

**ACTION REQUIRED BY  
APRIL 30, 2000**

## Member Contact Information Update

NASD Members Must  
Update Firm Contact  
Information Via The  
NASD Regulation Web  
Site By **April 30, 2000**

**SUGGESTED ROUTING**

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Executive Representatives
- Legal & Compliance
- Operations
- Registered Representatives
- Senior Management

**KEY TOPICS**

- Members/Contact Information

### Executive Summary

National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) member firms must update their Member Firm Contact Questionnaire (NMFCQ or Contact Questionnaire) located on the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)) to include the name and e-mail address of the member firm's Executive Representative by April 30, 2000. Members that have updated the Contact Questionnaire since January 1, 2000, do not need to complete this mandatory update. However, members that don't have any changes to their 1999 Contact Questionnaires must still complete this update by verifying that information through the NASDR Web Site.

### Questions/Further Information

Additional information on the NMFCQ is located on the NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) Web Site at [www.nasdr.com/2695.htm](http://www.nasdr.com/2695.htm). Questions concerning this *Notice* may be directed to the CRD/PD Gateway Call Center, at (301) 869-6699; or to Bruce Spates, Assistant Director, Internet and Investor Education, NASD Regulation, at (301) 721-1149.

### Background

As published in *NASD Notice to Members 98-77* (September 1998), amendments to Article IV, Section 3 of the NASD By-Laws, which took effect January 1, 1999, require members to: (1) obtain an Internet e-mail account and Internet access for their Executive Representative; and (2) update their firm's contact information via the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)) to include the Executive Representative's e-mail address.

Also discussed in *Notice to Members 98-77* were changes to the distribution of key NASD Regulation publications. Effective January 1, 1999, the primary means of distribution of *NASD Notices to Members* and the *Regulatory & Compliance Alert* is in electronic form via the NASD Regulation Web Site. Members are advised that the schedule for posting the monthly *NASD Notices to Members* to the Web Site will be on or about the 10th of each month. Once Executive Representatives have updated their Contact Questionnaire to include their Internet e-mail address, NASD Regulation will provide e-mail notification of new *Notices* and other updates posted to the Web Site.

Since the complimentary print distribution of these publications terminated in January 1999, member firms that wish to continue to receive the printed versions may subscribe by contacting NASD MediaSource<sup>SM</sup> at (301) 590-6142. Each Executive Representative will be eligible for one subscription to *Notices to Members* and/or the *Regulatory & Compliance Alert* at cost, *i.e.*, \$15 per year.

While members may choose to rely on the printed *NASD Notices to Members*, it does not relieve them of the requirement for the Executive Representative to maintain an Internet e-mail account on behalf of the firm, and to update the firm's Contact Questionnaire via the NASD Regulation Web Site by April 30, 2000.

### Updating Procedures

Members that previously updated the Contact Questionnaire should utilize their existing NMFCQ User ID and Password to access and update the Questionnaire. New

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members should receive a User ID and Password as a result of completing the membership application process. Members that may have forgotten or misplaced their NMFCQ access information should request assistance by sending an e-mail to [wnmfcq@nasd.com](mailto:wnmfcq@nasd.com) which includes the name of the person entitled to access the Contact Questionnaire, firm name, and Broker/Dealer CRD Number. As mentioned above,

members that have updated the Contact Questionnaire since January 1, 2000, do not need to complete this mandatory update. However, members that don't have any changes to their 1999 Contact Questionnaires must still complete this update by verifying that information through the NASDR Web Site.

Members are reminded that the Chief Executive Officer and

designated firm NASD Executive Representative must be members of senior management and registered principals with the specific member for which the update is being made.

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## INFORMATIONAL

# Independent Research Reports

## SEC Approves Rule Change Relating To Filing Requirements For Independently Prepared Research Reports

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Legal & Compliance
- Mutual Fund
- Registered Representatives
- Senior Management

### KEY TOPICS

- Advertising And Sales Literature
- NASD Rule 2210
- Research Reports

### Executive Summary

On January 13, 2000, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 2210, which governs member communications with the public.<sup>1</sup> The amendments exempt from Rule 2210's filing requirements certain types of independently prepared research reports concerning investment companies. The amendments become effective on April 1, 2000.

Questions concerning this *Notice* may be directed to Thomas M. Selman, Vice President, Investment Companies/Corporate Financing, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) at (202) 728-8068; Thomas A. Pappas, Director, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8453; or Joseph P. Savage, Counsel, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8233.

Attachment A includes the text of Rule 2210's amendments.

### Background

NASD Rule 2210 requires that any "advertisement" or "sales literature" concerning a registered investment company be filed with NASD Regulation's Advertising/Investment

Companies Regulation Department (Department) and meet the content standards of Rule 2210 and any applicable SEC rules. Rule 2210 defines "sales literature" to include research reports. Consequently, a member that uses a research report as sales material must file it with the Department, even if the member did not commission the research contained in the report, and an independent, third party research firm prepared the report.

As the investment company industry has grown in recent years, so has the coverage of the industry by independent research firms. Many research firms publish reports that analyze and provide information about a wide variety of investment companies, including their performance, fees and expenses, and a description and narrative analysis of their investment strategies and portfolio management style.

NASD members use these independently prepared research reports in a number of ways. For example, a member may make an independent research firm's entire research service available to customers at a branch office. A member may also distribute or make available an independently prepared research report concerning a particular investment company as part of its selling process.

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### Description Of Filing Exemption

The amendments provide that certain types of independently prepared research reports concerning registered investment companies do not have to be filed with the Department if they are used as sales literature. Pursuant to new Rule 2210(c)(6)(G), all research reports—including customized reports prepared at the request of an investment company, its affiliates, or a member firm—must meet five requirements to qualify for the filing exemption. Customized reports also must meet a sixth requirement.

- 1) The report must be prepared by an entity that is independent of the investment company, its affiliates, and the member using the report.
- 2) The member using the report may not materially alter the report's contents, except to the extent necessary to make it consistent with applicable regulatory standards. In this regard, for example, the Department would allow a member to add performance information necessary for the report to meet SEC Rule 482's currentness standards.<sup>2</sup> Additionally, a member may correct any factual errors or clarify terms or other information in the report. In general, the investment company, its affiliates, or the member using the report would make these alterations.
- 3) The research firm must prepare and distribute reports based on similar research with respect to a substantial number of investment companies.

