

JUNE 2005

# Notice to Members

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# Notice to Members

JUNE 2005

## SUGGESTED ROUTING

Investment Companies  
Legal & Compliance  
Registered Representatives  
Senior Management  
Variable Contracts

## KEY TOPICS

Sales Contests  
Non-Cash Compensation

## REQUEST FOR COMMENT

### Sales Contests and Non-Cash Compensation

NASD Requests Comment on Proposal to Prohibit All Product-Specific Sales Contests and to Apply Non-Cash Compensation Rules to Sales of All Securities; **Comment Period Expires August 5, 2005**

#### Executive Summary

NASD currently restricts the payment and acceptance of non-cash compensation in connection with the sale of direct participation programs (DPPs), variable insurance contracts, investment company securities, and public offerings of real estate investment trusts (REITs) and other securities. NASD also prohibits internal non-cash sales contests in connection with the sale of variable insurance contracts or investment company securities unless they meet certain criteria, including that such contests are based on principles of total production and equal weighting. NASD proposes to expand the prohibitions of non-cash compensation to the sale and distribution of any security or type of security, rather than just those enumerated above. NASD also proposes to prohibit all product-specific cash and non-cash "sales contests" as defined by the proposed rule.

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Thomas M. Selman, Senior Vice President, Investment Companies/Corporate Financing, at (240) 386-4533; Joseph P. Savage, Associate Vice President, Investment Companies Regulation, at (240) 386-4534; or Philip A. Shaikun, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8451.

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## Action Requested

NASD encourages all interested parties to comment on the proposed rule change. Comments must be received by August 5, 2005. Members and other interested parties can submit their comments using the following methods:

- ◆ **Mail** comments in hard copy to the address below; or
- ◆ **Email** comments to *pubcom@nasd.com*.

To help NASD process and review comments more efficiently, persons commenting on this proposal should use only one method. Comments sent by hard copy should be mailed to:

Barbara Z. Sweeney  
Office of Corporate Secretary  
NASD  
1735 K Street, NW  
Washington, DC 20006-1506

**Important Notes:** The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the NASD Web site. Generally, comments will be posted on the NASD Web site one week after the end of the comment period.<sup>1</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the NASD Board, and then must be approved by the SEC, following publication in the *Federal Register*.<sup>2</sup>

## Background and Discussion

### Current Rules Governing Non-Cash Compensation and Sales Contests

NASD rules generally prohibit members and their associated persons from directly or indirectly accepting or making payments or offers of non-cash compensation in connection with the sale of DPPs, variable insurance products, investment company securities, and the public offering of other securities, including REITs. These prohibitions are subject to certain exceptions that permit:

- (A) Gifts that do not exceed an annual amount per person fixed by the NASD Board of Governors (currently \$100) and are not preconditioned on achievement of a sales target;

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- (B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment that is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target;
  - (C) Payment or reimbursement by offerors<sup>3</sup> in connection with meetings held by an offeror or by a member for the purpose of training or educating associated persons of a member, provided that the meeting meets certain criteria;<sup>4</sup>
  - (D) Non-cash compensation arrangements between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that the arrangement meets certain criteria (discussed below);<sup>5</sup> and
  - (E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, or contributions by a member to a non-cash compensation arrangement of a non-member, provided that the arrangement meets the requirements for a non-cash compensation arrangement between a member and its associated persons pursuant to sub-paragraph (D) (discussed below).

Under the provisions permitting non-cash compensation arrangements between a member and its associated persons, a member may hold an internal *non-cash* sales contest with respect to the sale of investment company securities or variable insurance products provided that the contest is based on total production and the credit for each type of security sold (e.g., investment company or variable insurance product) is equally weighted. While this exception excludes sales contests that award credit only for specific securities within a category, such as only awarding credit for sales of proprietary mutual funds, it does allow sales contests that award credit for all sales within a particular category of securities (e.g., all sales of mutual funds), subject to the total production and equal weighting requirements.

NASD believes that general prohibitions concerning payment or receipt of non-cash compensation should be extended beyond investment companies, variable insurance products, DPPs, and public offerings of securities such as REITs, as the conflicts underlying these prohibitions exist with respect to all securities. NASD also believes that product-specific sales contests—even those that conform to the total production and equal weighting requirements of the current non-cash rules—should be prohibited.

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### **Extension of Non-Cash Compensation Prohibitions to All Securities**

The proposal would eliminate the current non-cash compensation provisions—Rules 2710(i) (REITs and other publicly offered securities), 2810(c) (DPPs), 2820(g)(4) (variable contracts), and 2830(l)(5) (investment companies)—and replace them with a new Rule 2311, which would apply to the payment or receipt of non-cash compensation and the sponsoring or participation in any sales contest with respect to the sale or distribution of any security or type of security. Thus, for example, the restrictions on the payment of non-cash compensation that currently apply to investment company securities, variable insurance products, REITs, and DPPs also would apply to the sale of stocks, bonds, or other securities.

Under proposed Rule 2311, members and their associated persons would be prohibited from directly or indirectly accepting or making payments or offers of payments of any non-cash compensation, subject to certain exceptions. One such exception would permit gifts that do not exceed in value an annual amount per person established by the NASD Board of Governors (currently \$100) and that are not preconditioned on the achievement of a sales target. Another exception would permit an occasional meal, a ticket to a sporting event or the theater, or comparable entertainment that is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on the achievement of a sales target.

The proposal also would permit offerors<sup>6</sup> and members to make payments or reimbursements of associated persons' expenses in connection with training or education meetings, provided that the meetings meet certain conditions.

First, the member would have to maintain records of all such payments or reimbursements, including the names of the associated persons who attended, and the amounts of the payments or reimbursements.

Second, the associated persons would have to obtain the member's prior approval to attend the meeting and attendance or reimbursement of expenses could not be preconditioned on the achievement of a sales target. The proposal would explicitly define the term "preconditioned on the achievement of a sales target" (which also relates to the gift and entertainment exceptions above) as meaning an arrangement pursuant to which associated persons understand in advance that they must achieve either a dollar-denominated goal for selling any security or type of security or a goal of finishing within a group of top sellers of a security or type of security. The definition would state that a training or education meeting shall not be considered preconditioned on the achievement of a sales target if a member or an offeror designates persons to attend the meeting to recognize past performance or to encourage future performance, provided that associated persons do not understand in advance that receipt of compensation in connection with the meeting requires achievement of a sales target.

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Third, the location would have to be appropriate to the purpose of the meeting, which the proposal would define as a United States office of the offeror or member holding the meeting, a facility located in the vicinity of such office, a U.S. regional location with respect to meetings of associated persons who work within that region or, with respect to meetings dealing with REITs or DPPs, a U.S. location at which a significant asset of the program is located.

Fourth, consistent with past staff interpretations, the proposed rule would explicitly permit only reimbursement for training, education, meals, lodging, and transportation of the associated person.<sup>7</sup> Consequently, the proposed rule would make clear that in a training and education meeting, the offeror or member firm could not pay for or provide reimbursement for entertainment or for the expenses of guests of attendees.<sup>8</sup>

NASD believes that these provisions are largely consistent with the current non-cash compensation rules applicable to investment company securities, variable insurance products, DPPs, and REITs. However, NASD has made some changes to these provisions to improve their clarity and members' understanding of the rules. NASD requests comments as to whether these changes make the rules clearer.

#### **Prohibition of Product-Specific Sales Contest**

While proposed Rule 2311 expands many of the non-cash compensation provisions to all types of securities, NASD also is proposing to eliminate the current exception for product-specific sales contests. Specifically, the proposal would ban all "sales contests," which are defined as "any contest among associated persons for cash or non-cash prizes that is preconditioned on the achievement of a sales target within a defined period of time with respect to the sale or distribution of any security or any type of security." The meaning of "preconditioned on the achievement of a sales target" is discussed above.

NASD views any sales contest that favors one security (e.g., a proprietary investment company) or one type of security (e.g., investment companies or stocks) as having the potential to create an incentive to engage in sales conduct unrelated to the best interests of customers. Consequently, the ban on sales contests would prohibit "stock of the day" and similar promotions. It also would prohibit increased bonuses or "President's Club" memberships that are awarded for the sale of specific securities or types of securities within a defined period of time.

The definition of sales contest would permit broker-dealers to hold a contest among its associated persons that is based on their total production on the sale of all securities, provided certain records were kept. By permitting contests that are based on an associated person's total production, the rule also would allow cash bonuses to registered representatives who attained a higher total production across *all* securities. The member would be required to maintain records of those contests, including the criteria for awarding prizes and the names of the associated persons who participate in them.

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NASD specifically seeks comment on the proposed definition of “sales contest.” Does it adequately address those compensation arrangements that create inappropriate incentives, without prohibiting legitimate forms of compensation?

The proposal also would eliminate a current provision that permits non-member companies or other members to contribute to a non-cash arrangement between a member and its associated persons, or contributions by a member to a non-cash compensation arrangement of a non-member, provided that it meets the requirements for such arrangements (such as the total production and equal weighting standards). NASD requests comment on whether there is any need to retain this provision in some form, given that the proposal would ban product-specific sales contests.

NASD does not intend these changes to cover different sales load structures or ongoing differential cash payouts among various products. Thus, for example, a member would be permitted to sell fund families that pay higher sales loads (e.g., a fund that pays a highest sales load of 5.75 percent of the purchase price) than other fund families that the member sells (e.g., funds whose highest sales loads are 4.5 percent). Likewise, for example, the rule would not apply to a member that, on an ongoing basis, pays out to associated persons 80 percent of commissions earned from the sales of proprietary products but only pays out 60 percent of commissions earned from the sale of non-proprietary products. The regulatory treatment of these so-called “differential compensation” arrangements is the subject of SEC rulemaking.<sup>9</sup>

## Endnotes

- 1 See *Notice to Members 03-73* (Nov. 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Persons commenting on this proposal should submit only information that they wish to make publicly available.
- 2 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.
- 3 The term “offeror” generally refers to issuers, sponsors, advisers to issuers or sponsors, underwriters and their affiliates. See Rules 2710(i)(1)(C), 2810(c)(1)(C), 2820(b)(3)(E) and 2830(b)(1)(E).
- 4 Generally, training and education meetings must meet the following requirements:
  - i) the member must maintain certain records of these meetings, including the names of the offerors involved, the names of the associated persons attending the meetings, and the nature and value of the non-cash compensation received;
  - ii) the associated persons must obtain the member’s prior approval to attend the meeting and attendance is not preconditioned by the member on achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by paragraph (D);
  - iii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;



- iv) the payment or reimbursement is not applied to the expenses of guests of the associated persons; and
- v) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by paragraph (D).

See Rules 2710(i)(2)(C), 2810(c)(2)(C), 2820(g)(4)(C) and 2830(l)(5)(C).

5 Under Rules 2820 and 2830, non-cash compensation arrangements between a member and its associated persons or, in the case of variable contracts, between a non-member company and its sales personnel who are associated persons of an affiliated member, generally must meet the following requirements:

- i) the member's or non-member's non-cash compensation arrangement is based on the total production of associated persons with respect to all securities within a specific category (such as mutual funds, variable annuities, or variable life insurance) distributed by the member;
- ii) the non-cash compensation arrangement requires that the credit received for each security is equally weighted;
- ii) no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and
- iv) the record keeping requirements of the non-cash rules are satisfied.

See Rules 2820(g)(4)(D) and 2830(l)(5)(D). Rules 2710 and 2810 permit non-cash arrangements between a member and its associated persons or a company that controls a member company and the member's associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement. See Rules 2710(i)(2)(D) and 2810(c)(2)(D).

6 The proposal would modify the definition of "offeror" depending upon the type of product that is the subject of the training or education meeting. The modified definition is based upon the current definitions of "offeror" in Rules 2710, 2810, 2820, and 2830.

7 See "Non-Cash Compensation – Training or Education Meetings," NASD Regulatory & Compliance Alert 13 (Summer 2000), available at [http://www.nasd.com/lrca/summer\\_00](http://www.nasd.com/lrca/summer_00); Letter from Mary L. Schapiro, President, NASD (March 7, 2001), available at [http://www.nasd.com/schapiro\\_030701](http://www.nasd.com/schapiro_030701).

8 The staff has interpreted the training or education meeting exception "as an event that is first and foremost intended to provide training or education to an associated person. Any training meeting should occupy substantially all of the work day." "Non-Cash Compensation – Training Or Education Meetings," NASD Regulatory & Compliance Alert 13 (Summer 2000).

9 See SEC Rel. No. 33-8544 (Feb. 28, 2005), 70 Fed. Reg. 10521 (Mar. 4, 2005).

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## ATTACHMENT A

Proposed rule text.

### 2311. Non-Cash Compensation and Sales Contests

(a) Definitions

(1) "Compensation" shall mean cash compensation and non-cash compensation.

(2) "Cash compensation" shall mean any, discount, concession, fee, service fee, commission, asset-based sales charge, loan, override, cash employee benefit or cash prize received in connection with the sale and distribution of any security or type of security.

(3) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of any security or type of security that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(4) "Offeror" shall mean:

(A) with respect to a training or education meeting concerning variable contracts, an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities;

(B) with respect to a training or education meeting concerning investment company securities not sold through variable contracts, an investment company, an adviser to an investment company, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities; and

(C) with respect to a training or education meeting concerning any other type of security, an issuer, sponsor, an adviser to an issuer or sponsor, an underwriter and any affiliated person of such entities.

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(5) "Preconditioned on the achievement of a sales target" shall mean an arrangement pursuant to which associated persons understand in advance that they must achieve either a dollar-denominated goal for selling any security or type of security or a goal of finishing within a defined number of top sellers of a security or type of security. A training or education meeting shall not be considered preconditioned on the achievement of a sales target if a member or an offeror designates persons to attend the meeting to recognize past performance or to encourage future performance, provided that associated persons do not understand in advance that the receipt of compensation in connection with the meeting requires achievement of a sales target.

(6) "Sales contest" shall mean any contest among associated persons for cash or non-cash prizes that is preconditioned on the achievement of a sales target within a defined period of time with respect to the sale or distribution of any security or type of security. The term "sales contest" shall not mean any contest among associated persons that is based upon the total production of the associated persons for all types of securities, provided that the member maintains records of all such contests, including the criteria for awarding prizes and the names of the associated persons who participate in such contests.

(b) Restrictions on Non-cash Compensation and Sales Contests.

No member or person associated with a member shall sponsor or participate in any sales contest or directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except the following:

(1) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors<sup>1</sup> and are not preconditioned on achievement of a sales target.

(2) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment that is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(3) Payment or reimbursement by offerors or members in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(A) the member maintains records of all such payments or reimbursements, including the names of the offerors, the names of the associated persons who attended, and the amount of the payment or reimbursement;

<sup>1</sup> The current annual amount fixed by the Board of Governors is \$100.

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(B) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not preconditioned by the member on the achievement of a sales target;

(C) the location is appropriate to the purpose of the meeting, which shall mean a United States office of the offeror or the member holding the meeting, or a facility located in the vicinity of such office, or a United States regional location with respect to meetings of associated persons who work within that region or, with respect to meetings dealing with real estate investment trusts or direct participation programs, a United States location at which a significant asset of the program is located;

(D) the payment or reimbursement applies only to training, education, meals, lodging and transportation for associated persons, and is not applied to the expenses of guests of associated persons, or to the entertainment of associated persons; and

(E) the payment or reimbursement by the offeror is not preconditioned by the offeror on the achievement of a sales target.

# Special Notice to Members

JUNE 2005

## SUGGESTED ROUTING

Internal Audit  
Legal & Compliance  
Operations  
Registered Representatives  
Senior Management  
Systems  
Trading  
Training

## KEY TOPICS

Rule 6740  
SEC Rule 15c2-11

## GUIDANCE

### Important Information Regarding the Suspension of Trading in the Securities of Gluv Corp.<sup>1</sup>

#### Executive Summary

NASD is issuing this *Special Notice to Members (Special NTM)* to advise member firms and other interested parties of certain actions and issues relating to the trading of the securities of Gluv Corp. This *Special NTM* also is intended to remind members of their responsibilities with respect to Securities and Exchange Commission (SEC) Rule 15c2-11 and NASD Rule 6740.

