitution checks totaling more than \$3.6 million to affected customers, primarily active duty and retired military personnel. Restitution is expected to total approximately \$5

million. NASD's Investor Education Foundation will use the remaining fine money to create investor education programs for the military.

Investors in Systematic Investment Plans purchase mutual funds through monthly contributions over a 10- or 15-year period, and are charged a sales load of 50 percent of the first year's contributions.

In this action, NASD found that between August 2002 and January 2003, Stough recommended to 12 customers that they liquidate their Systematic Investment Plan investments and reinvest the proceeds in Class A shares of mutual funds. Stough failed to inform those customers that they had the option of transferring assets directly from their Systematic Investment Plans to funds in the same mutual fund family without incurring sales charges. Instead, he recommended and sold them shares of other mutual fund families and charged them sales loads of up to 5.75 percent.

"Brokers must consider sales charges when recommending that a customer move assets from one investment to another," said Barry Goldsmith, NASD Executive Vice President and Head of Enforcement. "Brokers must also consider the costs to the customer of moving investments from one mutual fund family to another. In this case, the broker acted improperly by failing to consider comparable options within a fund family that carried no sales charges and failed to disclose that option to his customers."

NASD also found that rather than having customers complete direct fund-to-fund rollovers as required by First Command's procedures, Stough instructed his clients to liquidate their Systematic Investment Plans, place the proceeds in a bank account, and then write a check from the bank account to purchase new mutual funds. Stough also failed to indicate in required documentation that the customer's money for the new purchases had come from Systematic Investment Plan liquidations. Instead, he labeled the source of the money as "bank IRA." As a result, these unsuitable transactions went undetected for approximately six months.

Stough's unsuitable recommendations and sales to the 12 clients involved 47 separate transactions that generated total commissions of more than \$34,400 to First Command. Stough received \$16,500 of that total. First Command has paid restitution to all affected customers, and Stough has returned his commissions to First Command.

Stough neither admitted nor denied NASD's charges, but consented to the entry of NASD's findings. Last December, when it settled NASD charges of making misleading statements and omitting important information when selling its Systematic Investment Plans, First Command neither admitted nor denied the charges, but consented to the entry of NASD's findings.

Detailed information on the First Command restitution program is available on NASD's Web site (www.nasd.com).