- 4) The research firm must update and distribute reports based on its research of the investment company with reasonable regularity in the normal course of the research firm's business (*e.g.*, semi-annually).
- 5) Neither the investment company, its affiliates, nor the member using the research report may commission the research used by the research firm in preparing the report. While these entities may not commission the research used in preparing the report, this requirement does not preclude a member from paying fees to independent research firms for research services subscriptions, reproducing and distributing its reports, or preparing customized reports.
- 6) If a customized report is prepared at the request of the investment company, its affiliate, or a member, the report may include only information that the research firm has already compiled and published in another non-customized report that meets the requirements of Rule 2210(c)(6)(G). Additionally, the customized report may not omit information necessary to make it fair and balanced. As discussed above, members may alter customized reports to the extent necessary to make the report consistent with applicable regulatory standards. Additionally, a member may rely on the filing exemption for a customized report meeting the requirements of paragraph (G)(vi) even if the member did not request preparation of the customized report.

The amendments also make clear that, although research reports meeting these requirements are excluded from the NASD's filing requirements, they will be deemed filed with the NASD for purposes of Section 24(b) of the Investment Company Act of 1940 and SEC Rule 24b-3 thereunder. Section 24(b) of the Investment Company Act requires sales material for open-end investment companies, unit investment trusts, and face-amount certificate companies to be filed with the SEC within 10 days of distribution to investors. Rule 24b-3 provides that sales material filed with a self-regulatory organization will be deemed filed with the SEC for purposes of Section 24(b). The purpose of this provision is to make clear that members will not be required to file such reports with the SEC simply because they did not file them with the Department.

Except for the filing requirements, independently prepared research reports will continue to be regarded as sales literature for purposes of Rule 2210. These reports will remain subject to Rule 2210's content requirements (including the ranking guidelines, when applicable), spot-check procedures, and recordkeeping requirements, and a registered principal of the member must approve them prior to use.

The amendments apply to independently prepared research reports that are contained in software or that are electronically communicated, as well as printed reports.

### Effective Date Of Amendments

The amendments are effective on April 1, 2000.

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## ATTACHMENT A

### Text Of Amendments To Rule 2210

(Note: New text is underlined.)

Paragraph (c)(6) of Rule 2210 is amended by adding new paragraph (G) as follows:

(6) The following types of material are excluded from the foregoing filing requirements and (except for research reports under paragraph (G)) the foregoing spot-check procedures:

\* \* \*

(G) any research report concerning an investment company registered under the Investment Company Act of 1940, provided that:

(i) the report is prepared by an entity that is independent of the investment company, its affiliates, and the member using the report (the "research firm");

(ii) the report's contents have not been materially altered by the member using the report (except as necessary to make the report consistent with

applicable regulatory standards);

(iii) the research firm prepares and distributes reports based on similar research with respect to a substantial number of investment companies;

(iv) the research firm updates and distributes reports based on its research of the investment company with reasonable regularity in the normal course of the research firm's business;

(v) neither the investment company, its affiliates nor the member using the research report has commissioned the research used by the research firm in preparing the report; and

(vi) if a customized report was prepared at the request of the investment company, its affiliate or a member, then the report includes only information that the research firm has already compiled and published in another report, and does not omit information in that report necessary to make the customized report fair and balanced.

Although research reports meeting the above requirements are excluded from the foregoing filing requirements, they shall be deemed to be filed with the Association for purposes of Section 24(b) of the Investment Company Act of 1940 and Rule 24b-3 of the Securities and Exchange Commission thereunder.

### Endnotes

<sup>1</sup> See Securities and Exchange Release No. 34-42340 (Jan. 13, 2000), 65 Fed. Reg. 3510 (Jan. 21, 2000).

<sup>2</sup>The Department has had a longstanding informal policy of allowing members to distribute a research report that does not meet the currentness standards of Rule 482, provided that: (i) it is the most recent version of the report, and (ii) it is accompanied by information that satisfies the currentness standards and is at least equally prominent to any non-current performance information contained in the report.

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## NASD Notice to Members 00-16

### INFORMATIONAL

# Public Disclosure Program

## SEC Approves Changes To NASD Public Disclosure Program (Interpretive Material 8310-2)

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Legal & Compliance
- Operations
- Registered Representatives
- Senior Management

### KEY TOPICS

- Forms U-4 And U-5
- IM-8310-2
- Public Disclosure Program

### Executive Summary

On February 7, 2000, the Securities and Exchange Commission (SEC) approved proposed changes to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Interpretive Material 8310-2 (IM-8310-2), the provision that governs the NASD's Public Disclosure Program (Program).

In summary, the approved changes clarify that the NASD: (1) will release information about persons formerly associated with a member only for a two-year period following the termination of their registration with the NASD; (2) will release information about terminated persons and firms that is provided on the Form U-6 (the form regulators use to report regulatory actions), if such matters would be required to be reported on the Form U-4 or Form BD; and (3) will begin using automated disclosure reports, which will include verbatim information submitted by filers on uniform forms.

Under this Program, the NASD discloses to the public certain information regarding the employment history, other business experience, and disclosure information<sup>1</sup> of NASD members and their associated persons. The primary purpose of the Program is to help investors make informed choices about the individuals and firms with whom they may wish to do business. The changes approved by the SEC are intended to ensure that the NASD's disclosure practices are clearer and fairer to NASD members, associated persons, and the public.

### Questions/Further Information

For more information about this Notice, please contact the following NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) staff: Ann Bushey,

Assistant Director, CRD/Public Disclosure, at (301) 590-6389; or Rick Pullano, Associate Director and Counsel, CRD/Public Disclosure, at (301) 212-3789.