#### Questions/Further Information

Questions regarding this *Special NTM* may be directed to the Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8071; or the Legal Section, Market Regulation, NASD, at (240) 386-5126.

#### Discussion

Gluv Corp. recently announced that 3 million shares of its common stock were issued prior to the dividend payment date. The company further stated that it appears that an unknown number of those shares have been improperly traded in the marketplace. In response to the company's press release and other discussions between the company and SEC staff, on May 27, 2005, the SEC temporarily suspended trading in the securities of Gluv Corp. pursuant to Section 12(k) of the Securities Exchange Act of 1934. The SEC issued this suspension because of questions surrounding the accuracy and adequacy of publicly disseminated information concerning, among other things, the total shares outstanding, the availability of non-restricted shares for trading and delivery, the company's shareholders, and rights with respect to shares of Gluv Corp.

05-41

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The SEC's trading suspension terminates on June 10, 2005, at 11:59 p.m. ET. Although trading will no longer be suspended, members should exercise great caution when executing customer or proprietary trades, including member-to-member transactions for the purposes of resolving open fails, until such time as members can be assured that the shares in circulation were part of a bona-fide issuance.

Members are reminded that, pursuant to SEC Rule 15c2-11 and NASD Rule 6740, no quotation may be entered unless and until a member has complied with all of the requirements of the rules, including SEC Rule 15c2-11(a)(5). SEC Rule 15c2-11(a) requires, among other things, that based on a member's review of the issuer information specified therein, a member must have a reasonable basis under the circumstances to believe that the issuer information is accurate in all material respects and the sources of such information are reliable. Until the questions surrounding the information and documents of Gluv Corp. are resolved, member firms should be aware, that in the context of Form 211 filings, NASD has significant concerns as to whether a member would have a reasonable basis to believe the accuracy or reliability of information relating to Gluv Corp.

In addition, SEC staff has indicated that it will entertain requests for relief by firms with regard to the net capital charges related to trades in Gluv Corp. that occurred before the close of business on May 27, 2005, but that such relief will not extend to trading that commences after the cessation of the temporary suspension.

## Endnote

- 1 NASD has been informed by issuer's counsel that Gluv Corp. has changed its name to Media Magic, Inc., although NASD has not received formal notice of such.

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# Special Notice to Members

JUNE 2005

## SUGGESTED ROUTING

Executive Representatives  
Legal & Compliance  
Operations  
Registration  
Senior Management

## KEY TOPICS

District Elections

## GUIDANCE

### District Elections

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

#### Executive Summary

The purpose of this *Special Notice to Members* is to inform members of the upcoming nomination and election process to fill forthcoming vacancies on NASD District Committees and District Nominating Committees.

Information on District Committee and District Nominating Committee members currently serving through 2006, 2007, and 2008 is included in Attachment A. Information on District Election Procedures is included in Attachment B. A blank candidate profile sheet is also included (Attachment C).

#### Background

The NASD District Committees serve an important role within NASD by supporting NASD's mission to regulate securities markets for the ultimate benefit and protection of investors. Among other things, District Committee members:

- ◆ Alert staff to industry trends that could be a potential regulatory concern.
- ◆ Consult with NASD staff on proposed policies and rule changes brought to a District Committee for its views.
- ◆ Serve on Disciplinary Panels in accordance with NASD Rules.
- ◆ Promote NASD's mission and stated positions.

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Committee members must have the experience, ability, and commitment to fulfill these responsibilities, including:

- ◆ Understanding the issues facing the securities industry and possessing the ability to apply knowledge and expertise to these issues to develop solutions.
- ◆ Fostering member interest and participation in NASD.
- ◆ Educating members in their District on the work of NASD.
- ◆ Attending regularly and participating professionally, effectively, and in a collegial manner in District Committee meetings.
- ◆ Remaining objective and unbiased in the performance of District Committee matters.

Committee members must also adhere to certain prohibitions and restrictions. These include:

- ◆ Refraining from serving as an expert witness in NASD disciplinary hearings or arbitrations.
- ◆ Being sensitive to conflicts, and refraining from participating in a particular matter when a conflict exists.
- ◆ Refraining from using membership on the District Committee for commercial purposes, or otherwise suggesting special access to NASD.
- ◆ Keeping sensitive, non-public, or propriety information confidential.

### Nomination Process

Individuals from member firms of all sizes and segments of the industry are encouraged to submit names for consideration for membership on the 11 District Committees and District Nominating Committees. In this election, each District Committee will have three vacancies to fill, with the exception of District 10, which will have four.<sup>1</sup> The term of office for District Committee members is three years. Each District Nominating Committee will have five vacancies to fill for a one-year term. Persons who are interested in serving on the District Committee or the District Nominating Committee within their district must complete a candidate profile sheet (Attachment C) and submit it by hand delivery, courier service, mail, or facsimile to the District Director. Completed candidate profile sheets must be received by the District Director on or before July 29, 2005. Persons who submit candidate profile sheets after this date will not be considered. NASD encourages current and former committee members to assist NASD by soliciting candidates for both committees.



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Article VIII, Sections 8.2 and 8.9 of the NASD Regulation By-Laws (By-Laws) establish formal eligibility requirements for members of the District Committee and District Nominating Committee. They provide that such members:

- 1) Be employed by an NASD member eligible to vote in the district for District Committee elections;<sup>2</sup> and
- 2) Work primarily from such NASD member's principal office or a branch office that is located within the district where the member serves on a District Committee or District Nominating Committee.

Completed nomination forms that are received by July 29, 2005, will be provided to all members of the appropriate District Nominating Committee for review. It is anticipated that on or before September 9, 2005, each District Director, acting on behalf of the District Nominating Committee, will notify the Secretary of NASD of each candidate nominated by the District Nominating Committee and the committee to which the candidate is nominated.

Members are reminded of the importance to accurately maintain their Executive Representative name and email address information, as well as their firm's main postal address. This will ensure that member mailings, such as election information, will be properly directed. Failure to keep this information accurate may jeopardize the member's ability to participate in District elections as well as other member votes. To update the Executive Representative name and email address, firms should access the NASD Contact System, located on NASD's Web site at [www.nasd.com/ncs](http://www.nasd.com/ncs).

To update postal address information, the firm must file a Form BD Amendment via the Web CRD system. For assistance updating either of these systems, you may contact our Call Center at (301) 590-6500.

### Questions/Further Information

Questions concerning this *Special Notice* may be directed to the District Director noted, or to Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, at (202) 728-8062 or via email at [barbara.sweeney@nasd.com](mailto:barbara.sweeney@nasd.com).

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## Endnotes

- 1 In some cases, a District Committee may have additional vacancies to fill if a member of the District Committee has resigned since the last election, as indicated in Attachment A.
- 2 NASD will be filing with the Securities and Exchange Commission, for immediate effectiveness, an amendment to Article VIII of the By-Laws to modify the eligibility requirements for membership on the District Committee and District Nominating Committee by providing that candidates must be "registered with" rather than "employed by" an NASD member. The rationale for this change is that any person who engages in the investment banking or securities business of a member must be registered with NASD and be an associated person of that member. There is, however, no requirement that associated persons be employees. They may, in fact, operate for employment law purposes as independent contractors. The staff believes the requirement of being "registered with" as opposed to "employed by" the member more accurately aligns the candidacy requirements with the qualification of persons who may represent a member.  
  
NASD also will be filing a second change to Article VIII to permit each District Nominating Committee, at the time it nominates its slate of nominees, to identify one alternate nominee for the District Committee and one alternate nominee for the District Nominating Committee who will, in an uncontested election, replace a member of the slate of nominees who withdraws or is otherwise determined to be ineligible.

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©2005. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

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## ATTACHMENT A

### District 1 Committee and District Nominating Committee Members

#### Elisabeth P. Owens, District Director

525 Market Street, Suite 300, San Francisco, CA 94105

(415) 882-1201

(415) 546-6991 fax

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#### District 1 Committee—Chair: Francis X. Roche, II

Members to be elected to terms expiring January 2009: 3

##### Committee members to serve until January 2006

Warren E. Gordon	Charles Schwab & Co., Inc.	San Francisco, CA
William P. Hayes	Wells Fargo Investments, LLC	San Francisco, CA
Francis X. Roche, II	RBC Dain Rauscher, Inc.	San Francisco, CA

##### Committee members to serve until January 2007

William A. Evans	Stone & Youngberg, LLC	San Francisco, CA
Mansoor Kisat	Citigroup Global Markets, Inc.	Santa Rosa, CA
Arthur E. Raitano	Hoefer & Arnett, Incorporated	San Francisco, CA

##### Committee members to serve until January 2008

Howard Bernstein	Pacific Growth Equities, LLC	San Francisco, CA
Bruce Nollenberger	Nollenberger Capital Partners, Inc.	San Francisco, CA
Daniel W. Roberts	Roberts & Ryan Investments Inc.	San Francisco, CA

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#### District 1 Nominating Committee—Chair: L. Robert McKulla

Members to be elected to terms expiring January 2007: 5

##### Committee members to serve until January 2006

Nicholas C. Cochran	American Investors Company	San Ramon, CA
L. Robert McKulla	Wachovia Securities	Walnut Creek, CA
Robert A. Muh	Sutter Securities, Inc.	San Francisco, CA
G. Stuart Spence	UBS Financial Services, Inc.	San Francisco, CA
Samuel Yates	RBC Dain Rauscher	San Francisco, CA

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## District 2 Committee and District Nominating Committee Members

### Lani M. Sen Woltmann, District Director

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071

(213) 613- 2601  
(213) 617-3299 fax

---

### District 2 Committee — Chair: Don S. Dalis

Members to be elected to terms expiring January 2009: 3

#### Committee members to serve until January 2006

A. William Cohen	Integrated Trading and Investments, Inc.	Las Vegas, NV
Don S. Dalis	UBS	Newport Beach, CA
Ismael Manzanares, Jr.	Foresters Equity Services, Inc.	San Diego, CA

#### Committee members to serve until January 2007

Stephen B. Benton	Financial Network Investment Corporation	El Segundo, CA
James M. S. Dillahunty	Fixed Income Securities, LLC	San Diego, CA
John D. Lewis	JDL Securities Corp.	Newport Beach, CA

#### Committee members to serve until January 2008

Kenneth R. Hyman	Partnervest Securities, Inc.	Santa Barbara, CA
Bryan R. Plank	Merrill Lynch	San Diego, CA
Valorie Seyfert	CUSO Financial Services, L.P.	San Diego, CA

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### District 2 Nominating Committee—Chair: Richard B. Gunter

Members to be elected to terms expiring January 2007: 5

#### Committee members to serve until January 2006

Richard B. Gunter	Wedbush Morgan Securities	Los Angeles, CA
James E. Biddle	The Securities Center Incorporated	Chula Vista, CA
Terry L. Chase	Wachovia Securities, Inc.	Pasadena, CA
James R. Kruger <sup>1</sup>	Crowell, Weedon & Co.	Los Angeles, CA
Joel H. Ravitz	Quincy Cass Associates	Los Angeles, CA

<sup>1</sup> Mr. Kruger was appointed to fill a vacancy created by the resignation of Steven K. McGinnis. Mr. Kruger's term expires in January 2006.

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## District 3 Committee and District Nominating Committee Members

### Joseph M. McCarthy, District Director

370 17th Street, Suite 2900  
Denver, CO 80202  
(303) 446-3100  
(303) 620-9450 fax

### James G. Dawson, District Director

Two Union Square, 601 Union Street, Suite 1616  
Seattle, WA 98101-2327  
(206) 624-0790  
(206) 623-2518 fax

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### District 3 Committee—Chair: Bridget M. Gaughan

Members to be elected to terms expiring January 2009: 3

#### Committee members to serve until January 2006

Gene G. Branson	Partners Investment Network, Inc.	Spokane, WA
Bridget M. Gaughan	SunAmerica Securities, Inc.	Phoenix, AZ
John W. Goodwin	Goodwin Browning & Luna Securities, Inc.	Albuquerque, NM

#### Committee members to serve until January 2007

Curtis J. Hammond	Morgan Stanley Dean Witter Inc.	Bellevue, WA
J. Keith Kessel	AFS Brokerage, Inc.	Greenwood Village, CO
Arlene M. Wilson	D.A. Davidson & Co.	Great Falls, MT

#### Committee Members to serve until January 2008

Kathryn M. Dominick	TCAdvisors Network Inc.	Englewood, CO
Craig A. Jackson	Northwest Consulting, LLC	Roseburg, OR
Harry L. Striplin	Paulson Investment Company, Inc.	Portland, OR

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### District 3 Nominating Committee—Chair: Kathryn A. Supko

Members to be elected to terms expiring January 2007: 5

#### Committee members to serve until January 2006

Gregory R. Anderson	MCL Financial Group, Inc.	Denver, CO
Elyssa S. Baltazar	Smith Barney	Denver, CO
Thomas R. Hislop	Peacock, Hislop, Staley & Given, Inc.	Phoenix, AZ
Clarence Fredrick Roed	McAdams Wright Ragen, Inc.	Bellevue, WA
Kathryn A. Supko	Northwestern Mutual Investment Services, LLC	Boise, ID

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## District 4 Committee and District Nominating Committee Members

### Thomas D. Clough, District Director

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

(816) 802-4708  
(816) 421-5029 fax

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### District 4 Committee—Chair: Deborah M. Castiglioni

Members to be elected to terms expiring January 2009: 3

#### Committee members to serve until January 2006

Michael D. Burns	USAllianz Securities, Inc.	Minneapolis, MN
Deborah M. Castiglioni	Cutter & Company, Inc.	Chesterfield, MO
Kevin P. Maas	PrimeVest Financial Services, Inc.	St. Cloud, MN

#### Committee members to serve until January 2007

Joseph D. Fleming	Piper Jaffray & Co.	Minneapolis, MN
Mark T. Lasswell	Wells Fargo Brokerage Services, LLC	Minneapolis, MN
Vacancy <sup>2</sup>		

#### Committee members to serve until January 2008

Allen J. Moore	SMITH HAYES Financial Services	Lincoln, NE
Stephen R. Oliver	Gold Capital Management, Inc.	Overland Park, KS
Minoo Spellerberg	Princor Financial Services Corporation	Des Moines, IA

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### District 4 Nominating Committee—Chair: Pamela R. Ziermann

Members to be elected to terms expiring January 2007: 5

#### Committee members to serve until January 2006

Frank H. Kirk	Wachovia Securities, LLC	Kansas City, MO
Jeffrey A. Schuh	Residential Funding Securities Corporation	Minneapolis, MN
James H. Warner	The Warner Group	Sioux City, IA
Pamela R. Ziermann	Dougherty & Company LLC	Minneapolis, MN
Vacancy <sup>3</sup>		

<sup>2</sup> This vacancy was created by the resignation of Richard M. Hurwitz. The term expires in January 2007.

<sup>3</sup> This vacancy was created by the resignation of Timothy J. Lyle. The term expires in January 2006.