### Background

The NASD established the Program in 1988 to provide investors with important information about the professional background, business practices, and conduct of NASD members and their associated persons. Recognizing the Program's value to investors, Congress passed legislation in 1990 requiring the NASD to establish and maintain a toll-free telephone number to receive inquiries regarding its members and their associated persons. In 1998, NASD Regulation began providing administrative information (*i.e.*, employment history, registration statuses) online via the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)). In 1999, NASD Regulation responded to nearly 1,000,000 inquiries through the Program.

The changes to the Program recently approved by the SEC do not include the display of disclosure information via the NASD Regulation Web Site. Disclosure reports will continue to be provided by e-mail and regular mail. The NASD, however, continues to work with the SEC and Congress to seek legislation that it believes is necessary in order to provide for the display of all disclosure information via the NASD Regulation Web Site.

The changes approved by the SEC are intended to ensure that the NASD's disclosure practices are clearer and fairer to NASD members, associated persons, and the public. In particular, the changes clarify which persons are

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subject to the Program and what types of information are disclosed through the Program. NASD Regulation also is changing the manner in which it provides disclosure reports about persons who are subject to the Program. Specifically, NASD Regulation will no longer prepare manual summaries of information to be disclosed pursuant to the Program. Instead, NASD Regulation will generate reports under the Program by drawing information directly from the Web CRD<sup>SM</sup> database. As discussed in more detail in the next section, this change means that Public Disclosure Reports will include verbatim descriptions of events and comments that have been provided by registered representatives and firms on their respective uniform forms. Member firms should be cognizant of this change and should take appropriate steps to ensure that such forms do not contain confidential client information or offensive or potentially defamatory language. NASD Regulation reiterated in the rule filing, approved by the SEC, its current policy of not releasing Social Security numbers, home addresses, or physical description information through the Program. The proposed changes to the Program are summarized in the next section.

### Key Changes To IM-8310-2

#### *Persons Subject To Disclosure Through The Program*

NASD Regulation will release information regarding:

- (1) current and former NASD member firms;
- (2) persons currently associated with an NASD member; and

- (3) persons who have been associated with an NASD member within the preceding two years. The two-year period coincides with the period in which an individual can return to the industry without being required to requalify by examination and the initial period in which an individual remains subject to the NASD's jurisdiction.

#### *Release Of Information Provided Via Form U-6*

Before the rule change, NASD Regulation would not disclose information with respect to a firm or individual if it was filed after the termination of an individual or firm because once the individual or firm had been terminated, there was no longer a requirement to report the information. The rule change clarifies that NASD Regulation will release information provided on Form U-6, the form used by regulators to report disciplinary matters, if such matters would be required to be reported on the Form U-4 or Form BD, even if the individual or member firm is no longer registered. NASD Regulation believes that information reported on the Form U-6 is highly reliable because it is filed by federal and state securities regulators or self-regulatory organizations. NASD Regulation further believes that this information serves an important investor protection purpose; therefore, it will disclose such information about individuals and firms under the Program. Disclosure of such information about individuals will be subject to the two-year limitation discussed above, however.

#### *Automated Disclosure Reports*

NASD Regulation will generate reports from its Web CRD database beginning in March 2000. These

reports will be sent to requesters by regular or electronic mail. The automated reports will draw information from specified fields on the Web CRD database that parallel fields on the Forms U-4 and U-6. The automated reports will allow for more consistent disclosure of the information as it is reported to NASD Regulation and also will allow NASD Regulation to provide reports to investors more quickly. In addition, the automated reports allow the inclusion of comments submitted on the uniform forms (e.g., comments submitted by registered representatives on the Form U-4).

Members should understand that, under this new approach, information submitted on uniform forms, including the Form U-4, will be disclosed verbatim in the Public Disclosure Reports. Member firms and/or registered persons responsible for submitting confidential client information or offensive or potentially defamatory language on such forms may be subject to civil liability or NASD regulatory sanctions. NASD Regulation recognizes that it may receive complaints or objections to information or language that has been submitted on a uniform form. Upon receipt of such a complaint or objection, NASD Regulation intends to notify the filer of the objection or complaint, and provide the filer with an opportunity to amend the filing to remove the language in controversy. If the filer determines not to amend, NASD Regulation will apply a balancing test to weigh the value of the language in controversy for investor protection and completeness of disclosure of the reported information against the objector's asserted privacy rights, concerns regarding offensive language, and/or defamation claims. Based on the outcome of this test, NASD Regulation may

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determine to redact information in question from a disclosure report. In such cases, NASD Regulation will inform a requester of a report that has had information redacted of the reasons for the redaction.

NASD Regulation believes these changes enhance the Public Disclosure Program by clarifying

NASD Regulation's disclosure policies and by making information available to investors in a more timely manner. The release approving the rule changes (SEC Release No. 34-42402; File No. SR-NASD-99-45) may be viewed on the SEC Web Site at [www.sec.gov/rules/sroindx.htm](http://www.sec.gov/rules/sroindx.htm).

### Endnote

<sup>1</sup>Disclosure information includes certain criminal, regulatory, customer complaint, and other information that is required to be reported on the Uniform Form U-4 or Form BD.

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**ACTION REQUESTED BY  
APRIL 10, 2000**

## Proposed Recordkeeping And Reporting Requirements Of Certain Quotations

NASD Regulation  
Requests Comment On  
Proposed Recordkeeping  
And Reporting  
Requirements For  
Quotations On Certain  
Automated, Inter-Dealer  
Quotation Systems;  
**Comment Period  
Expires April 10, 2000**

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Legal & Compliance
- Operations
- Senior Management
- Technology
- Trading and Market Making

### KEY TOPICS

- OTC Securities
- Recording And Reporting  
Quotation Data
- Market Making

### Executive Summary

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) requests comment from members, investors, and other interested parties on a rule proposal that would require members to record and maintain their proprietary quotations displayed in certain automated, inter-dealer quotation systems, such as the Electronic Pink Sheets (EPS), and to report such data to NASD Regulation upon request. Access to this quotation data is an integral part of NASD Regulation's efforts to surveil for member compliance with applicable rules and regulations. In addition, with respect to allegations of fraud or certain types of unusual trading activity, quotation data is necessary to reconstruct the market in order to obtain an accurate and complete representation of the cause of the potentially fraudulent or unusual activity.

The proposed rule would permit a member to use a reporting agent to provide the quotation data to NASD Regulation, with the member being ultimately responsible for provision of the data. NASD Regulation believes that most, if not all, members will use the services of a reporting agent, which will likely be the operator of the system, such as the National Quotation Bureau (NQB) with respect to the EPS. However, if a member knows or has reason to believe that it or its reporting agent is not complying with the requirements of the proposed rule, the member would be required immediately to withdraw its proprietary quotations until such time that the member is satisfied that the quotation data is being properly maintained and reported.

Included with this *Notice to Members* are Attachment A (the text of the proposed rule) and

Attachment B (specific questions that NASDR requests comments on from members and interested parties).

### Request For Comment

NASD Regulation is seeking comment on a rule proposal relating to recordkeeping and reporting requirements of quotations on certain automated, inter-dealer quotation systems. NASD Regulation encourages all members, investors and interested parties to comment on the proposed rule. For your convenience, we have provided a checklist (see Attachment B) so that in a minimum amount of time you can provide NASD Regulation with your general comments. Comments must be received by **April 10, 2000**.

Members and interested parties can submit their comments using the following methods:

- 1) mailing in the checklist (Attachment B)
- 2) mailing in written comments
- 3) e-mailing written comments to: [pubcom@nasd.com](mailto:pubcom@nasd.com)
- 4) submitting comments online at the NASDR Web Site ([www.nasdr.com](http://www.nasdr.com))

If you decide to send comments using both the checklist and one of the other methods listed above, please let us know. The checklist and/or written comments should be mailed to:

Joan C. Conley  
Office of the Corporate Secretary  
NASD Regulation, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500

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The only comments that will be considered are those submitted in writing, either via e-mail, regular mail, or the NASDR Web Site.

Before becoming effective, the NASD Regulation Board of Directors must adopt, and the Securities and Exchange Commission (SEC) must approve, any rule change. The NASD Board of Governors also may review the rule change.

### Questions/Further Information

As noted, written comments should be submitted to Joan C. Conley. Questions concerning this *Notice to Members—Request for Comments* may be directed to the Legal Section, Market Regulation Department, at (301) 590-6410; or Stephanie M. Dumont, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8176.

### Background

In September 1999, the EPS service, which is operated by the NQB, began displaying real-time, online stock quotations for approximately 5,000 securities. Some members may now enter quotations in the EPS, which are displayed over the Internet at the EPS Web Site on a real-time basis. Prior to the availability of EPS, the “pink sheets” consisted of weekly lists of quotes printed in hard copy by NQB. NQB updated these non-binding quotations by means of a daily facsimile to subscribers. Market participants could access intra-day quotations only by telephone or similar means of communication to Market Makers in the security.<sup>1</sup>

Because the EPS now displays quotations on a real-time basis, NASD Regulation staff requires access to this quotation data to

surveil adequately for member compliance with applicable rules and regulations and, when necessary, to reconstruct market activity. For example, member activities in the EPS are subject to NASD Rule 3320, “Offers at Stated Prices,” which requires that a member’s quotations be “firm,” *i.e.*, the member is expected to buy or sell at least a normal unit of trading in the quoted stock at its then prevailing quotations, unless clearly designated otherwise. In addition, NASD Rule 6750 provides that every member firm that functions as a Market Maker in over-the-counter (OTC) equity securities on an inter-dealer quotation system that permits quotation updates on a real-time basis must honor those quotations for the minimum size applicable to the Market Maker’s firm bid or ask. Although complete trade report data would be available through existing trade reporting requirements and systems, NASD Regulation staff does not otherwise have access to historical quotation activity at the time of trades.<sup>2</sup> Therefore, NASD Regulation is proposing that members that participate in automated quotation systems such as the EPS be required to record and maintain their proprietary quotation data.

### Proposed Rule

Under the proposal, members that publish quotations on the EPS (or any similar automated quotation system) would be required to record and maintain proprietary quotation data on a daily basis and to report such quotation data to NASD Regulation upon its request. The proposed rule would require that members record their quotation activity by the end of each business day and preserve such records in accordance with Rule 17a-4(a) under the Securities Exchange Act of 1934 (Exchange Act).

Specifically, under Rule 17a-4, members would be required to preserve these records for a period of not less than six years, the first two years in an accessible place.

The proposed rule would not apply to quotations provided on an inter-dealer quotation system that is qualified pursuant to Section 17B of the Exchange Act, because by definition, such a system would be sponsored and regulated by a registered securities association or national securities exchange, and quotation information would be available from the system directly. This includes, for example, the OTC Bulletin Board<sup>®</sup>, which is sponsored and regulated by the NASD. In addition, the proposed rule would not apply to an inter-dealer quotation system that is operated by a member of the NASD because the NASD would obtain quotation data (or in many cases, the display of limit orders) directly from the member that operates the system.

The proposed rule would permit a member to use a reporting agent to provide the quotation data to NASD Regulation. NASD Regulation believes that most, if not all, firms would use the services of a reporting agent, which would likely be the operator of the system, such as NQB. In this regard, we anticipate that the operator of the system will provide NASD Regulation all relevant quotation data directly on a daily or ongoing basis. The member, however, would remain ultimately responsible for complying with all requirements of the proposed rule, notwithstanding the use of a reporting agent. If a member knows or has reason to believe that it or its reporting agent is not complying with the requirements of the rule, the member would be required immediately to withdraw its

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proprietary quotations until such time that the member is satisfied that the quotation data is being properly maintained and reported. In this regard, the NASD would expect a member to periodically review or monitor the reporting agent's activities to ensure continued compliance.

The proposed rule would require members to record and report the time of the quotation displayed, the bid and bid quotation size, the offer and offer quotation size, and the prevailing inside bid and offer at the time of the quotation. The member would need to record this information for all updates in quotations or quotation size.

### **Endnotes**

<sup>1</sup>NASD Rule 2320(g) requires that a member executing a customer order in these securities obtain quotations from at least three dealers (or all dealers if three or less) to determine the best inter-dealer market prior to executing a trade.

<sup>2</sup>While quotation data generally is provided directly by the exchange or system on which it is displayed, in this instance, the operator of the system, NQB, is not a registered broker/dealer, a member of the NASD, or a national securities exchange.