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## District 5 Committee and District Nominating Committee Members

### Warren A. Butler, Jr., Regional Director

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

(504) 522-6527  
(504) 522-4077 fax

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### District 5 Committee—Chair: Carolyn R. May

Members to be elected to terms expiring January 2009: 3

#### Committee members to serve until January 2006

John J. Dardis	Jack Dardis & Associates, Ltd.	Metairie, LA
Carolyn R. May	Simmons First Investment Group, Inc.	Little Rock, AR
F. Eugene Woodham	Sterne, Agee & Leach, Inc.	Birmingham, AL

#### Committee members to serve until January 2007

Jennifer Carty Scola	Carty & Company, Inc.	Memphis, TN
R. Patrick Shepherd	Avondale Partners, L.L.C.	Nashville, TN
Donald Winton	Crews & Associates, Inc.	Little Rock, AR

#### Committee members to serve until January 2008

Philip J. Dorsey	Dorsey & Company, Inc.	New Orleans, LA
Fred G. Eason	Delta Trust Investments, Inc.	Little Rock, AR
Harold L. Gladney	Vining Sparks IBG, L.P.	Memphis, TN

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### District 5 Nominating Committee—Chair: David A. Knight

Members to be elected to terms expiring January 2007: 5

#### Committee members to serve until January 2006

David A. Knight	Stephens Inc.	Little Rock, AR
LeRoy H. Paris, II	InvestLinc Securities, LLC	Jackson, MS
Tom R. Steele	Equitable Advisors, Inc.	Nashville, TN
David W. Wiley, III	Wiley Bros., Aintree, LLC	Nashville, TN
John J. Zollinger, III	Morgan Keegan & Company, Inc.	New Orleans, LA

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## District 6 Committee and District Nominating Committee Members

### Virginia F. M. Jans, District Director

12801 N. Central Expressway, Suite 1050, Dallas, TX 75243

(972) 701-8554  
(972) 716-7646 fax

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### District 6 Committee—Chair: John R. Muschalek

Members to be elected to terms expiring January 2009: 3

#### Committee members to serve until January 2006

Brent T. Johnson	Multi-Financial Securities Corporation	Houston, TX
John R. Muschalek	First Southwest Company	Dallas, TX
Robert L. Nash	Southwest Securities, Inc.	Dallas, TX

#### Committee members to serve until January 2007:

Karen Banks	Frost Brokerage Services, Inc.	San Antonio, TX
Cynthia E. Besek	Maplewood Investment Advisors, Inc.	Dallas, TX
Sennett Kirk, III <sup>4</sup>	Kirk Securities Corporation	Denton, TX

#### Committee members to serve until January 2008

Bryan T. Emerson	Starlight Investments, LLC	Houston, TX
William H. Lowell	Lowell & Co., Inc.	Lubbock, TX
Michael A. Pagano	1st Global Capital Corp.	Dallas, TX

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### District 6 Nominating Committee—Chair: William B. Madden

Members to be elected to terms expiring January 2007: 5

#### Committee members to serve until January 2006

Christopher R. Allison	M.E. Allison & Co., Inc.	San Antonio, TX
William B. Madden	Madden Securities Corporation	Dallas, TX
V. Keith Roberts	Stanford Group Company	Houston, TX
David W. Turner	Wachovia Securities, Inc.	Fort Worth, TX
Vacancy <sup>5</sup>		

<sup>4</sup> Mr. Kirk resigned from the District 6 Nominating Committee and was appointed to fill a vacancy on the District 6 Committee created by the resignation of Darryl W. Traweek. Mr. Kirk must stand for election to serve out the remaining term on the District 6 Committee, which expires in January 2007.

<sup>5</sup> This vacancy was created by the resignation of Sennett Kirk, III. The term expires in January 2006.



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## District 7 Committee and District Nominating Committee Members

### Daniel J. Stefek, District Director

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

(404) 239-6128  
(404) 237-9290 fax

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### District 7 Committee—Chair: Dennis S. Kaminski

Members to be elected to terms expiring January 2009: 3

#### Committee members to serve until January 2006

Joseph B. Gruber	FSC Securities Corporation	Atlanta, GA
Dennis S. Kaminski	Mutual Service Corporation	West Palm Beach, FL
James A. Klotz	FMSBonds, Inc.	North Miami Beach, FL

#### Committee members to serve until January 2007

Susan J. Hechtlinger	Banc of America Investment Services, Inc.	Charlotte, NC
Landrum H. Henderson, Jr.	Legg Mason Wood Walker, Inc.	Charlotte, NC
Alan L. Maxwell, Jr.	Wachovia Capital Markets, LLC	Charlotte, NC

#### Committee members to serve until January 2008

Erick R. Holt, Esq.	AMVESCAP	Atlanta, GA
William G. McMaster	Scott & Stringfellow, Inc.	Columbia, SC
Charles F. O'Kelley	Atlantic Coast Securities Corporation	Tampa, FL

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### District 7 Nominating Committee—Chair: Kenneth W. McGrath

Members to be elected to terms expiring January 2007: 5

#### Committee members to serve until January 2006

Jeffrey P. Adams	Balentine & Company	Atlanta, GA
Richard G. Averitt, III	Raymond James Financial Services, Inc.	St. Petersburg, FL
Kenneth W. McGrath	Popular Securities, Inc.	Hato Rey, PR
Richard V. McGalliard	Wachovia Securities, Inc.	Atlanta, GA
Roark A. Young	Young, Stovall and Company	Miami, FL

---

## District 8 Committee and District Nominating Committee Members

### Carla A. Romano, District Director

55 West Monroe Street, Suite 2700, Chicago, IL 60603

(312) 899-4324  
(312) 606-0742 fax

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### District 8 Committee—Chair: Thomas M. McDonald

Members to be elected to terms expiring January 2009: 3

#### Committee members to serve until January 2006

Wilbur H. Burch	Newbridge Securities Corporation	Saginaw, MI
Thomas M. McDonald	Wayne Hummer Investments, L.L.C.	Chicago, IL
James J. Roth	Pershing A BNY Securities Group Co.	Oak Brook, IL

#### Committee members to serve until January 2007

Michael E. Bosway	City Securities Corporation	Indianapolis, IN
Mari Buechner <sup>6</sup>	Coordinated Capital Securities, Inc.	Madison, WI
Robert J. Michelotti	Ferris, Baker Watts Incorporated	Auburn Hills, MI

#### Committee members to serve until January 2008

Richard M. Arceci	ValMark Securities, Inc.	Akron, OH
Ronald J. Dieckman	J.J.B. Hilliard, W.L. Lyons, Inc.	Louisville, KY
Julie E. Vander Weele	Mesirow Financial, Inc.	Chicago, IL

---

### District 8 Nominating Committee—Chair: Bruce J. Young

Members to be elected to terms expiring January 2007: 5

#### Committee members to serve until January 2006

Bernard A. Breton	Carillon Investments, Inc.	Cincinnati, OH
William K. Curtis	M & I Brokerage Services, Inc.	Milwaukee, WI
Carol P. Foley	Podesta & Company	Chicago, IL
Gregory W. Goelzer	Goelzer Investment Management	Indianapolis, IN
Bruce J. Young	Mesirow Financial, Inc.	Chicago, IL

<sup>6</sup> Ms. Buechner was appointed to fill a vacancy created by the resignation of Lora Rosenbaum. Ms. Buechner must stand for election to serve out the remaining term, which expires in January 2007.

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## District 9 Committee and District Nominating Committee Members

### **John P. Nocella, District Director**

1835 Market Street, Suite 1900  
Philadelphia, PA 19103  
(215) 963-1992  
(215) 496-0434 fax

### **Gary K. Liebowitz, District Director**

581 Main Street, 7th Floor  
Woodbridge, NJ 07095  
(732) 596-2025  
(732) 596-2001 fax

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### **District 9 Committee—Chair: W. Dean Karrash**

Members to be elected to terms expiring January 2009: 3

#### **Committee members to serve until January 2006**

Richard Grobman	Oppenheimer & Co. Inc.	Philadelphia, PA
W. Dean Karrash	Burke, Lawton, Brewer & Burke	Spring House, PA
Gregg A. Kidd	Pinnacle Investments Inc.	East Syracuse, NY
Jerome J. Murphy	Janney Montgomery Scott LLC	Philadelphia, PA

#### **Committee members to serve until January 2007**

Peter P. Jenkins	Credit Suisse First Boston LLC	Baltimore, MD
Harold N. Peremel	Peremel & Co., Inc.	Baltimore, MD
Vacancy <sup>7</sup>		

#### **Committee member to serve until January 2008**

Scott L. Fagin	The Jeffrey Matthews Financial Group, L.L.C.	Millburn, NJ
Rebecca L. Kohler	Fidelity Investments Tax-Exempt Services Co.	Roanoke, VA
Vacancy <sup>8</sup>		

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### **District 9 Nominating Committee—Chair: J. Lee Keiger, III**

Members to be elected to terms expiring January 2007: 5

#### **Committee members to serve until January 2006**

James E. Bickley	Cresap, Inc.	Horsham, PA
J. Lee Keiger, III	Davenport & Company, LLC	Richmond, VA
Michael S. Mortensen	PNC Investments	Pittsburgh, PA
Michael B. Row	Pershing LLC	Jersey City, NJ
Howard B. Scherer	Janney Montgomery Scott LLC	Philadelphia, PA

<sup>7</sup> This vacancy was created by the resignation of Barry M. Cash. The term expires in January 2007.

<sup>8</sup> This vacancy was created by the resignation of Dorothy G. Sanders. The term expires in January 2008.

---

## District 10 Committee and District Nominating Committee Members

### Hans L. Reich, Regional Director

One Liberty Plaza, 49th Floor, 165 Broadway, New York, NY 10006 (212) 858-4180  
(212) 858-4189 fax

---

### District 10 Committee—Chair: Richard J. Paley

Members to be elected to terms expiring January 2009: 4

#### Committee members to serve until January 2006

Margaret M. Caffrey	Schonfeld & Company, LLC	Jericho, NY
Raymond C. Holland, Sr.	Triad Securities Corp.	New York, NY
Andrew H. Madoff	Bernard L. Madoff Investment Services LLC	New York, NY
Richard J. Paley	Carey Financial Corporation	New York, NY

#### Committee members to serve until January 2007

Richard Berenger	Sky Capital, LLC	New York, NY
Lon T. Dolber	American Portfolios Financial Services, Inc.	Holbrook, NY
George T. Mimura	Nomura Securities International, Inc.	New York, NY
Howard R. Plotkin	Lehman Brothers Inc.	New York, NY

#### Committee members to serve until January 2008

Vincent A. Buchanan	Buchanan Associates, Inc.	New York, NY
Clifford H. Goldman	Marco Polo Securities Inc.	New York, NY
Jeffrey T. Letzler	Instinet, LLC	New York, NY
Howard Spindel	Integrated Management Solutions	New York, NY

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### District 10 Nominating Committee—Chair: Charles V. Senatore

Members to be elected to terms expiring January 2007: 5

#### Committee members to serve until January 2006

William Behrens	Northeast Securities, Inc.	New York, NY
Jennifer A. Connors	Lehman Brothers Inc.	New York, NY
Mark W. Ronda	Oppenheimer & Co. Inc.	New York, NY
Charles V. Senatore	Fidelity Brokerage Services, LLC	New York, NY
Vacancy <sup>9</sup>		

<sup>9</sup> This vacancy was created by the resignation of Ruth S. Goodstein. The term expires in January 2006.

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## District 11 Committee and District Nominating Committee Members

### Frederick F. McDonald, District Director

99 High Street, Suite 900, Boston, MA 02110

(617) 532-3401  
(617) 451-3524 fax

---

### District 11 Committee—Chair: Mark R. Hansen

Members to be elected to terms expiring January 2009: 3

#### Committee members to serve until January 2006

Mark R. Hansen	State Street Global Markets, LLC	Boston, MA
Lee G. Kuckro	Advest, Inc.	Hartford, CT
Wilson G. Saville	Barrett & Company	Providence, RI

#### Committee members to serve until January 2007

David K. Booth	Jefferson Pilot Securities Corp.	Concord, NH
Thomas F. Hollenbeck	J.P. Morgan Invest, LLC	Boston, MA
Curtis L. Snyder, Jr.	American Technology Research, Inc.	Greenwich, CT

#### Committee members to serve until January 2008

Frank L. Chandler	Boston Capital Services, Inc.	Boston, MA
Joseph Gritzer	USI Securities, Inc.	Glastonbury, CT
Moira Lowe	Tower Square Securities, Inc.	Hartford, CT

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### District 11 Nominating Committee—Chair: John I. Fitzgerald

Members to be elected to terms expiring January 2007: 5

#### Committee members to serve until January 2006

Michael C. Braun	Moors & Cabot, Inc.	Boston, MA
Andrew F. Detwiler	Vandham Securities Corp.	Boston, MA
John I. Fitzgerald	Leerink Swann & Company	Boston, MA
Gregory D. Teese	Equity Services, Inc.	Montpelier, VT
Peter T. Wheeler	Commonwealth Financial Network	Waltham, MA

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## ATTACHMENT B

### Procedures for Electing District Committee and District Nominating Committee Members<sup>1</sup>

1. Each NASD District shall maintain a District Nominating Committee in the manner specified in Article VIII of the By-Laws of NASD Regulation, Inc.
2. The Secretary of NASD has sent *Notice to Members 05-42* to each District Nominating Committee member and each District Director identifying the members of the District Committee and the District Nominating Committee whose terms expire in January 2006. The notice describes the election procedures to be followed in filling these positions.
3. The Secretary of NASD and the Corporate Communications Department will email a reminder to all members of their responsibility, and obligation, to keep current and accurate the information on their Executive Representatives. The email will contain a reference to the NASD Contact System, located on NASD's Web site at [www.nasd.com/ncs](http://www.nasd.com/ncs), for changing a firm's Executive Representative name, email, and postal address. This email will note that failure to keep this information accurate may jeopardize the member's ability to participate in the district elections, as well as in other member votes.
4. The Secretary of NASD will send a *Notice to Members* announcing the forthcoming elections to the Executive Representative of all NASD members eligible to vote in each district. The *Notice to Members* will identify: (a) the number of positions that need to be filled in each district; and (b) the incumbent members of each District Committee. Persons who are interested in serving on the District Committee or the District Nominating Committee within their district must complete a candidate profile sheet and submit it by hand delivery, courier service, mail, or facsimile to the District Director. Completed candidate profile sheets must be received by the District Director on or before July 29, 2005. Persons who submit candidate profile sheets after this date will not be considered.

Completed candidate profile sheets received by the District Director on or before July 29, 2005, will be provided to all members of the appropriate District Nominating Committee for review. During this stage of the election process, the District Nominating Committee identifies and solicits candidates to nominate for election to the District Committee and the District Nominating Committee.

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<sup>1</sup> NASD will be filing with the Securities and Exchange Commission, for immediate effectiveness, amendments to Article VIII of the By-Laws relating to District Committee and District Nominating Committee elections to: (1) clarify the eligibility requirements for membership on the District Committee and District Nominating Committee by providing that candidates must be "registered with," rather than "employed by," an NASD member; and (2) permit each District Nominating Committee, at the time it nominates its slate of nominees, to identify one alternate nominee for the District Committee and one alternate nominee for the District Nominating Committee who will, in an uncontested election, replace a member of the slate of nominees who withdraws or is otherwise determined to be ineligible.

- 
5. Soon after the expiration of the time allotted in the *Notice to Members* to submit names and candidate profile sheets for consideration, the District Nominating Committee will meet to determine its slate of candidates for the election. NASD staff will provide the District Nominating Committee members with information considered to be relevant to the nomination process, including:
    - ◆ analytical data pertaining to the district's membership; and
    - ◆ candidate profile sheets.
  6. In determining its slate of candidates for the election, the District Nominating Committee will review the background and qualifications of the proposed candidates, and endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and various classes and types of NASD members engaged in the investment banking or securities business within the district. The slate must include the same number of nominees as there are positions to be filled on the District Committee and the District Nominating Committee.
  7. On or before September 9, 2005, the District Director, acting on behalf of the District Nominating Committee, will notify the Secretary of NASD of each candidate nominated by the District Nominating Committee and the committee to which the candidate is nominated.
  8. On or before October 1, 2005, the Secretary of NASD will send a *Notice to Members* to the District Committees and the Executive Representatives of NASD members eligible to vote in each district, identifying the nominees for the District Committees and the District Nominating Committees.

**If the District Nominating Committee nominates the same number of nominees as there are positions to be filled on the District Committee and the District Nominating Committee and no additional candidate comes forward by delivering written notice to the appropriate District Director within 14 calendar days after the date of the *Notice to Members* identifying the nominees, the candidates nominated by the District Nominating Committee are considered duly elected.**

9. If a person who is otherwise eligible to serve on the District Committee or the District Nominating Committee was not nominated by the District Nominating Committee and wants to be considered for election as an additional candidate, he/she must notify the District Director in writing within 14 calendar days after the date of the *Notice to Members* referenced in item 8 above. The District Director must make a written record of the time and date of the receipt of such notification.
10. Promptly following receipt of the additional candidate's timely notice, the Secretary of NASD will provide to the additional candidate a list of all NASD members eligible to vote in the district, their mailing addresses, and their Executive Representatives.
11. An additional candidate is considered nominated if a petition signed by the Executive Representative of at least 10 percent of the NASD members eligible to vote in the district is filed with the District Nominating Committee within 30 calendar days after the mailing date of the list to the additional candidate referenced in item 10 above.