# NASD Notice to Members 00-17—Request For Comment

## ATTACHMENT A

### Text Of Proposed Rule

#### Rule 6630. Recording of Quotation Information

#### (a) Quotation Recording Requirements

(1) Subject to the terms and conditions contained herein, each member that displays in an automated quotation medium proprietary quotations or indications of interest in OTC Equity Securities shall record each item of information described in paragraph (b) of this Rule. This quote activity record must reflect all changes in an OTC Market Maker's proprietary quotation or quotation size displayed, and the time each such change was made.

(2) Members shall, by the end of each business day, record each item of information required to be recorded under this Rule in such form as is prescribed by the Association from time to time.

#### (3) Maintaining and Preserving Records

(A) Each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a-4(a).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a-4(f)(1)(i) or by means of

"electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and be maintained and preserved for the required time in that form.

#### (b) Information to be Recorded

The quote activity record required pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every proprietary quotation displayed throughout the trading day:

- (1) Submitting Firm;
- (2) Inter-dealer quotation medium;
- (3) Trade Date;
- (4) Time Quotation Displayed (expressed in hours, minutes and seconds);
- (5) Security Name and Symbol;
- (6) Bid and Bid Quotation Size;
- (7) Offer and Offer Quotation Size;
- (8) Prevailing Inside Bid; and
- (9) Prevailing Inside Offer

If no updates were entered to an OTC Market Maker's proprietary quotation or quotation size for any given trading day, the member must record the information in subparagraphs (b)(1) through (7).

#### (c) Quotations Not Required To Be Recorded

The recording requirements contained in paragraphs (a) and (b)

of this Rule shall not apply to quotations of OTC Equity Securities that are displayed on an inter-dealer quotation system that is:

- (1) qualified pursuant to Section 17B of the Act; or
- (2) operated by a member of the Association.

#### (d) Reporting Requirements

##### (1) General Requirement

Members shall report information required to be recorded under this Rule to the Association upon its request.

##### (2) Method of Transmitting Data

Members shall transmit this information in the form prescribed by the Association.

#### (e) Reporting Agent Agreements

(1) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member's obligations under this Rule.

(2) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

## **NASD Notice to Members 00-17—Request For Comment**

(3) All written documents evidencing an agreement described in paragraph (e)(2) shall be maintained by each party to the agreement.

(4) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this

paragraph. If a member knows or has reason to believe that its Reporting Agent is not complying with the requirements of this Rule, the member must immediately withdraw its proprietary quotations until such time that the member is satisfied that the quotation data is being properly maintained and reported.

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# NASD Notice to Members 00-17—Request For Comment

## ATTACHMENT B

### Request For Comment Checklist—Questions For Members And Other Interested Parties

The following list of questions provides a quick and easy means to comment on some of the provisions contained in the proposal. This list of questions does not cover all of the changes contained in the proposal; therefore, we encourage members and other interested parties to review the entire proposal and to comment separately on all aspects of the proposal.

#### Instructions

Comments must be received by **April 10, 2000**. Members and interested parties can submit their comments using the following methods:

- mailing in this checklist
- mailing in written comments
- e-mailing written comments to *pubcom@nasd.com*
- submitting comments online at the NASDR Web Site (*www.nasdr.com*)

The checklist and/or written comments and should be mailed to:

Joan C. Conley  
Office of the Corporate Secretary  
NASD Regulation, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500

#### ***Proposed Recordkeeping And Reporting Requirements Of Certain Quotations***

1. Do you support the proposed rule described in the *Notice*?

Yes    No    See my attached written comments

2. Is the specific information that would be required to be recorded and reported under the proposed rule appropriate?

Yes    No    See my attached written comments

3. Are the use of "Reporting Agent" agreements appropriate for compliance with the proposed requirements?

Yes    No    See my attached written comments

#### **Contact Information**

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

#### **Are you:**

An NASD Member

An Investor

A Registered Representative

Other: \_\_\_\_\_

## INFORMATIONAL

# NASD Examinations

## NASD Regulation Issues Statement Of Policy Regarding Recordation By Members Of NASD Examinations

## SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Legal & Compliance
- Senior Management

## KEY TOPICS

- Recording NASD Field Examinations

## Executive Summary

In response to a request by a member firm, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) recently clarified its long-standing practice of not permitting members to record by video or audio tape conversations between NASD Regulation field examiners and National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) member firm officers or other staff during the opening and exit interviews that are routinely requested by NASD Regulation staff during field examinations, as well as any other aspects of examinations. By this *Notice*, the NASD adopts this long-standing practice as its policy regarding audio or video taping of examinations by members.

## Questions/Further Information

Questions or comments concerning this *Notice* may be directed to Alden S. Adkins, Senior Vice President and General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8332; or Dan Sibears, Senior Vice President, Member Regulation, at (202) 728-8221; or Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

## Discussion

Recently, an NASD member firm requested clarification of NASD Regulation policy regarding whether members are permitted to video or audio tape conversations between NASD Regulation field examiners and member firm officers or their staff during the opening and exit interviews that are routinely requested by NASD Regulation staff during a field examination.

Conducting examinations of NASD member firms is fundamental to the regulatory responsibilities of NASD Regulation. The member's request raised concerns about whether certain actions by members, if permitted, could compromise the confidentiality and integrity of the procedures and methodology employed by field examiners to conduct field examinations. In addition, a unilateral or undisclosed recordation by video or audio tape of NASD examinations could, among other things, result in evidentiary complications involving the authenticity and reliability of such recordings.

NASD Regulation carries out its examination and other regulatory responsibilities in a manner designed to ensure the integrity, professionalism, and confidentiality of this business process. NASD Rule 8210<sup>1</sup> and supporting case law make it clear that NASD Regulation has the authority to define the conditions under which examinations and investigations occur. In this regard, the long-standing practice of NASD Regulation is to conduct examinations without video or audio taping by members. By this *Notice*, the NASD adopts this long-standing practice as its policy regarding audio or video taping of examinations by members. It would be contrary to NASD rules, and potentially contrary to state law, for a member to record by video or audio tape any portion of the examination without the express written permission of NASD Regulation. Moreover, based on the rationale above, NASD Regulation would rarely, if ever, permit a member to video or audio tape any aspect of an examination.