- 
12. If an additional candidate secures the required petition within the 30-day designated timeframe, the election is considered a contested election. The Secretary of NASD will send a *Notice to Members* to the Executive Representatives of NASD members eligible to vote in the district announcing the names of all candidates and describing the contested election procedures.

**Additional information pertaining to the District Committee and District Nominating Committee Election Procedures may be found in Article VIII of the By-Laws of NASD Regulation.**



# ATTACHMENT C Candidate Profile Sheet

## Current Registration

Name: \_\_\_\_\_ CRD#: \_\_\_\_\_  
Firm: \_\_\_\_\_ #RRs at Firm: \_\_\_\_\_  
Title/Primary Responsibility: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

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

Firm: \_\_\_\_\_  
Title/Primary Responsibility: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Title/Primary Responsibility: \_\_\_\_\_

## General Areas of Expertise (please check all that apply)

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

\_\_\_\_\_  
\_\_\_\_\_

## Product Expertise (please check all that apply)

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

\_\_\_\_\_  
\_\_\_\_\_

## Memberships/Positions Held in Trade or Business Organizations

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

## Educational Background

School: \_\_\_\_\_ Degree: \_\_\_\_\_  
School: \_\_\_\_\_ Degree: \_\_\_\_\_

# Special Notice to Members

JUNE 2005

## SUGGESTED ROUTING

Legal & Compliance  
Senior Management

## KEY TOPICS

National Adjudicatory Council

## GUIDANCE

### NAC Nominations

NASD Announces Nomination Procedures for Regional Industry Member Vacancies on the National Adjudicatory Council; **Nomination Deadline: June 24, 2005**

#### Executive Summary

The purpose of this *Special Notice to Members* is to advise members of the nomination procedures to fill one upcoming vacancy on the National Adjudicatory Council (NAC). The three-year term of the NAC regional Industry member from the North Region expires in January 2006. Exhibit I contains information regarding the NAC regional Industry member whose term expires in January 2006. Exhibit II contains a list of all NAC members. The procedures to fill the NAC regional Industry vacancy is outlined in Exhibit III. Also, a Candidate Profile Sheet is included in Exhibit IV.

#### Nomination Process

Members are encouraged to submit nominations for the upcoming NAC vacancy. To nominate a candidate, members should submit a cover letter and the Candidate Profile Sheet (Exhibit IV) to the Regional Nominating Committee Chair, the NASD District Directors, or the NASD Corporate Secretary (listed in Exhibit I) by **August 1, 2005**.

The completed Candidate Profile Sheets will be provided to all Regional Nominating Committee members for review. On or about **August 12, 2005**, the Regional Nominating Committee will provide NASD members with written notice of the NAC candidate that the Committee proposes for nomination to the National Nominating Committee. Pursuant to Article V, Section 5.3(a) of the NASD Regulation By-Laws, the NASD National Nominating Committee shall nominate all candidates for the NAC for subsequent appointment by the Board.

05-43

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## Questions/Further Information

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

## National Adjudicatory Council Membership and Function

### Membership

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

- West Region:** Hawaii, California, Nevada, Arizona, Colorado, New Mexico, Utah, Wyoming, Alaska, Idaho, Montana, Oregon, Washington, and the former U.S. Trust Territories.
- South Region:** Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, Florida, Georgia, North Carolina, South Carolina, Puerto Rico, the Canal Zone, and the Virgin Islands.
- Midwest Region:** Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Illinois, Indiana, Kentucky, Michigan, and Wisconsin.
- North Region:** Delaware, Maryland, Pennsylvania, Virginia, West Virginia, the District of Columbia, New Jersey, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City).
- New York:** The counties of Nassau and Suffolk, and the five boroughs of New York City.

**We are seeking nominations for the North Region.**

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### **Function**

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

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

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

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## **EXHIBIT I**

### **NAC Industry Member with a Term Expiring in January 2006**

#### **North Region (Districts 9 and 11)**

##### **NAC Incumbent: A. Louis Denton**

If you are interested in nominating yourself or a colleague to represent the North Region for a three-year term on the NAC, please submit a cover letter and a completed Candidate Profile Sheet (Exhibit IV) to any of the following individuals by **August 1, 2005**.

##### **W. Dean Karrash**

*Regional Nominating Committee Chair*

Burke, Lawton, Brewer & Burke  
516 N. Bethlehem Pike  
P.O. Box 950-C  
Spring House, PA 19477

(215) 643-9100

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**Gary K. Liebowitz**  
District 9 Director (New Jersey)

NASD  
581 Main Street, 7th Floor  
Woodbridge, NJ 07095

(732) 596-2000

**Frederick F. McDonald**  
District 11 Director

NASD  
99 High Street, Suite 900  
Boston, MA 02110

(617) 532-3400

**John P. Nocella**  
District 9 Director (Philadelphia)

NASD  
11 Penn Center  
1835 Market Street, 19th Floor  
Philadelphia, PA 19103

(215) 665-1180

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

NASD  
1735 K Street, NW  
Washington, DC 20006

(202) 728-8062

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## **EXHIBIT II**

### **2005 National Adjudicatory Council**

Geoffrey F. Aronow	Heller Ehrman White & McAuliffe LLP
Constance Bagley	Harvard Business School
A. Louis Denton	Philadelphia Corporation for Investment Services
W. Dennis Ferguson	Sterne Agee Clearing
Amy Bowerman Freed	Hogan & Hartson, L.L.P.
Kathleen M. Hagerty	Northwestern University
Timothy Henahan	Baker & Co., Inc.
David A. Lipton	Catholic University of America
Judith R. MacDonald	Rothschild, Inc.
Neal E. Nakagiri	
James M. Rogers	J.J.B. Hilliard, W.L. Lyons, Inc.
Brian T. Shea	Pershing LLC
William Wang	Hastings College of Law
Samuel Wolff	Akin Gump Strauss

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## EXHIBIT III

### National Adjudicatory Council Nomination Procedures

1. NASD maintains Regional Nominating Committees in the manner specified in Article VI of the By-Laws of NASD Regulation, Inc.
2. Members located in the North Region are hereby notified of the upcoming election of a member to the National Adjudicatory Council and are encouraged to submit names of potential candidates to the Chair of the Regional Nominating Committee, District Directors, or to the NASD Corporate Secretary, Barbara Z. Sweeney (see Exhibit I) by **August 1, 2005**.
3. Nominees will be asked to complete a Candidate Profile Sheet, which will be reviewed by the Regional Nominating Committee.
4. The Regional Nominating Committee shall review the background of the candidates and the description of the NASD membership provided by NASD staff and shall propose to the National Nominating Committee a candidate for the National Adjudicatory Council. In proposing a candidate for nomination, the Regional Nominating Committee shall endeavor to secure appropriate and fair representation of the region.
5. On or about **August 12, 2005**, the Regional Nominating Committee shall notify in writing the Executive Representatives and branch offices of the NASD members in the region of the name of the candidate it will propose to the National Nominating Committee for the National Adjudicatory Council.
6. If an officer, director, or employee of an NASD member in the region is not proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she shall send a written notice to the Regional Nominating Committee Chair or the Secretary of NASD within 14 calendar days after the mailing date of the Regional Nominating Committee's notice (#5 above) and proceed in accordance with the Contested Nomination Procedures found in Article VI of the NASD Regulation By-Laws.
7. If no additional candidate comes forward within 14 calendar days, the Regional Nominating Committee shall certify their candidate to the National Nominating Committee. Additional information pertaining to the National Adjudicatory Council Election Procedures can be found in Article VI of the By-Laws of NASD Regulation. The By-Laws can be found in the online *NASD Manual* at [www.nasd.com](http://www.nasd.com).

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# EXHIBIT IV

# Candidate Profile Sheet

## Current Registration

Name: \_\_\_\_\_ CRD#: \_\_\_\_\_  
Firm: \_\_\_\_\_ #RRs at Firm: \_\_\_\_\_  
Title/Primary Responsibility: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

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

Firm: \_\_\_\_\_  
Title/Primary Responsibility: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Title/Primary Responsibility: \_\_\_\_\_

## General Areas of Expertise (please check all that apply)

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

\_\_\_\_\_  
\_\_\_\_\_

## Product Expertise (please check all that apply)

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

\_\_\_\_\_  
\_\_\_\_\_

## Memberships/Positions Held in Trade or Business Organizations

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

## Educational Background

School: \_\_\_\_\_ Degree: \_\_\_\_\_  
School: \_\_\_\_\_ Degree: \_\_\_\_\_

# Notice to Members

JUNE 2005

## SUGGESTED ROUTING

Executive Representatives  
Legal & Compliance  
Senior Management

## KEY TOPICS

Annual Compliance Meetings  
Rule 3010

## GUIDANCE

### Annual Compliance Meetings

SEC Approves Amendments Relating to Annual Compliance Meetings; **Effective Date: July 25, 2005**

#### Executive Summary

On April 25, 2005, the Securities and Exchange Commission (SEC) approved amendments to Rule 3010(a)(7) to require that registered principals, in addition to registered representatives, attend an annual compliance meeting. The SEC also approved amendments to Rules 3010(a), 3010(a)(3), and 3010(b)(1) to clarify that the scope of these rules specifically extends to registered representatives, registered principals, and other associated persons.<sup>1</sup>

The rules, as amended, are set forth in Attachment A. The amendments become effective on **July 25, 2005**.

#### Questions/Further Information

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

#### Background and Discussion

Prior to the rule amendments discussed in this *Notice*, Rule 3010(a)(7) required the attendance of registered representatives at annual compliance meetings, but it did not require the attendance of registered principals. Given the supervisory and compliance-related functions that principals perform and that the primary purpose of annual compliance meetings is to discuss compliance issues and keep registered persons current on changing compliance requirements or changes in the firm, NASD has amended Rule 3010(a)(7) to require that all registered principals, in addition to registered representatives, attend an annual compliance meeting in accordance with the Rule.



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As amended, Rule 3010(a)(7) now requires that each registered representative and registered principal participate, at least once each year, in an interview or meeting at which compliance matters relevant to the activities of the particular representative and principal are discussed. These interviews or meetings can be held individually or with a group and can be held at a central or regional location or at the representative's or principal's place of business. As discussed in *Notice to Members (NTM) 99-45* (June 1999), members are provided with substantial flexibility in implementing the annual compliance meeting. For instance, as further detailed in *NTM 99-45*, the interview or meeting may be conducted by video conference, interactive classroom setting, telephone, or other electronic means (including webcast), provided that certain safeguards are in place.

NASD also has made technical amendments to Rules 3010(a), 3010(a)(3), and 3010(b)(1) to clarify that the scope of these rules specifically extends to registered representatives, registered principals, and all other associated persons.

## Endnote

- 1 See Securities Exchange Act Release No. 51605 (April 25, 2005), 70 FR 22732 (May 2, 2005) (Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Annual Compliance Meetings; File No. SR-NASD-2005-004).

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## ATTACHMENT A

New language is underlined; deleted language is in brackets.

### 3010. Supervision

#### (a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member. A member's supervisory system shall provide, at a minimum, for the following:

(1) through (2) No Change.

(3) The designation as an office of supervisory jurisdiction (OSJ) of each location that meets the definition contained in paragraph (g) of this Rule. Each member shall also designate such other OSJs as it determines to be necessary in order to supervise its registered representatives, registered principals, and other associated persons in accordance with the standards set forth in this Rule, taking into consideration the following factors:

(A) whether registered persons at the location engage in retail sales or other activities involving regular contact with public customers;

(B) whether a substantial number of registered persons conduct securities activities at, or are otherwise supervised from, such location;

(C) whether the location is geographically distant from another OSJ of the firm;

(D) whether the member's registered persons are geographically dispersed; and

(E) whether the securities activities at such location are diverse and/or complex.

(4) through (6) No Change.

(7) The participation of each registered representative and registered principal, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the member at which compliance matters relevant to the activities of the representative(s) and principal(s) are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's(') or principal's(') place of business.

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**(b) Written Procedures**

(1) Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD [this Association].

(2) through (4) No Change.

(c) through (g) No Change.

# Notice to Members

JUNE 2005

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Systems  
Senior Management

## KEY TOPICS

Agency Securities Lending  
Net Capital Rule  
Stock Borrow Deficits

## GUIDANCE

### Agency Securities Lending

#### Agency Securities Lending Disclosure Initiative

#### Executive Summary

This *Notice* advises broker-dealers engaged in the business of agency securities lending that the Agency Lending Disclosure Taskforce (Industry Taskforce), composed of, among others, representatives of the securities industry, regulators, and the Depository Trust & Clearing Corporation (DTCC), has recommended, through its Agency Lending Disclosure Initiative, certain uniform processes and a proposed calendar of milestones, to help broker-dealers engaged in agency securities lending activities comply with existing rule requirements relating to books and records, net capital requirements, and internal and supervisory controls.<sup>1</sup>

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Richard Jardine, Financial Analyst, Department of Member Regulation, at (202) 728-6937; or Susan M. DeMando, Associate Vice President, Financial Operations, Department of Member Regulation, at (202) 728-8411.

#### Background and Discussion

Agency lending of securities involves the use of an intermediary, or agent, that acts on behalf of both the borrower and lender(s) and does not have title to the securities being loaned. It is common practice for broker-dealers to rely on agents to locate securities they wish to borrow, pay collateral to these agents, and record agency securities lending transactions at the agent level. Often, borrowing broker-dealers record little or no details regarding the underlying principal lender(s). The borrowing broker-dealer may not even know the identity of the actual lender(s).<sup>2</sup>

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SEC staff has raised concerns regarding the level of transparency and information disclosure in agency securities lending transactions and the impact on credit and regulatory capital monitoring, given that broker-dealers generally conduct lending transactions through an agent, rather than with the principal lender(s). SEC staff has concluded that in order to comply with existing financial responsibility rules, particularly the net capital rule and related interpretations, broker-dealers engaged in the business of agency securities lending must (i) maintain books and records of loan activity with each underlying principal lender, (ii) monitor credit exposure as to each underlying principal lender, and (iii) calculate regulatory capital exposure as to each underlying principal lender.

Regulators and industry representatives, including staff of the SEC, the NYSE, NASD, the Federal Reserve Bank of New York, and the Securities Lending Division and Capital Committee of the Securities Industry Association (SIA), began meeting to discuss this issue in January 2003. These discussions led to the formation, in January 2004, of the Industry Taskforce. The Industry Taskforce consists of representatives from the SIA's Securities Lending Division and Capital Committee, the Risk Management Association's Committee on Securities Lending, The Bond Market Association, DTCC, and technology vendors that support securities lending.

The Industry Taskforce was created to coordinate efforts and facilitate the development of processes and technical standards to support compliance with the SEC's regulatory requirements. In order to accomplish this goal, the Industry Taskforce is organized into five working groups: Regulatory Capital, Credit, Infrastructure, Legal, and Testing. In May 2004, the Industry Taskforce engaged Capco as a project manager to provide support for the Agency Lending Disclosure Initiative. The purpose of the Agency Lending Disclosure Initiative is to establish uniform processes to assist broker-dealers in complying with existing rule requirements related to books and records, net capital, and internal and supervisory controls when engaged in agency securities lending activities.

Dialogue between regulators and the Industry Taskforce has been ongoing in order to reach a consensus on an industry approach to improve agency securities lending disclosure and satisfy SEC financial responsibility requirements. Industry Taskforce discussions have focused on improving transparency by having agent lenders provide data to broker-dealers that will permit them to accurately and adequately monitor credit exposure and calculate capital requirements based on securities loans with the underlying principal lender executed under securities lending agreements; e.g., by giving borrowers the name of the underlying lender and the ability to assess its credit worthiness.

**In order to ensure agreement with the regulators, the Industry Taskforce has developed a specific timeline for the Agency Lending Disclosure Initiative. Broker-dealers that engage in the business of agency securities lending should be aware of the Agency Lending Disclosure Initiative and the timeline. The timeline requires broker-dealers to be ready to accept and retain data from agent lenders by the first quarter of 2006.**

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Again, it is important to note that the purpose of the Agency Lending Disclosure Initiative is to establish uniform processes to assist broker-dealers in their compliance with existing rule requirements related to books and records, net capital, and internal and supervisory controls when engaged in agency securities lending transactions.