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## NASD Notice to Members 00-18

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### Endnote

<sup>1</sup>The authority under which NASD Regulation conducts investigations and examinations of member firms is embodied in Rule 8210. Rule 8210, in part, permits the NASD, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD, to inspect books, records, and accounts of members, and to

require members to provide other information and testify under oath. Rule 8210 further provides that members must comply with the requirements to provide such testimony, information, books, and records. Implicit in Rule 8210 is the idea that the NASD establishes and controls the conditions under which the information is provided and the examinations are conducted.

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## NASD Notice to Members 00-19

### INFORMATIONAL

## FIPS Changes

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of January 24, 2000

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Corporate Finance
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Senior Management
- Trading & Market Making

### KEY TOPIC

- FIPS

As of January 24, 2000, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
ACPV.GA	Advanta Corp.	7.100	10/23/00
AEII.GA	AEI Resources Inc.	10.500	12/15/05
ALIL.GB	Alliance Laundry System LLC/Corp.	9.625	02/16/00
APCS.GA	Alamosa PCS Hldgs Inc.	12.875	02/15/10
ATSS.GA	American Tissue Inc.	12.500	07/15/06
AWAS.GE	Allied Waste North Amer Inc.	10.000	08/01/09
BBC.GA	Bergen Brunswig Corp.	7.250	06/01/05
BBC.GB	Bergen Brunswig Corp.	7.375	01/15/03
BRRY.GB	Berry Plastics Corp.	12.250	04/15/04
BRYP.GA	Compass Aerospace Corp.	10.125	04/15/05
BRYP.GB	Compass Aerospace Corp.	10.125	04/15/05
CBTC.GA	Cincinnati Bell Tell Co.	6.300	12/01/28
CNBE.GB	Cincinnati Bell Inc.	4.375	08/01/02
CNOC.GA	Concentra Operating Corp.	13.000	08/15/09
CTDC.GA	Consolidated Container Co. LLC	10.125	07/15/09
GCGP.GA	Globalnet Communications Group Ltd	13.000	07/15/07
HCHM.GA	Huntsman ICI Chemicals LLC	10.125	07/01/09
HLPF.GA	Holley Performance Prods Inc.	12.250	09/15/07
LMRM.GD	Lamar Media Corp.	11.000	05/15/03
MTCM.GA	Metricom Inc/Metricom Fin Inc.	13.000	02/15/10
PSCH.GA	Petro Stop'g Hldg LP	15.000	08/01/08
RCNC.GE	RCN Corp.	11.125	10/15/07
SFAC.GA	SFAC New Holdings Inc.	13.000	06/15/08
SFNH.GA	SFAC New Holdings Inc.	12.125	10/01/02
SRCL.GA	Stericycle Inc.	12.375	11/15/09
TEK.GA	Tektronix Inc.	7.500	08/01/03
TEK.GB	Tektronix Inc.	7.625	08/15/02
TMAR.GD	Trico Marine Services Inc.	8.500	08/01/05
URI.GE	United Rentals Inc.	9.000	04/01/09
USU.GA	USEC Inc.	6.625	01/20/06
USU.GB	USEC Inc.	6.750	01/20/09
VHT.GC	Venture Holdings Trust	11.000	06/01/07
VHT.GD	Venture Holdings Trust	12.000	06/01/09
WHSE.GA	Williamhouse Regency(Del) Inc.	11.500	06/15/05

As of January 24, 2000, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
AGLS.GA	Anchor Glass Container Corp.	9.875	12/15/08
ALIL.GA	Alliance Laundry System LLC/Corp.	9.625	05/01/08
ALVY.GA	Alvey Systems Inc.	11.375	01/31/03
ATEN.GA	AT Entertainment Inc.	14.500	07/15/08
BRUO.GA	Bruno's Inc.	10.500	01/01/05
CBBS.CD	CBS Inc.	8.875	06/01/22
CBBS.GA	CBS Inc.	7.625	01/01/02
CBBS.GB	CBS Inc.	7.750	06/01/99
CBBS.GC	CBS Inc.	7.125	11/01/23
CBS.GA	CBS Corp.	7.150	05/20/05
CLCU.GA	Classic Communications Inc.	13.250	08/01/09

## NASD Notice to Members 00-19

Symbol	Name	Coupon	Maturity
DBSC.GA	Dobson Communications Corp.	11.750	04/15/07
DGX.GB	Quest Diagnostics Inc.	9.875	07/01/09
DRFL.GA	Drummond Financial Corp.	00.000	07/31/08
FED.GA	First Federal Financial Corp.	11.750	01/01/04
FENY.GA	Forcenergy Inc.	9.500	02/15/07
FENY.GB	Forcenergy Inc.	8.500	02/15/07
GBFE.GA	Golden Books Family Entmt Inc.	7.650	09/15/02
GND.GA	Grand Casinos Inc.	10.125	12/01/03
GNMH.GA	Genmar Holdings Inc.	13.500	07/15/01
HOVV.GB	Hovanian Enterprises Inc.	11.250	04/15/02
HWD.GA	Hollywood Casino Corp.	12.750	11/01/03
ISCM.GA	Insight Commun/Fin Corp.	8.250	03/01/00
LENF.GA	Lenfest Communication Inc.	8.375	11/01/05
LENF.GB	Lenfest Communication Inc.	10.500	06/15/06
LTCH.GB	Litchfield Fin'l Corp.	8.875	11/01/03
LTCH.GC	Litchfield Fin'l Corp.	10.000	11/01/04
MTEL.GA	Mobile Telecomm Tech Corp.	13.500	12/15/02
NXTL.GG	Nextel Communications Inc.	11.500	09/01/03
PNM.GE	Public Service Company N Mex	9.125	03/15/00
RGRO.GA	Ralphs Grocery Company	10.250	07/15/02
STSA.GA	Sterling Financial Corp.	8.750	01/31/00
UFIC.GA	UNIFI Communications Inc.	14.000	01/28/00
WFGM.GA	Waterford Gaming LLC	12.750	02/07/00
WFSG.GA	Wilshire Financial Svcs Grp Inc.	13.000	08/05/04
WFSG.GB	Wilshire Financial Svcs Grp Inc.	13.000	01/01/04
WIRL.GA	Wireless One Inc.	13.000	10/15/03
WIRL.GB	Wireless One Inc.	13.500	08/01/06
WMHO.GA	Williamhouse Regency Del Inc.	11.500	06/15/05
WRC.GA	World Color Press Inc.	8.375	11/15/08

As of January 24, 2000, changes were made to the symbols of the following FIPS bonds.