Based upon the current project plan, broker-dealers that engage in the business of agency securities lending should be aware of the following upcoming milestones established by the Industry Taskforce:

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#### **Credit**

- |  |   |
|--|---|
| <b>July 2005</b>                               | By July 1, borrowers will need to have completed testing of the systems for credit eligibility checks and need to be able to receive incremental add/delete requests for credit pre-qualification for <b>new</b> principals. This includes borrowers connecting directly to DTCC, as well as through vendor systems, such as EquiLend or SunGard systems. |
| <b>August 1, 2005 through October 31, 2005</b> | During this period, borrowers will need to perform credit eligibility checks for all <b>existing</b> principals who had been previously approved counterparties lending through agent lenders.  |
- 

#### **Regulatory Capital**

- |   |   |
|---|---|
| <b>September 2005</b>                             | By September 1, borrowers will need to have in place the systems and procedures to test the daily loan data file receipt process with their vendors or directly with DTCC, as applicable. |
| <b>September 1, 2005 through January 31, 2006</b> | During this period, borrowers will be conducting testing and preparing for implementation.  |
| <b>March 2006</b>                                 | By March 1, borrowers should be fully integrated with their vendors or DTCC and fully implemented.  |
- 

For information regarding infrastructure and technology, please contact your vendor or DTCC. For any other information, or answers to questions regarding the Agency Lending Disclosure Initiative, please visit their Web site at [www.agencylending.capco.com](http://www.agencylending.capco.com) or contact the Capco Project Management Office. All contacts are available at [www.agencylending.capco.com/contacts.htm](http://www.agencylending.capco.com/contacts.htm).

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## Endnotes

- 1 The New York Stock Exchange (NYSE) has published Information Memo 05-39, dated June 6, 2005, which provides substantially the same information.
- 2 The SEC's Division of Market Regulation addressed the appropriate method of calculating borrowed securities deficit charges for net capital purposes in a December 7, 1983, letter to the Chicago Board Options Exchange (CBOE). The letter states, in relevant part:

A broker-dealer which has borrowed securities (borrower) must mark the borrowed securities to market each business day, as of the close of the prior day's business, and determine the amount of collateral held by any securities lender (lender) which exceeds the current market value of the securities borrowed from that lender (excess collateral). The borrower must deduct from its net worth in computing net capital;

(a) the amount of excess collateral held by any one lender which exceeds one hundred and five percent (105%) of the current market value of the securities borrowed from that lender;

(b) or, if greater, the amount of excess collateral held by any one lender to the extent the excess collateral is greater than twenty percent (20%) of the borrower's excess net capital (net capital greater than the minimum required); plus,

(c) the total amount of excess collateral held by all lenders in aggregate which exceeds three hundred percent (300%) of the borrower's excess net capital reduced by the charge that the broker-dealer has already incurred under the above standards.

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# Disciplinary and Other NASD Actions

## REPORTED FOR JUNE

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 May 2005.

### Firms and Individuals Fined

**Actinver Securities Inc. (CRD #41139, Sugar Land, Texas) and Alvaro Madero (CRD #2155183, Registered Principal, Mexico City, Alabama)** submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$20,000, jointly and severally. Without admitting or denying the allegations, the firm and Madero consented to the described sanctions and to the entry of findings that Actinver Securities, acting through Madero, sold shares of a mutual fund to its customers in violation of the firm's membership agreement, which did not permit the firm to engage in mutual fund sales at the time. The findings also stated that Madero, acting on behalf of Actinver Securities, failed to designate one or more appropriately registered principals in its main office with the authority to carry out the firm's supervisory responsibilities as required by NASD Conduct Rule 3010(a)(4). **(NASD Case #C10050017)**

**First Security Investments, Inc. (CRD #24035, Kingston, Pennsylvania) and Stephen Maynard Alinikoff (CRD #1022014, Registered Principal, Kingston, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$35,000, jointly and severally. Without admitting or denying the allegations, the firm and Alinikoff consented to the findings that First Security Investments, Inc., executed riskless principal transactions and failed to disclose the amount of its markup/markdowns on the confirmations that it sent to its public customers for these transactions. The findings further stated that Alinikoff failed to ensure that the firm complied with this disclosure requirement. **(NASD Case #C9A050022)** **Firms and Individuals Fined**

**Greenwich Global, LLC (CRD #37304, Wilton, Connecticut), Timothy James Daly (CRD #1460203, Registered Principal, Norwalk, Connecticut), and Alice Jean Solomon (CRD #1789872, Registered Principal, Highlands, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, Greenwich Global, Daly, and Solomon consented to the described sanctions and to the entry of findings that Solomon served as Greenwich Global's Limited Principal-Financial and Operational without registering with NASD as a Limited Principal-Financial and Operational by taking and passing the appropriate qualification exam. The findings also stated that Greenwich Global, acting through Daly, its CEO, and President, failed to comply with its membership agreement in that the firm made a material change in its business activities without giving prior



notification to and receiving approval from NASD. The findings also included that the firm, acting through Daly, failed to establish, maintain, and enforce written procedures to supervise its options and variable annuity business. **(NASD Case #C11050014)**

**Pond Equities, Incorporated (CRD #30934, Brooklyn, New York) and Stephen Joshua Greenberg (CRD #2324570, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which Pond Equities was censured and fined \$30,000, including disgorgement of \$3,800 in transactional profits. Greenberg was fined \$10,000 and suspended from associating with any member firm in all capacities for 20 business days. The firm shall review its system and procedures regarding the purchase and sale of restricted securities for compliance with NASD rules and federal securities laws and regulations. Without admitting or denying the allegations, the firm and Greenberg consented to the described sanctions and to the entry of findings that Pond Equities, acting through Greenberg, sold shares of a stock to the public that were not registered, and no applicable exemption from registration applied. The findings further stated that in effecting sales of a company's shares to the public, Pond failed to comply with its obligations to exercise due care to prevent the sale of unregistered securities. The findings also stated that the firm lacked an adequate supervisory system and written procedures for sales of unregistered stock, and failed to provide sufficient guidance to its brokers to enable them to identify circumstances that should lead them to conclude the stocks are restricted; failed to instruct its brokers as to the steps necessary to conduct due diligence before selling stock that may be restricted; and failed to establish the steps supervisors or the compliance department needed to take to review transactions in such stock. NASD also found that the firm lacked systems to provide reasonable assurance that its brokers were conducting a reasonable investigation into whether securities were registered or subject to valid exemption from registration.

Greenberg's suspension began on May 16, 2005 and end with the close of business on June 13, 2005. **(NASD Case #CE4050001)**

**Wachovia Securities, LLC (CRD #19616, Glen Allen, Virginia), Larry Michael Phillips (CRD #362671) and Richard James DiCenso (CRD #67208, Lancaster, California)** submitted a Letter of Acceptance, Waiver, and Consent in which Wachovia Securities was censured and fined \$25,000; Phillips was fined \$20,000 and suspended from association with any NASD member for 10 business days; and DiCenso was censured and fined \$15,000. Without admitting or denying the allegations, the firm, Phillips, and DiCenso consented to the findings that Wachovia, acting through Phillips, created and distributed written communications that

failed to disclose adequately material facts regarding investment products and strategies, or made exaggerated, unwarranted, or misleading statements or claims regarding those products, or both. The findings also stated that the firm, acting primarily through DiCenso, failed to reasonably supervise a registered representative's written communications activities in connection with correspondences and sales literature. In addition, the findings stated that Wachovia failed to file Phillips' sales literature with NASD. The findings also stated that Wachovia failed to establish and maintain procedures that were reasonably designed to achieve compliance with NASD's requirement for filing sales literature within 10 days of first use. The findings further stated that Wachovia's written supervisory procedures improperly instructed the firm's managerial personnel on when written communication qualified as sales literature that needed to be filed with NASD.

Phillips' suspension began June 6, 2005, and will conclude at the close of business June 17, 2005. **(NASD Case #CE2050007)**

## Firms Fined

**Alpine Securities Corporation (CRD #14952, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to revise its written supervisory procedures with respect to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>). Without admitting or denying the allegations, Alpine Securities consented to the described sanctions and to the entry of findings that it transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. 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 concerning OATS. **(NASD Case #CLG050041)**

**Banc of America Securities, LLC (CRD #26091, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, Banc of America Securities consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction<sup>SM</sup> System (ACT<sup>SM</sup>) last-sale reports of transactions in eligible securities and failed to designate through ACT such last-sale reports as late. The findings also stated that the firm failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in over-the-counter (OTC) equity securities. **(NASD Case #CLG050051)**

**Belle Haven Investments, L.P. (CRD #29278, Greenwich, Connecticut)** 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 report at least 299 transactions involving Trade Reporting and Compliance Engine (TRACE)-eligible securities. The findings also stated that the firm violated Section 15c(3)(a) of the Exchange Act, Rule 15c3-3 thereunder, by accepting customer checks payable to itself rather than to its clearing firm. The findings further stated that the firm failed to enforce its written supervisory procedures relating to reporting transactions in TRACE-eligible securities and to the receipt and handling of customer funds. **(NASD Case #C11050008)**

**Delano Group Securities, L.L.C. (CRD #47619, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to implement an adequate written anti-money laundering (AML) compliance program. **(NASD Case #C8A050026)**

**Divine Capital Markets LLC (CRD #118212, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in securities transactions while failing to maintain its required net capital. **(NASD Case #C10050016)**

**Fifth Third Securities, Inc. (CRD #628, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$79,750. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to ensure that Forms U5 were filed in a timely manner with NASD. The findings stated that the firm failed to file MSRB Forms G36 for the primary offering of municipal underwritings within 10 business days after the final agreement to purchase, offer, or sell the securities, and for municipal underwritings within one business day after receipt of the official statement from the issuer. The findings also stated that the firm failed to enforce its written supervisory procedures with respect to the timely submission of Forms U5 and MSRB Forms G-36 with NASD. **(NASD Case #C8A0500034)**

**J.P. Morgan Securities Incorporated (CRD #18718, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the allegations, the

firm consented to the described sanctions and to the entry of findings that it failed to take reasonable steps to ensure that its representations to NASD that specific shares would not be sold for specified periods of time from the initial date of the IPO would be adhered to. The findings also stated that the firm's supervisory system contained inadequate policies or procedures for monitoring restrictions on sales of securities held by individuals associated with the firm, which could not be sold for specified periods of time. **(NASD Case #CE2050008)**

**May Financial Corporation (CRD #3927, Dallas, Texas)** submitted an Offer of Settlement Letter 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, acting through an individual, it engaged in a securities business while failing to maintain sufficient net capital. The findings also stated that the firm, acting through an individual, filed inaccurate FOCUS reports, prepared inaccurate net capital computations, and failed to provide telegraphic notice of the net capital deficiencies. The findings further stated that the firm, acting through an individual, completed inaccurate reserve computations, failed to have the requisite amount of funds on deposit in the firm's reserve account, and failed to notify the SEC and NASD that it had failed to make the required deposit into its reserve bank account. **(NASD Case #C06040029)**

**Momentum Securities, LLC (CRD #39293, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in a securities business when its net capital was below the required minimum in contravention of SEC Rule 15c3-1. The findings stated that the firm failed to record liabilities owed to traders who participated in a "rebate" trading program sponsored by an affiliated company. The findings also stated that the firm failed to record on its financial statements the account payable for the amount of the rebates that the firm was to pass through the traders whose trading activity earned the rebates. In addition, NASD found that the firm failed to record \$400,000 in liabilities owed to certain employees for deferred bonus compensation and failed to record a \$1.2 million liability owed to NASDAQ. NASD also determined that the firm prepared inaccurate net capital computations, trail balances, and general ledgers materially overstating its net capital. NASD also found that the firm failed and neglected to provide notification that its net capital was below the required minimum and failed to file accurate FOCUS reports. The findings also stated that Momentum allowed persons associated with the firm to engage in the management of the firm's securities business without registering as principals of the firm. **(NASD Case #C06050008)**

**Morgan Stanley & Company, Incorporated (CRD #8209, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$150,000 and ordered to pay disgorgement of \$2,545,618.14. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to take reasonable steps to ensure that its representations to NASD that specific shares would not be sold prior to the expiration of lock-up periods would be adhered to. The findings further stated that the firm's supervisory system contained inadequate policies or procedures for monitoring restrictions on sales of securities, including securities held by firm affiliates or affiliated firms, which could not be sold for specified periods of time. The findings also stated that the firm's supervisory system contained inadequate policies or procedures for monitoring restrictions on sales of securities, which the firm had represented to NASD would not be sold for specified periods in connection with obtaining approval of the terms of an offering. (NASD Case #CE2050009)

**NBC Capital Markets Group, Inc. (CRD #18229, Memphis, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to pay \$8,975, plus interest, in restitution to a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and the entry of findings that it failed to take the necessary steps to make an accurate determination of the value of municipal security transactions, resulting in the firm's purchasing the securities from the customer at prices that were below the fair market value, and failed to ensure that the transactions were executed at aggregate prices that were fair and reasonable. The findings also stated that the firm failed to ensure that the municipal securities purchase and sales transactions were approved by a municipal securities principal. (NASD Case #C05050016)

**Park Financial Group, Inc. (CRD #30582, Winter Park, Florida)** 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 failed to establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and implement regulations thereunder, including the obligation to report suspicious activities as required. The findings also stated that the firm failed to provide for independent compliance testing to be conducted by a qualified outside party. NASD also found that the firm conducted a securities business while failing to maintain its required minimum net capital and filed a materially inaccurate FOCUS report in that its net capital calculation was inaccurate. (NASD Case #C07050026)

**Ryan Beck & Company, Incorporated (CRD #3248, Livingston, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display customer limit orders immediately in NASDAQ securities in its public quotation, when each such order was at a price that would have improved firm's bid or offer in such security. The findings also stated that the firm failed to preserve for a period of not less than three years, the first two in an accessible place, the memorandum of broker orders. (NASD Case #CLG050040)

**Standard & Poor's Securities, Incorporated (CRD #5248, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$40,000, and required to revise its written supervisory procedures with respect to OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS on 785 business days. 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 concerning OATS. (NASD Case #CLG050042)

**Track Data Securities Corporation (CRD #103802, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$105,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. The findings stated that the firm made available a report on the covered orders in national market system securities that it received for execution from public customers that classified orders incorrectly. The findings also stated that the firm published inaccurate information for its routing of non-directed orders in covered securities and failed to maintain documentation indicating whether certain orders in covered securities were directed or non-directed orders. NASD found that the firm failed to report through ACT last sale reports of transactions in NASDAQ National Market securities. In addition, the findings 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 concerning best execution, limit order display, trade reporting, books and records, registration of supervisors and order clerks, locked and crossed markets, Section 21(A)-related issues, short sales, OATS, and SEC rule 11Ac1-5. (NASD Case #CLG050044)

**UBS Financial Services, Inc. (CRD #8174, Weehawken, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$175,000, and required to pay restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it sold securities to public customers for whom the investment was unsuitable. The findings also stated that the firm failed to maintain records disclosing the basis upon which its suitability determinations were made in its recommendations and sales to public customers of certain securities. The findings further stated that the firm included advertisements on its Web site that failed to adequately disclose and describe the risks of investing in managed futures products. **(NASD Case #CE3050009)**

**William Blair and Company, L.L.C. (CRD #1252, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to register an associated person with NASD as a Limited Representative–Equity Trader, where such person was engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities. The finding also stated that the firm failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when such order was at a price that would have improved the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the respondent firm's bid or offer in each such security. The findings further stated that the respondent firm transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. **(NASD Case #CLG050050)**

## Individual Fined

**Hany Samir Awadalla (CRD #2074306, Registered Representative, New York, New York)** submitted an Offer of Settlement in which he was censured and fined \$75,000. Without admitting or denying the allegations, the respondent consented to the described sanctions and to the entry of findings that he threatened an official of a public company in an attempt to obtain a fee for his firm's investment banking services that was larger than the company was willing to pay. **(NASD Case #CAF030058)**

## Individuals Barred or Suspended

**Joseph Abbondante (CRD #1879052, Registered Principal, Freehold, New Jersey)** was barred from association with any NASD member in any capacity and required to pay restitution in the amount of \$276,265 to public customers. 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 Abbondante (1) participated in private securities transactions without providing prior written notice to, and receiving prior written approval from, his member firm; (2) recklessly made material misrepresentations and omissions to public customers with respect to an investment fund; (3) engaged in outside business activities without providing prompt written notice to his member firm; and (4) knowingly facilitated another in providing false account statements to seven customers of his member firm. **(NASD Case #C10020090)**

**Terry Jon Atzen (CRD #8627, Registered Principal, Newberg, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$88,342.51, including \$78,342.51 in disgorgement of financial benefits received, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Atzen reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Atzen consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior notice to, and receiving approval from, his member firms.