New Symbol	Old Symbol	Name	Coupon	Maturity
CNPA.GA	CNP.GA	Crown Central Petroleum	10.875	02/01/05
DMCB.GA	DMCV.GA	Dairy Mark Coven Strs Inc.	10.250	03/15/04
IHSV.GA	IHS.GA	Integrated Health Svcs. Inc.	10.750	07/15/04
IHSV.GB	IHS.GB	Integrated Health Svcs. Inc.	9.625	05/31/02
IHSV.GC	IHS.GC	Integrated Health Svcs. Inc.	10.250	04/30/06
IHSV.GD	IHS.GD	Integrated Health Svcs. Inc.	9.500	09/15/07
IHSV.GE	IHS.GE	Integrated Health Svcs. Inc.	9.250	01/15/08
ASD.GH	AMSN.GA	American Standard Inc.	8.250	06/01/09
TLTX.GA	TTX.GA	Tultex Corp.	10.625	03/15/05
VX.GA	VILG.GA	Vialog Corp.	12.750	11/15/01
WAXX.GA	WAX.GC	Waxman Industries Inc.	12.750	06/01/04
TLTX.GB	TTX.GB	Tultex Corp.	9.625	04/15/07
SIDE.GA	ASSR.GA	Associated Materials Inc.	9.250	03/01/08

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, Market Regulation, NASD Regulation<sup>SM</sup>, at (301) 590-6447. Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq<sup>®</sup> Market Operations, at (203) 385-6310.

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## NASD Notice to Members 00-20

### INFORMATIONAL

## Trade Date— Settlement Date

### Good Friday: Trade Date—Settlement Date Schedule

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Internal Audit
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Trading & Market Making

### KEY TOPIC

- Holiday Trade Date—Settlement Date Schedule

### Good Friday: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market® and the securities exchanges will be closed on Good Friday, April 21, 2000. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
April 17	April 20	April 25
18	24	26
19	25	27
20	26	28
21	Markets Closed	—
24	27	May 1

\*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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# Disciplinary Actions

## Disciplinary Actions Reported For March

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, March 20, 2000. The information relating to matters contained in this *Notice* is current as of the end of February 23, 2000.

### Firm Expelled, Individual Sanctioned

**J. Banks Company (CRD #42570, Boca Raton, Florida) and Jeffrey B. Banks a.k.a. Jeffrey B. Nuss (CRD #2133170, Registered Principal, Highland Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were fined \$125,000, jointly and severally, and the firm was expelled from the NASD. Banks was barred from association with any NASD member in any capacity with the right to reapply after two years and permanently barred from association with any NASD member in a principal or supervisory capacity. Payment of the fine shall be a prerequisite for consideration of any application for reentry by either the firm or Banks. Without admitting or denying the allegations, the firm and Banks consented to the described sanctions and to the entry of findings that the firm, by and through Banks, failed to have a qualified financial and operations principal (FINOP) properly associated with the firm and improperly misrepresented the identity of its alleged FINOP in

communications with the NASD. The findings also stated that the firm, by and through Banks, conducted its securities business while failing to maintain the required minimum net capital, failing to keep an accurate general ledger, and making a series of misleading oral and written statements to the NASD regarding alleged violations of NASD rules and federal securities laws. In addition, the firm permitted an unregistered person to sell the firm's common stock through a private placement offering. **(NASD Case #C07990066)**

### Firm Fined, Individuals Sanctioned

**D.L. Cromwell Investments, Inc. (CRD #37730, Boca Raton, Florida), Lloyd Sylvester Martin Beirne (CRD #1982417, Registered Principal, Boca Raton, Florida) and Matthew Greenwald (CRD #229262, Registered Principal, Boca Raton, Florida).** Beirne was fined \$10,000, jointly and severally, with the firm and suspended from association with any NASD member in any supervisory capacity for 15 business days. Greenwald was fined \$10,000, jointly and severally, with the firm and suspended from association with any NASD member in any supervisory capacity for five business days. The fines for Beirne and Greenwald will not be in addition to the fine assessed against the firm. The firm was censured, fined \$37,585.94 (which includes disgorgement of \$12,585.94 in commissions), and ordered to retain an independent consulting firm for one year to review the firm's compliance and written supervisory procedures to determine their adequacy and consistency with applicable laws and regulations. The independent

consultant will make written recommendations which the firm will promptly adopt and implement or suggest alternative procedures which the consultant may approve. At least six months, but no longer than a year from the date of the initial report, the consultant will conduct a follow-up review and prepare a written report addressing the firm's compliance and written supervisory procedures. The sanctions were based on findings that Beirne and Greenwald failed to adequately supervise a registered representative so as to detect the unsuitable recommendations the representative made to public customers. The findings also stated that the firm failed to establish and maintain a supervisory system of its registered representatives that was reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. **(NASD Case #C07990037)**

#### **Firm And Individual Fined**

**Aragon Financial Services, Inc. (CRD #16023, Brea, California)** and **Douglas Lyman Lish (CRD #310660, Registered Principal, Anaheim, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm and Lish were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the firm and Lish consented to the described sanctions and to the entry of findings that they failed to report customer complaints received by the firm and securities-related arbitrations to the NASD in which the firm, and/or persons associated with the firm, were named as respondents and which were disposed of by award or settlement in dollar amounts exceeding the thresholds set by the NASD. **(NASD Case #C02990072)**