Atzen's suspension began at opening of business June 6, 2005, and will conclude June 5, 2007. **(NASD Case #C3B050008)**

**John Douglas Audifferen (CRD #2053214, Registered Representative, Brooklyn, New York)** was fined \$17,500, and barred from association with any NASD member in any capacity. The fine must be paid before Audifferen may request relief from any statutory disqualification. The sanctions were based on the findings that he purchased shares of stock for a public customer in the cash account of the customer at his member firm and knew, or should have known, that the customer did not have sufficient cash to cover the cost of the purchases. The findings also stated that Audifferen deposited his own funds into the customer's account to cover the cost of the purchases, thereby willfully violating Regulation T by directly or indirectly extending credit to or for the customer's account. In addition, NASD determined that Audifferen sold securities from the account of the public customer, received \$17,500 from the customer that represented, in part, proceeds from the sale, thereby obtaining the beneficial use of an extension of credit and willfully causing his member firm to

violate Regulation T. Moreover, the findings stated that Audifferen maintained his own securities account at his member firm, purchased and sold securities in the account, and knew he did not have sufficient margin or sufficient funds to cover the cost of the purchases, thereby causing his member firm to make an extension of credit to him in violation of Regulation T. NASD also determined that Audifferen failed to disclose information on his Form U4. (NASD Case #C10030095)

**Scott Anthony Bartlett (CRD #3211860, Registered Representative, Schertz, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bartlett willfully failed to disclose a material fact on his Form U4 and failed to respond to NASD requests for information. (NASD Case #C06040033)

**James Michael Begale (CRD #16874, Registered Representative, Lombard, 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 90 days. The fine must be paid before Begale reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Begale consented to the described sanctions and to the entry of findings that he affixed a public customer's initials to a new account form and submitted the form to his member firm without the customer's knowledge or consent.

Begale's suspension began June 6, 2005, and will conclude September 3, 2005. (NASD Case #C8A050032)

**Geoffrey Sherwood Beitner (CRD #1065826, Registered Representative, Norfolk, 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 ten business days. The fine must be paid before Beitner reassociates with any NASD member following the suspension or before requesting and relief from any statutory disqualification. Without admitting or denying the allegations, Beitner consented to the described sanctions and to the entry of findings that he borrowed \$20,000 from a public customer, contrary to the firm's written procedures.

Beitner's suspension began May 16, 2005, and concluded at the close of business May 27, 2005. (NASD Case #C9A050018)

**Francios Belizaire (CRD #4495421, Associated Person, Irvington, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Belizaire falsified an authorization agreement for automatic deposits for public customers without the customers' knowledge, authorization, or consent. NASD found

that Belizaire failed to respond to NASD requests for documents and information. (NASD Case #C10040110)

**Michael Franklin Bestine (CRD #1879401, Registered Representative, Point Pleasant, 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 he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations Bestine consented to the described sanctions and to the entry of findings that he settled a complaint with a public customer without the approval or authority of his member firm.

Bestine's suspension began May 16, 2005, and will conclude at the close of business November 15, 2005. (NASD Case # C9B050023)

**Roger James Blundell (CRD #2228388, Registered Principal, Boxfond, Massachusetts)** 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 principal or supervisory capacity for 30 days. The fine must be paid before Blundell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Blundell consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise registered representatives of his member firm to prevent their violations and achieve compliance with applicable securities laws, regulations, and NASD rules.

Blundell's suspension began June 6, 2005, and will conclude at the close of business July 5, 2005. (NASD Case #C11050009)

**Elizabeth Susanne Brasler (CRD #4285019, Registered Representative, Santa Barbara, California)** submitted a letter of Acceptance, Waiver and Consent in which she was fined \$5,000, suspended from association with any NASD member in any capacity for two months, and ordered to pay \$112,018 in restitution to a public customer. Without admitting or denying the allegations, Brasler consented to the described sanctions and to the entry of findings that she recommended that a public customer invest in certain high-risk municipal bonds without having reasonable grounds for believing that it was suitable for the customer in light of the facts disclosed by the customer concerning her financial status, investment objectives, and risk tolerance.

Brasler's suspension began June 6, 2005, and will conclude August 5, 2005. (NASD Case #C02050033)

**Thomas James Burke (CRD #4582502, Registered Representative, Worcester, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The sanctions were based on findings that Burke forged the signatures of public customers on insurance and/or investment-related documents. The findings also stated that Burke submitted a falsified marketing expense report to his member firm. **(NASD Case #C9B050030)**

**Kevin John Cerruti (CRD #1094911, Registered Principal, North Long Branch, New Jersey)** submitted a letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and barred from association with any NASD member in any principal or supervisory capacity. The fine must be paid immediately upon reassociation with any NASD member or prior to requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cerruti consented to the described sanctions and to the entry of findings that he failed to supervise registered representatives and associated persons with a view to preventing violations of NASD's rules and federal securities laws. **(NASD Case #CLI050008)**

**John Sheldon Cotton (CRD #1835778, Registered Principal, Louisville, Kentucky)** 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, Cotton consented to the described sanction and to the entry of findings that he engaged in a "ponzi-type" scheme involving funds totaling \$2,565,725. The findings stated that Cotton represented to public customers that the funds would be used to purchase securities from a private individual at a discounted price and then sold at the market price for an immediate profit. The findings also stated that Cotton did not purchase the securities and arranged for funds received from new investors to be wired directly to accounts of prior investors, purportedly representing investment profits without the knowledge or involvement of either of his member firms. NASD found that Cotton caused \$30,800 to be deposited into the securities account of public customers for the purpose of compensating them for trading losses in their accounts without the knowledge of his member firm. In addition, NASD determined that he created and sent a customer an account statement incorrectly reflecting an overstated value in the customer's securities account. **(NASD Case #C05040090)**

**Robert Payne Crider (CRD #3237093, Registered Representative, San Antonio, Texas)** submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Crider reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without

admitting or denying the allegations, Crider consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the account of a public customer without having a reasonable basis for believing the transactions were suitable based upon customer's investment objectives, financial situation, and needs.

Crider's suspension began May 16, 2005, and will conclude at the close of business May 15, 2006. **(NASD Case #C06050003)**

**Dan Robert Del Fium (CRD #4173034, Registered Representative, Las Flores, 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, Del Fium consented to the described sanction and to the entry of findings that he signed the names of public customers on an authorization form without the customers' knowledge or consent. **(NASD Case #C02050032)**

**David Leo Dennis (CRD #2451340, Registered Representative, Austin, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on the findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Dennis failed to respond to NASD requests for information. **(NASD Case #C05040076)**

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

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

**Harold Philip Donnerstag (CRD #2691932, Registered Representative, Matawan, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Donnerstag failed to respond to NASD requests for information. The findings also stated that he entered into a settlement agreement with a public customer without his member firm's knowledge or approval. **(NASD Case #C9B040103)**

**Victor Anthony Duque (CRD #2177517, Registered Representative, Westbury, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The

sanctions were based on findings that, in an attempt to settle a complaint by a public customer, Duque proposed settlement terms, and made settlement payments, to the customer without obtaining written authorization from his member firm. The findings also stated that Duque failed to respond to NASD requests for an on-the-record interview. (NASD Case #CLI050010)

**James Anthony Dvorznak (CRD #2874901, Registered Representatives, Bethpage, New York)** was barred from association with any NASD member in any capacity. The sanction was based on the findings that he effected unauthorized transactions in public customers' accounts. The findings also stated that Dvorznak failed to appear and provide requested testimony. (NASD Case #C07040097)

**Michael Blaise Doherty (CRD #1325333, Registered Principal, Bayside, New York)** was fined \$5,000 and suspended from association with any NASD member in any supervisory capacity for 10 business days. The sanctions were based on the findings that Doherty failed to take appropriate action to supervise a registered representative.

Doherty's suspension began May 2, 2005, and concluded at the close of business May 13, 2005. (NASD Case #C9B040036)

**Robert William English (CRD #1110587, Registered Principal, Butte, Montana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, English consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative. (NASD Case #C3B050009)

**Thomas Ray Femister (CRD #2783803, Registered Representative, Washington, District of Columbia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that Femister converted funds of a public customer for his own use and benefit without the knowledge or authorization of the customer. The findings also stated that Femister failed to respond to NASD requests for documents and information. (NASD Case #C9A050019)

**Marc Aaron Frazier (CRD #2467261, Registered Representative, Centerville, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Frazier consented to the described sanction and to the entry of findings that he affixed, or caused to be affixed, the signature of a public customer to mutual fund letters of

acknowledgment without the customer's authorization, knowledge, or consent. (NASD Case #C3B050010)

**Mark Furmato (CRD #1823640, Registered Representative, Brielle, 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, Furmato consented to the described sanction and to the entry of findings that he improperly transferred profits from one account to another account to receive greater compensation. (NASD Case #C9B050029)

**Carol Anne Garrett (CRD #1988572, Registered Principal, Huntington, Connecticut)** 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, Garrett consented to the described sanction and to the entry of findings that she misappropriated \$76,728.51 in customer funds and her firm's payroll funds without the customer and firm's authorization or consent. The findings stated that Garrett failed to appear for an NASD on-the-record interview. (NASD Case #C11050007)

**Thomas Kennedy Gifford (CRD #2370665, Registered Representative, Wyckoff, 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, Gifford consented to the described sanction and to the entry of findings that he effected transactions in the account of public customers without the customers' consent or authority. (NASD Case #C9B050027)

**Irene Weiner Goldberg (CRD #1282174, Registered Representative, East Norwich, New York) and Mitchell Louis Goldberg (CRD #1386682, Registered Principal, Syosset, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which each respondent was barred from association with any NASD member in any capacity. The sanctions were based on findings they engaged in a pattern of trading activity in a public customer's account that was excessive in light of the customer's objectives, financial situation, and needs. (NASD Case #CLI050011)

**Ernest Alexander Harris (CRD #714335, Registered Representative, Los Angeles, California)** submitted a letter of Acceptance, Waiver and Consent in which he was fined \$7,000, including disgorgement of \$2,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Harris consented to the described sanctions and to the entry of findings that he engaged in outside business activity, for compensation, without prior written notification to, or written approval from his member firm.

Harris' suspension began June 6, 2005, and will conclude at the close of business June 24, 2005. (NASD Case #C02050031)

**Darren L. Heyman (CRD #4372849, Registered Representative, Willemstad, Curacao)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for four months. In light of the financial status of Heyman, no monetary sanctions have been imposed. Without admitting or denying the allegations, Heyman consented to the described sanction and to the entry of findings that he knowingly and intentionally engaged in a course of conduct where he was able, on behalf of his member firm's proprietary account, to sell (buy) shares of securities at prices that were higher/lower than he would otherwise have been able to obtain, but for his entry and execution of the one-share orders.

Heyman's suspension began May 16, 2005, and will conclude at close of business September 15, 2005. (NASD Case #CLG050054)

**Wesley Matthew Hiles (CRD #4368679, Registered Representative, Tamaqua, 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, Begale consented to the described sanction and to the entry of findings that he solicited public customers to purchase a variable annuity or other securities products, received instructions or authorization from the customers to invest the funds on their behalf in conformance with the solicitation, and thereafter misappropriated \$270,000 of the customers' funds for his own use and benefit. (NASD Case #C9A050021)

**Steven Joseph Iannini (CRD #2141254, Registered Representative, Mechanicsville, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$40,000 and suspended from associating with any member firm in all capacities for six months. The fine must be paid before Iannini reassociates with any NASD member following the suspension or before requesting any relief from any statutory disqualification. Without admitting or denying the allegations, Iannini consented to the described sanctions and to the entry of findings that he facilitated the ability of a public customer of his member firm to avoid attempts to limit market-timing trading, thereby enabling the customer to continue market timing through sub-accounts of variable annuities. The findings also stated that through Iannini, the customer purchased annuities from two insurance companies for hedge funds and funds of funds it managed. NASD found that the customer systematically market timed sub-accounts of the variable annuities it purchased. NASD also found that with the assistance of Iannini, the customer was able to avoid restrictions by opening new contracts using purportedly

different hedge funds, naming different annuitants, and purchasing smaller contracts.

Iannini's suspension began June 6, 2005, and will conclude at the close of business December 5, 2005. (NASD Case #CE4050004)

**Roger Angelo Kapsalis (CRD #2159293, Registered Representative, Brooklyn, New York)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Kapsalis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kapsalis consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4. The findings also stated that he effected securities transactions away from his member firm and failed to provide written notification to his member firm.

Kapsalis' suspension began May 16, 2005, and will conclude at the close of business February 15, 2006. (NASD Case #C10050018)

**Kevin Owen Kelley (CRD #1183995, Registered Principal, Norwalk, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The sanction was based on the findings that Kelley engaged in outside business activities without providing prompt written notice to his member firm. The findings also stated that Kelley failed to appear for an NASD on-the-record interview. (NASD Case #C11050012)

**Scott Ronald Kemmerling (CRD #2105289, Registered Representative, Rochester Hills, Michigan)** 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 three months. The fine shall be due and payable either immediately upon reassociation with a member firm following the three-month suspension, or prior to any application requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kemmerling consented to the described sanctions and to the entry of findings that he failed and neglected to provide prompt, written notice to his member firm of his outside business activities.

Kemmerling's suspension began May 16, 2005, and will conclude at the close of business August 15, 2005. (NASD Case #C8A050025)



**Thomas Francis Kennedy, Jr. (CRD #1230523, Registered Supervisor, Babylon, 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 five business days. The fine must be paid before Kennedy reassociates with any NASD member following the suspension or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Kennedy consented to the described sanctions and to the entry of findings that he failed to adequately supervise a registered representative.

Kennedy's suspension began May 16, 2005, and will conclude at the close of business May 20, 2005. (NASD Case #C10050022)

**Shawn Allen Linneborn (CRD #3023329, Registered Representative, Depew, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Linneborn consented to the described sanction and to the entry of findings that he converted \$14,000, and attempted to convert an additional \$17,409.97, of a public customer's funds. The findings also stated that Linneborn failed to respond to NASD requests for information. (NASD Case #C9B050024)

**Yuan Lung Liu (CRD #2595053, Registered Principal, Diamond Bar, California)** 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 Liu reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Liu consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without providing written notice to his member firm.

Liu's suspension began May 16, 2005, and will conclude at the close of business November 15, 2005. (NASD Case #C02050030)

**Scott Kenneth Lyons (CRD #2377884, Registered Representative, Portsmouth, Rhode Island)** 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, Lyons consented to the described sanction and to the entry of findings that he converted \$20,000 of a public customer's funds. (NASD Case #C9B050028)

**Georgios Manou (CRD #4240321, Registered Representative, Rochester, 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 45 days. Without admitting or denying the allegations, Manou consented to the described sanctions and to the entry of findings that he falsified a public customer's account records.

Manou's suspension will begin July 1, 2005, and will conclude at the close of business August 14, 2005 (NASD Case #C9B050025)

**James J. Mariani (CRD #2932631, Registered Representative, Hauppauge, New York)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, including \$5,000 in disgorgement, and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Mariani reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mariani consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the account of a public customer without having reasonable grounds for believing that these recommendations and transactions on margin were suitable for the customer based on her financial situation, investment objectives, and needs.

Mariani's suspension began June 6, 2005, and will conclude at the close of business July 18, 2005. (NASD Case #C10050025)

**Dennis Leslie Marlow (CRD #600767, Registered Representative, Monument, Colorado)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marlow consented to the described sanction and to the entry of findings that he created and distributed sales literature and advertisements without prior written approval from his member firm that omitted material facts and was misleading. (NASD Case #CAF040071)

**James Clifford McClure (CRD #2073666, Registered Representative, South Charleston, West 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 15 business days. Without admitting or denying the allegations, McClure consented to the described sanctions and to the entry of findings that he offered to share in losses in a public customer's securities account.

McClure's suspension began May 16, 2005, and concluded at the close of business June 3, 2005. (NASD Case #C9A050020)

**Alexander Stuart Mundin (CRD #2709187, Registered Representative, Richmond, Virginia) and Gregory Douglas Suskind (CRD #3056711, Registered Representative, Richmond, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which Mundin was fined \$5,000, including disgorgement of \$3,277.72 in unlawful profits, and suspended from association with any NASD member in any capacity for five months; and Suskind was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Mundin and Suskind consented to the described sanctions and to the entry of findings that they facilitated the ability of a client of their member firm to avoid attempts to limit its market-timing trading, thereby enabling the client to continue market timing through sub-accounts of variable annuities. The findings also stated that through Mundin and Suskind, the customer purchased annuities from two insurance companies for hedge funds and funds of funds it managed and systematically market timed sub-accounts of the variable annuities it purchased. NASD also found that with the assistance of Mundin and Suskind, the client was able to avoid restrictions by opening new contracts using purportedly different hedge funds, naming different annuitants, and purchasing smaller contracts.

Mundin's suspension will begin June 20, 2005, and will conclude November 19, 2005. Suskind's suspension began June 6, 2005, and will conclude at the close of business July 5, 2005. (NASD Case #CE4050003)

**Gloria Rene Osorio (CRD #4520109, Registered Representative, Joliet, Illinois)** 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, Osorio consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for documents and information. (NASD Case #C8A050031)

**Frank Anthony Passarella (CRD #2689136, Registered Representative, Mineola, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Passarella consented to the described sanction and to the entry of findings that he directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly used or employed, in connection with the purchase or sale of securities, manipulative or deceptive devices or contrivances; and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The findings also included that Passarella recommended transactions in securities without having reasonable grounds for believing such transactions were

suitable in light of the size and frequency of the transactions, the nature of the account, and the customer's financial situation and needs. In addition, NASD found that Passarella effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. (NASD Case #C9B040106)

**Kelly P. Paterno (CRD #2355542, Associated Person, Deerfield Beach, Florida)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Paterno reassociates with any NASD member following the suspension or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Paterno consented to the described sanction and to the entry of findings that he engaged in fraudulent and deceptive devices and contrivances involving trading in stocks through the use of instrumentalities of interstate commerce, the mails, or a facility of any national securities exchange. The findings state that Paterno, acting through his member firm, failed to act with reasonable diligence to ascertain the best inter-dealer market for the subject securities and failed to act diligently to ensure that the prices paid by the customers were as favorable as possible under the prevailing market conditions at the time. In addition, NASD found that that Paterno has never been registered with NASD in any capacity, but functioned as an equity trader for the firm by entering and reporting trades on behalf of the firm, determining when and how to execute trades, directing trades to market makers or the firm's clearing firm, and conducting proprietary trades for the firm. The findings also included that the firm, acting through Paterno, failed to make and preserve order tickets for the transactions as required by Rules 17a-3 and 17a-4.

Paterno's suspension began May 16, 2005, and will conclude May 15, 2007. (NASD Case #C05040054)

**Mitchell John Pizzirusso (CRD #1093406, Registered Representative, Newark, New Jersey)** submitted a letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Pizzirusso consented to the described sanctions and to the entry of findings that he entered into an agreement with a registered representative in order to circumvent securities licensing requirements. The findings stated that Pizzirusso falsified a public customer's account records so that he appeared as the registered representative of record.

Pizzirusso's suspension will begin July 1, 2005, and will conclude at the close of business July 22, 2005. (NASD Case #C9B050026)

**Teron Jamal Porter (CRD #4779422, Associated Person, Missouri City, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Porter reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Porter consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4. The findings also stated that Porter failed to timely respond to NASD requests for information.

Porter's suspension began May 16, 2005, and will conclude at the close of business November 15, 2006. **(NASD Case #C05050013)**

**David Alan Roth (CRD #2456284, Registered Representative, Newport Beach, 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 Roth reassociates with any NASD member following the suspension or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Roth consented to the described sanctions and to the entry of findings that he participated in private securities transactions for which he expected to receive compensation, but did not receive prior written approval from his member firm.

Roth's suspension began June 6, 2005 and will conclude September 5, 2005. **(NASD Case #C02050028)**

**James Joseph Rovezzi (CRD #1341098, Registered Representative, Boynton Beach, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Rovezzi engaged in outside business activities without providing prompt written notice to his member firm. The findings also included that Rovezzi provided a written response to his member firm in which he falsely represented that he had not engaged in the outside business activities. **(NASD Case #C07040088)**

**Patrick James Sahli (CRD #1019843, Registered Representative, Taft, California)** submitted a letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and must pay restitution to public customers and to his member firm before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sahli consented to the described sanctions and to the entry of findings that he engaged in a scheme to convert funds, and converted customer funds for his own use and benefit without the customers' knowledge, authorization, or consent. **(NASD Case #C02050034)**

**Scott Thomas Schaul (CRD #2200484, Registered Principal, Norwood, Massachusetts)** 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 Schaul reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schaul consented to the described sanctions and to the entry of findings that he signed a public customer's name on a variable annuity contract application and on a letter authorizing the liquidation of the customer's mutual fund.

Schaul's suspension began May 16, 2005, and will conclude at the close of business August 15, 2005. **(NASD Case #C11050011)**

**Norair Allain Seferian (CRD #2674569, Registered Representative, Smithtown, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Seferian consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

Seferian's suspension began June 6, 2005, and will conclude at the close of business July 18, 2005. **(NASD Case #CLI050006)**

**Jeffrey Lynn Smith (CRD #4783827, Associated Person, Clint, Texas)** submitted a letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that he misappropriated \$28,000 in insurance premium payments received from public customers without the customers' knowledge, authorization, or consent. **(NASD Case #C06050005)**

**Keith Everett Stahl (CRD #4826984, Registered Representative, Houston, Texas)** submitted a letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stahl consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U4. **(NASD Case #C05050018)**

**Vernon Grant Stewart (CRD #1319855, Registered Representative, Indianapolis, Indiana)** submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry

of findings that he willfully failed to disclose a material fact on his Form U4.

Stewart's suspension began June 6, 2005, and will conclude August 5, 2005. (NASD Case #C8A050001)

**Andrew Barrett Vaughey (CRD #2453108, Registered Representative, Seattle, Washington)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Vaughey reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Vaughey consented to the described sanctions and to the entry of findings that, by the use of instrumentalities of interstate commerce or the mails, he intentionally or recklessly employed devices to defraud public customers and their registered representative by making untrue statements of material facts and/or omitting to state material facts necessary to make the statements made by him, in light of the circumstances in which they were made, not misleading.

Vaughey's suspension began May 16, 2005, and will conclude at the close of business May 15, 2007. (NASD Case #C3B050004)

**Michael Lawrence Walters (CRD #1674530, Registered Representative, Allen Park, 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, Walters consented to the described sanction and to the entry of findings that he prepared and submitted documents bearing the forged signatures of public customers that included authorizations to obtain payments for financial plans that were never provided and fees charged to customers' accounts without their knowledge or consent. The findings stated that Walters misused customer funds by using the documents bearing forged signatures to obtain payments and fees from accounts of customers at the firm for his own use or benefit and not the benefit of the customers. In addition, the findings stated that Walters failed to respond to an NASD request to appear to give on-the-record testimony. (NASD Case #C8A050035)

**Kevin Mark Weaver (CRD #2845934, Registered Principal, Dallas, Texas)** was barred from association with any NASD member in any capacity and ordered to pay \$547,468, plus interest, in restitution to public customers. The sanction was based on findings that Weaver engaged in the fraudulent offer and sale of unregistered securities in the form of limited partnership interests through ostensibly separate offerings to public customers, and each offering was made pursuant to a private placement memorandum that contained numerous misrepresentations and omitted to state several material facts.

NASD found that Weaver failed to respond to NASD requests to appear and provide on-the-record testimony. (NASD Case #C06040034)

**Ryan-Li Juck Tan Wong (CRD #4298343, Registered Representative, Wahiawa, Hawaii)** 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, Wong consented to the described sanction and to the entry of findings that he attempted to convert a public customer's funds to his own use and benefit by submitting a wire transfer from his member firm in an attempt to transfer \$18,000 from the securities account of the customer to a bank account without the knowledge or consent of the customer. (NASD Case #C01050005)

**Paul Zdzieblowski (CRD #3029905, Registered Representative, Sterling Heights, Michigan)** was fined \$5,000, and suspended from association with any NASD member in any capacity for one year. The NAC imposed the sanction following appeal of an OHO decision. The sanctions were based on findings that Zdzieblowski willfully failed to disclose a material fact on his Form U4.

Zdzieblowski's suspension will begin at opening of business July 5, 2005, and will conclude at the close of business July 5, 2006. (NASD Case #C8A030062)

## 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.

**Jose Antonio Alba (CRD #4680317, Registered Representative, North Bergen, New Jersey)** was named as a respondent in an NASD complaint alleging that he converted \$5,160 in customer funds at his member firm. The complaint also alleges that Alba failed to respond to NASD requests for information. (NASD Case #C10050021)

**Anthony Cipriano (CRD #2998665, Registered Representative, West Babylon, New York)** and **Anthony Rahama Whitter (CRD #2733252, Registered Representative, Mount Vernon, New York)** were named in an NASD complaint alleging that they acted knowingly or recklessly in making baseless price predictions, misrepresentations, and omissions of material facts to public customers. (NASD Case #C07050029)

**David Edward Cook (CRD #2503250, Registered Principal, Warren, Ohio)** was named in an NASD complaint alleging that he affixed the signatures of public customers to Individual Retirement Account (IRA) distribution forms and submitted the forms to a clearing house to cover margin calls in the customers' accounts without the customers' knowledge or consent. The complaint also alleged that Cook caused distributions from public customers' IRAs to cover margin calls in the customers' accounts without the customers' knowledge or consent. The complaint further alleged that Cook submitted falsified IRA distribution forms to NASD, purportedly signed by public customers and falsely claiming that the customers authorized the distributions to cover margin calls. In addition, the complaint alleged that respondent Cook failed to respond to NASD requests for information. **(NASD Case #C8A050030)**

**Timothy Bryan Dickey (CRD #2541369, Registered Principal, Durant, Oklahoma)** was named in an NASD complaint alleging that he recommended and effected investment strategies to public customers and effected the strategies without having a reasonable basis for believing that the strategy was suitable for the customers given their financial needs and conditions. The complaint also alleged that Dickey participated in private securities transactions without first providing written notice to and obtaining approval from his member firm. The complaint further alleged that Dickey failed to respond to NASD requests for information. **(NASD Case #C05050017)**

**Michael Wayne Gibson (CRD #1501602, Registered Principal, Sacramento, California)** was named as a respondent in an NASD complaint alleging that he committed theft and embezzlement with respect to the property of an elderly and dependent adult. The complaint also alleges that Gibson failed to respond to NASD requests for documents and information. **(NASD Case #C01050006)**

**James Brendan Hanley (CRD #1438024, Registered Representative, Malden, Massachusetts)** was named in an NASD complaint alleging that he effected excessive and unsuitable transactions in the accounts of public customers without written authority from the customers or acceptance of the accounts as discretionary by his member firm. **(NASD Case #C11050013)**

**Joseph Lee Karcagi (CRD #264316, General Securities Principal, Punta Gorda, Florida)** was named in an NASD complaint alleging that he participated in private securities transactions without providing written notice to his member firm of his involvement in these transactions. The complaint also alleged that Karcagi failed to appear for testimony and failed to respond completely to NASD requests for documents and information. **(NASD Case #C07050028)**

**Philip John Nociforo (CRD #1482682, Registered Representative, Sound Beach, New York)** was named as a respondent in an NASD complaint alleging that, in connection with public customers' variable life insurance applications, he completed and submitted various forms indicating that the customers did not have other life insurance coverage and that they were not replacing existing life insurance coverage with the new policies, knowing that this information was false. The complaint also alleges that Nociforo received checks totaling \$16,050.46 from public customers for the specific purpose of funding the customers' variable life insurance policies, deposited the checks into his personal bank account, obtained bank checks totaling \$6,020.75 and forwarded the checks to his member firm as initial premium payments of customers' life insurance policies, thereby converting the remaining \$10,029.71 for his own personal use and benefit without the customers' authorization, knowledge, or consent. **(NASD Case #C10050027)**

**John Gregory Oppenheimer (CRD #3178207, Registered Representative, Raleigh, North Carolina)** was named in an NASD complaint alleging that he effected, or caused to be effected, the liquidation of a public customer's mutual funds and the purchase of a variable annuity without the customer's authorization. The complaint also alleged that Oppenheimer forged, or caused to be forged, a public customer's signature on documents, including an annuity purchase application. The complaint further alleged that Oppenheimer failed to appear for testimony. **(NASD Case #C07050031)**

**Kevin W. Parsells (CRD #4210163, Registered Representative, Merganville, New Jersey)** was named in an NASD complaint alleging that he effected transactions on margin in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint further alleged that Parsells failed to place a stop loss on a public customer's stocks, as requested by the customer. **(NASD Case #CLI050007)**

**Jennifer Cochrane Prussack (CRD #4405629, Registered Representative, Garland, Texas)** was named in an NASD complaint alleging that she made unauthorized withdrawals from the accounts of public customers and converted the funds for her own personal use and benefit without the knowledge, authorization, or consent of the customers. The complaint also alleged that respondent Prussack failed to respond to NASD requests for information. **(NASD Case #C06050006)**

**Marylan Katherine Taylor (CRD #2263196, Registered Representative, Aurora, Ohio)** was named in an NASD complaint alleging that she submitted a falsified certificate of completion of a continuing education course to the Kentucky Department of Insurance. The complaint also alleged that Taylor made herself the beneficiary of a public customer's

annuity without the customer's consent or knowledge. The complaint further alleged that Taylor willfully failed to disclose material facts on a Form U4 and failed to respond truthfully to requests for information by the state of Kentucky. (NASD Case #C8A050027)

**Robert Trevlin Stewart Jr. (CRD #1611243, Registered Principal, Richmond, Virginia)** was named as a respondent in an NASD complaint alleging that he received a check totaling \$165,000 from a public customer to be used to purchase an annuity, but he instead deposited the check into a bank account under his control and made withdrawals against that account, thereby misusing customer funds without the customer's knowledge, authorization, or consent. The complaint also alleges that Stewart failed to respond to an NASD request for information. (NASD Case #C3B050006)

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

**The Camelot Group, Inc.**  
Ft. Lauderdale, Florida  
(May 6, 2005)

#### **Firms Suspended for Failure to Supply Financial Information**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the 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.

**Blue Marble Financial, LLC**  
Irving, Texas  
(February 1, 2005 to May 2, 2005)

**BMS International Inc.**  
Berglangebach, Germany  
(April 12, 2005 to May 16, 2005)

**Mount Yale Securities, LLC**  
Denver, Colorado  
(April 12, 2005 to May 20, 2005)

**National Clearing Corp.**  
Sherman Oaks, California  
(April 12, 2005 to May 2, 2005)

#### **Individuals 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.)

**Ball, Ronald Clark**  
Ft. Lauderdale, Florida  
(May 6, 2005)

**Burt, Reginald Darnell**  
Stafford, Texas  
(April 28, 2005)

**Clark, Salvatore**  
Deer Park, New York  
(April 28, 2005 to May 4, 2005)

**Connor, Brian Paul**  
Venice, Florida  
(April 29, 2005)  
Connor's suspension was lifted May 12, 2005.

**Crihfield, Mark Keith**  
Germantown, Tennessee  
(April 12, 2005 to May 5, 2005)

**Driggers, Darren Alan**  
Spring, Texas  
(April 18, 2005)

**Elliott, Michael Scott**  
Sarasota, Florida  
(May 6, 2005)

**Fagan, Michael James Sr.**  
Ponchatoula, Louisiana  
(May 6, 2005)

**Hardesty, Clifford Allen**  
Austin, Texas  
(April 28, 2005)

**Jenak, Robert Brian**  
Boulder, Colorado  
(May 3, 2005)

**Rainner, Byron Sherrod**  
Plantation, Florida  
(May 6, 2005)

**Torrice, Jeffrey Peter**  
Grosse Point Woods, Michigan  
(April 18, 2005)

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

**Greos, James W.**  
Scottsdale, Arizona  
May 6, 2005)

**Dudnik, Dennis A.**  
Brooklyn, New York  
(May 6, 2005)

**Scarso, Emanuele A.**  
Brooklyn, New York  
(May 6, 2005)

## **Morgan Stanley to Pay \$2.7 Million for IPO Lock-Up Violations**

### **NASD Fines J.P. Morgan \$150,000, Goldman Sachs \$125,000 for Similar Violations**

NASD ordered three firms—Morgan Stanley & Co, J.P. Morgan Securities, Inc., and Goldman, Sachs & Co.—to pay more than \$2.9 million following sales of restricted securities in violation of lock-up agreements as required by NASD rules.

NASD censured the firms and ordered Morgan Stanley to pay a fine of \$150,000 and disgorgement of more than \$2.5 million in ill-gotten profits. J.P. Morgan was ordered to pay a fine \$150,000 and Goldman Sachs was fined \$125,000.

“NASD’s rules that regulate the underwriting process, including lock-up requirements, ensure that the underwriting terms and arrangements are fair and reasonable,” said NASD Vice Chairman Mary Schapiro. “Lock-up requirements may be imposed to bring underwriting compensation into compliance with NASD guidelines and to protect investors in IPOs from the potential for dilution and manipulation if underwriters were to sell large amounts of an IPO issuer’s shares into the aftermarket. These firms’ failure to have policies in place to ensure compliance with the rules and to minimize the opportunity for underwriters and related persons to realize a quick profit from the sale of pre-IPO shares hurt the integrity of the underwriting process and the confidence of investors.”

Each of the firms, or entities or individuals affiliated with the firms, acquired the securities from issuers in private placements prior to each issuer’s IPO. Each of the firms subsequently served as an underwriter of the issuer’s IPO. Under NASD rules, certain of the private placement securities were deemed underwriting compensation and were restricted from sale for a period of one year from the date of the IPO. In addition, NASD rules provided that if a member firm agreed to restrict the sale of securities for an additional period of time—one or two years—additional discounts would be provided to

the value assigned to the shares for purposes of determining underwriting compensation.

NASD’s Corporate Financing Department, which reviews the terms of public offerings of securities underwritten by NASD members, determined that the underwriting compensation for certain of the offerings was excessive. As a result, in order to lower the amount of underwriting compensation for certain offerings so it would not be deemed excessive by NASD, Goldman Sachs represented to NASD in writing that relatives of employees would not sell certain securities for three years from the date of the IPO. J.P. Morgan represented to NASD in writing that its officers and affiliated companies would not sell certain securities for three years from the date of the IPO. J.P. Morgan and Morgan Stanley also represented to NASD in writing, to obtain approval for other offerings, that affiliated entities would not sell certain securities for one year from the date of the offering. In addition, the registration statements for each of the offerings stated that the securities would not be sold for the specified periods. Despite the firms’ representations and NASD rules, securities were sold prior to the expiration of the specified lock-up periods.

Entities affiliated with Morgan Stanley sold shares in two offerings—Breakaway Solutions, Inc., and AsiaInfo Holdings, Inc.—prior to the expiration of the one-year lock-up period. As a result of the sale of these securities prior to the expiration of the lock-up period, Morgan Stanley received additional net profits of over \$2.5 million.

Five individuals related to employees of Goldman Sachs sold shares in one offering, PlanetRx.com, Inc., prior to the expiration of the lock-up periods.

NASD’s action against J.P. Morgan was taken against the firm as successor-in-interest to Hambrecht & Quist. An entity affiliated with Hambrecht & Quist, and officers of the firm, sold shares in four offerings—PlanetRx.com, coolsavings.com, Inc., Net2Phone, Inc., and Liberate Technologies—prior to the expiration of the lock-up periods.

Each of the firms violated NASD rules by failing to take reasonable steps to ensure compliance with the representations made to NASD regarding restrictions on the sale of the securities. Each of the firms also failed to establish and maintain an adequate supervisory system to ensure that securities would not be sold prior to the expiration of the lock-up periods.

Each of the firms settled the actions without admitting or denying the allegations, but consented to the entry of NASD’s findings.

## NASD Charges 15 Firms with Directed Brokerage Violations, Imposes Fines Totaling More Than \$34 Million

NASD imposed fines totaling more than \$34 million on 15 broker-dealers in connection with the receipt of directed brokerage in exchange for preferential treatment for certain mutual fund companies.

These cases, part of NASD's efforts to eliminate conflicts of interest in the sale of mutual funds, focus on brokerage firms involved in selling mutual funds to retail investors, as well as one mutual fund distributor. All of the cases involve violations of NASD's Anti-Reciprocal Rule, which prohibits firms from favoring the sale of shares of particular mutual funds on the basis of brokerage commissions received by the firm. Among other things, a firm may not recommend specific funds to sales personnel or establish preferred lists of funds in exchange for directed brokerage.

NASD found that the 14 retail firms, most of which sold funds offered by hundreds of different mutual fund complexes, operated "preferred partner" or "shelf space" programs that provided certain benefits to a relatively small number of mutual fund complexes in return for directed brokerage. The benefits to mutual fund complexes of these quid pro quo arrangements included, in various cases, higher visibility on the firms' internal Web sites, increased access to the firms' sales forces, participation in "top producer" or training meetings, and promotion of their funds on a broader basis than was available for other funds.

"When recommending mutual fund investments, firms must act on the basis of the merits of the funds and the investment objectives of the customers and not because of other benefits the brokerage firm will receive," said NASD Vice Chairman Mary L. Schapiro. "NASD's prohibition on the receipt of directed brokerage is designed to eliminate these conflicts of interest."

The mutual fund complexes that participated in these programs paid extra fees for enhanced visibility. The additional fees were typically based on a combination of sales and/or assets under management by the brokerage firm. Some of the complexes participating in the preferred partner programs paid part or all of the revenue sharing fees by the use of directed brokerage—that is, by directing a portion of the trades in the portfolios they managed to the trading desks of the firms participating in the program.

For firms that did not have the capacity to provide trade execution, trades were sent to designated third parties, which then remitted a portion of the trading commissions to the retail firms, although they provided no services in connection with the trade. These commissions were sufficiently large to pay for the benefits received by the funds as well as the costs of trade execution.

The retail firms generally monitored the amount of directed brokerage received to ensure that the fund complexes were satisfying their revenue-sharing obligations. The use of directed brokerage allowed the fund complexes to use assets of the mutual funds instead of their own money to meet their revenue sharing obligations.

NASD also censured and fined one mutual fund distributor, AllianceBernstein Investment Research and Management, Inc. AllianceBernstein paid for some of its shelf space obligations by having its affiliated investment adviser direct portfolio transactions to or for the benefit of firms to which the distributor owed revenue sharing fees.

The 15 firms and their respective fines are as follows (firms noted with asterisks are wholly owned subsidiaries of AIG Advisor Group, Inc.):

<b>Royal Alliance Associates, Inc.*</b> \$6,600,000	New York, NY
<b>H.D. Vest Investment Services</b> \$4,015,000	Irving, TX
<b>AllianceBernstein Investment Research and Management, Inc.</b> \$3,984,087	New York, NY
<b>Linsco/Private Ledger Corp.</b> \$3,602,398	Boston, MA
<b>Wells Fargo Investments, LLC</b> \$2,970,000	San Francisco, CA
<b>SunAmerica Securities, Inc.*</b> \$2,500,000	Phoenix, AZ
<b>FSC Securities Corp.*</b> \$2,400,000	Atlanta, GA
<b>Securities America, Inc.</b> \$2,400,000	Omaha, NE
<b>RBC Dain Rauscher, Inc.</b> \$1,700,000	Minneapolis, MN
<b>McDonald Investments Inc.</b> \$1,500,000	Cleveland, OH
<b>AXA Advisors, LLC</b> \$900,000	New York, NY
<b>Sentra Securities Corporation* and Spelman &amp; Co., Inc.*</b> (joint fine) \$780,000	Phoenix, AZ
<b>Advantage Capital Corp.*</b> \$450,000	Atlanta, GA
<b>Advest, Inc.</b> \$286,415	Hartford, CT



The fines imposed on eight of the firms—Royal Alliance Associates, SunAmerica Securities, FSC Securities Corp., Advantage Capital Corp., Sentra Securities Corp., Spelman & Co., RBC Dain Rauscher, and McDonald Investments— included charges relating to their failure to retain emails as required by the federal securities laws and NASD rules.

The fine imposed on H.D. Vest Investment Services included charges related to violations of NASD rules relating to non-cash compensation. H.D. Vest reimbursed brokers' expenses incurred in connection with certain firm training and educational conferences based, in part, on the brokers' sales of funds that participated in its preferred partner program, instead of giving equal weight to the sales of all mutual funds, as required by NASD rules.

H.D. Vest Investment Services, RBC Dain Rauscher, and McDonald Investments were also charged with violations of NASD's supervisory systems and procedures rule.

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

NASD has brought five previous actions for similar violations, including a complaint that is still pending against American Fund Distributors and settlements with Quick & Reilly, Inc., Piper Jaffray & Co., Edward D. Jones & Co. L.P., and Morgan Stanley DW Inc.

### **Hedge Fund Manager Hilary Shane Barred, to Pay \$1.45 Million to Settle NASD, SEC Fraud, and Insider Trading Charges Related to Purchase and Sale of Compudyne PIPE Shares**

#### **NASD Investigation into Other Individuals, Entities Continuing**

NASD announced that Hilary L. Shane, a hedge fund manager formerly registered with First New York Securities, L.L.C. (FNY), has been permanently barred from associating with any NASD-registered firm and will pay more than \$1.45 million to settle NASD and Securities and Exchange Commission (SEC) charges of fraud and insider trading. The charges arise from Shane's purchase and sale of shares in a PIPE transaction.

Sanctions imposed by NASD include the permanent bar and a \$375,000 fine. Sanctions imposed by the SEC include a one-year suspension from associating with any investment adviser; an injunction from any further violations of securities law; disgorgement of more than \$296,000 in ill-gotten profits from insider trading; disgorgement of more than \$356,000 in ill-gotten profits from selling unregistered shares; an SEC civil penalty of \$296,785; and prejudgment interest of more than \$125,000.

"This case is part of NASD's ongoing commitment to dealing with abuses in the marketing and trading of PIPE shares," said NASD Vice Chairman Mary L. Schapiro. "These abuses are serious and warrant serious sanctions."

A PIPE (Private Investment in a Public Equity) is a private offering in which accredited investors agree to purchase restricted, unregistered securities of public companies. Only after the PIPE shares registration is approved by the SEC are investors free to sell them on the open market. PIPE shares can only be offered to "accredited" investors—investors with assets of \$1 million or more.

NASD found that in September 2001, Maryland's Compudyne Corporation and its placement agent, Friedman, Billings, Ramsey & Co., Inc. (FBR), offered sophisticated investors—on a confidential basis—a PIPE deal proposing to sell 2.45 million shares of common stock, which raised more than \$29 million. The restricted stock was offered at the below-market price of \$12 per share. NASD found that Shane, after agreeing to buy the Compudyne PIPE shares, established a short position in the stock while in possession of material, non-public information and used the PIPE shares, once they were registered, to cover the short position. In addition, NASD found that Shane made false statements to obtain the right to acquire shares in the PIPE transaction and caused extensive violations of NASD's short sale rules by FNY.

On Oct. 8, 2001, Shane and FNY Millennium Partners, L.P., a hedge fund that she managed, obtained the right to buy 475,000 shares in the Compudyne PIPE. NASD found that Shane obtained the shares by falsely certifying in the purchase agreements that she and the hedge fund had no intention of distributing the shares.

The Compudyne PIPE deal was not announced to the public until 11:44 a.m. on Oct. 9, 2001. Between 8:30 a.m. and 11:44 a.m. that day, before the public announcement, Shane and the hedge fund sold short 122,900 shares of Compudyne, while she was in possession of material, non-public information about Compudyne.

By Oct. 29, 2001, when the SEC approved the registration statement that allowed sale of the PIPE shares, Shane had sold short 455,000 shares of Compudyne. When the PIPE shares were registered, Shane and the hedge fund obtained the PIPE shares at \$12 per share and then used these newly registered shares to cover the short position at a profit.

In settling this matter with NASD, Shane neither admitted nor denied the charges, but consented to the entry of NASD's findings. In the SEC proceeding, Shane consented to the entry of a final judgment by the U.S. District Court and an SEC administrative order, without admitting or denying the allegations in the SEC's complaint.

NASD's investigation into other individuals and entities involved in the CompuDyne PIPE is continuing.

### **SunTrust Capital Markets Fined \$100,000 for Failing to Register Research Analysts under New Rules**

#### **SunTrust's 48 Analysts Issued More Than 600 Reports without Taking Qualifying Exams**

NASD censured and fined SunTrust Capital Markets, Inc.—the Atlanta, GA-based bank-affiliated broker-dealer and investment bank—\$100,000 for failing to register its 48 research analysts under new NASD rules that took effect last year. This is the first NASD enforcement action involving the new registration requirements.

As of March 30, 2004, NASD rules require research analysts to be registered with NASD after passing new research analyst examinations. Persons who were already functioning as research analysts were granted a one-year grace period for meeting the new registration requirements, provided their firm applied for the research analyst registration by May 31, 2004—60 days following the effective date of the new requirement.

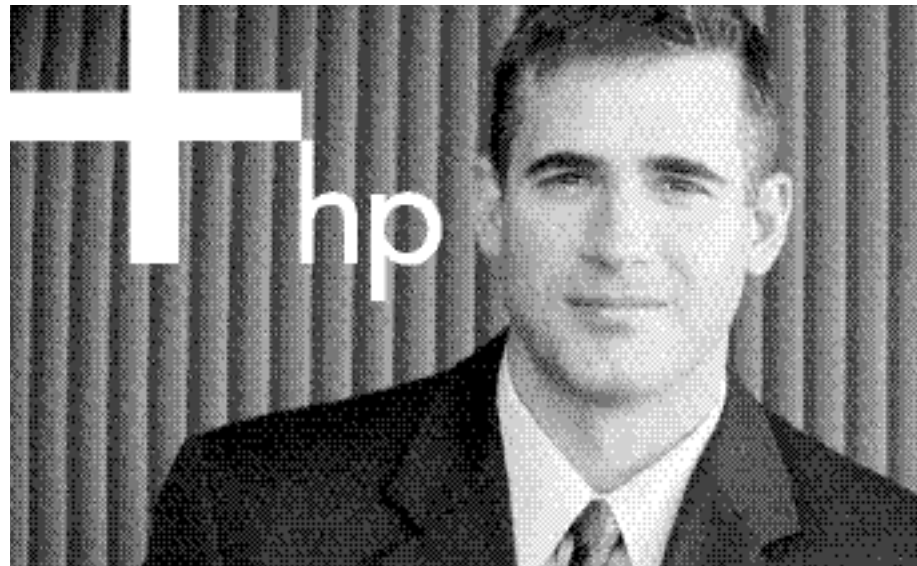
NASD found that SunTrust failed to apply for the research analyst designation for its 48 analysts by the May 31 deadline. As a result, the one-year grace period for passing the research analyst qualification examinations was not available to SunTrust's analysts. Nevertheless, during the period from June 1, 2004 to July 30, 2004, SunTrust's analysts continued to perform and publish research without taking and passing the research analyst qualification examinations.

NASD found that from June 1, 2004 through July 21, 2004, when SunTrust discovered its failure to submit the registration applications, SunTrust issued 438 research reports and/or updates. SunTrust issued another 202 research reports and/or updates between July 21, 2004 and July 30, 2004 after SunTrust realized that its research analysts had not been properly registered, and while it was seeking an extension of the filing deadline. Only on July 30, 2004, after its request for an exemption from the rule requirements was denied, did SunTrust cease issuing research reports.

"NASD's new analyst registration requirements are designed to protect investors, by helping to ensure that analysts are qualified to offer research opinions and understand their obligations under NASD rules," said NASD Vice Chairman Mary L. Schapiro.

By September 2004, 15 of SunTrust's analysts had qualified through examination. The remaining analysts were qualified by October 2004.

In settling this matter, SunTrust neither admitted nor denied the charges, but consented to the entry of NASD's findings.



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