#### **Firms Fined**

**Dougherty Summit Securities LLC n.k.a. Dougherty & Company, LLC (CRD #7477, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$23,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it commenced best efforts offerings of shares of common stock using private placement memoranda which failed to include statements that the firm, and/or persons associated with the firm, would be purchasing a portion of the offerings. The findings also stated that the firm failed to file, or to file in a timely manner, appropriate documents with the MSRB in connection with municipal offerings. **(NASD Case #C04000006)**

**Frederick & Company, Inc. (CRD #333, Milwaukee, Wisconsin)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$14,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to correctly identify aggregated transaction reports in Nasdaq National Market<sup>®</sup> (NNM) and Nasdaq SmallCap<sup>SM</sup> Market securities, failed to prepare accurate last sale reports, and failed to properly report Consolidated Quotation System transactions through the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>). The findings also stated that the firm improperly disclosed on confirmations that the firm had acted as a Market Maker in principal transactions with customers when, in fact, the firm was not a registered Market Maker

and failed to disclose to customers a markup/markdown or similar remuneration. In addition, the firm sold shares of initial public offerings (IPO) to investment partnerships and failed to have current information on file in accordance with the Free-Riding and Withholding Interpretation of the NASD Board of Governors. In connection with private placements, the firm received funds from public customers and deposited the funds into a firm-controlled bank account and failed to establish a reserve bank account and compute a reserve formula requirement. Moreover, the firm failed to establish, maintain, and enforce written supervisory procedures governing its trading and market-making activities, its adherence to free-riding and withholding rules, and its handling of customer funds in private placement offerings. **(NASD Case #C8A000003)**

**Keane Securities Co., Inc. (CRD #8452, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent (AWC) pursuant to which the firm was censured, fined \$10,000, and required to revise the firm's written supervisory procedures relating to the Securities and Exchange Commission (SEC) and NASD firm quote rules within 60 days of acceptance of this AWC by the National Adjudicatory Council (NAC). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it was presented with orders at its published bid or offer in an amount up to its published quotation size, failed to execute the orders, and therefore failed to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve

compliance with applicable securities laws, regulations, and NASD rules concerning SEC and NASD firm quote rules. **(NASD Case #CMS990173)**

**Maxcor Financial, Inc. (CRD #19801, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$41,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, through its Euro Brokers division, it created inaccurate books and records through the use of an inactive customer account as a suspense account and failed to provide timely notice to the NASD of the inaccurate books and records. The findings also stated that Euro Brokers failed to establish written supervisory procedures that designated the principals in the operations department and set forth their responsibilities. **(NASD Case #C10000007)**

**Miller & Schroeder Financial, Inc. (CRD #37526, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$14,060. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to conduct a securities business and to act in a registered capacity when the individual's registration had lapsed for non-compliance with the Regulatory Element of the Continuing Education requirement. **(NASD Case #C04000001)**

**Schonfeld Securities, L.L.C. (CRD #23304, Jericho, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to

which the firm was censured, fined \$10,000, and required to submit revised written supervisory procedures concerning transaction reporting to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it incorrectly designated as ".SLD" to ACT transactions in NNM and listed securities. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning transaction reporting. **(NASD Case #CMS000005)**

**Standard New York Securities, Inc. (CRD #35560, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to submit revised written supervisory procedures concerning transaction reporting to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to transmit transactions through ACT in NNM, Nasdaq SmallCap, and OTC equity securities in a timely manner, failed to designate such transactions as late to ACT, and failed to include the correct time of execution. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning transaction reporting. **(NASD Case #CMS000004)**

**The Third Market Corporation (CRD #30181, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$19,500, and required to pay \$223.76 plus interest in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it bought shares of securities for its market-making account while holding unexecuted customer limit orders and failed to display customer limit orders immediately when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders. The findings also stated that the firm failed to report transactions to ACT correctly and to maintain the time of entry of an order on a brokerage order memorandum. In addition, the firm failed to maintain a record showing the time the firm routed limit orders to the New York Stock Exchange for display. The firm also failed to execute a customer limit order when the inside market was better than the customer's limit order price and sold shares of securities to public customers and failed to use reasonable diligence to ascertain the best inter-dealer markets so that the resultant prices were as favorable to the customers as possible under prevailing market conditions. Moreover, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations regarding trade reporting, ACT reporting, limit order protection, registration, books and records, locked and crossed markets, the Order Handling Rules, anti-competitive practices, and best execution. **(NASD Case #CMS000006)**

**Whale Securities Co., L.P. (CRD #13516, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$27,000, and required to revise the firm's written supervisory procedures relating to locked and crossed markets, the Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>), registration, limit orders, best execution, and books and records. The revised procedures must be submitted to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in Nasdaq<sup>®</sup> securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a *de minimus* change in relation to the size of the firm's bid or offer in each security. The findings also stated that the firm failed to provide written notification to its customers that it was a Market Maker or, where it acted as principal, that the price on the customer confirmation was an average price and instead disclosed an incorrect reported trade price. The firm also reported transactions incorrectly to ACT and failed to correctly identify aggregated transaction reports in NNM and Nasdaq SmallCap securities. Moreover, the firm failed to maintain or enter information accurately on memoranda of brokerage orders or to maintain a customer transaction confirmation. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable

securities laws, regulations, and NASD rules concerning locked and crossed markets, SOES, registration, limit orders, best execution, and books and records. **(NASD Case #CMS990175)**

**William Scott & Co., LLC (CRD #14979, Union, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$32,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report customer complaints received by the firm to the NASD and permitted a registered representative to conduct a securities business while his securities industry registrations were inactive as a result of his failing to satisfy the Regulatory Element of the Continuing Education requirement. The findings also stated that the firm failed to have all of its covered registered representatives participate in the Firm Element of the Continuing Education program and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable rules of the NASD concerning the Regulatory and Firm Elements of Continuing Education. **(NASD Case #C10000004)**

### **Individuals Barred Or Suspended**

**John Leslie Anderson (CRD #2192152, Registered Principal, Madera, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$9,076 (which includes disgorgement of \$1,576 in commissions), suspended from association with any NASD member in any capacity for 90 days, and ordered to requalify as a registered

options principal before associating with any NASD member in that capacity. Anderson was also ordered to pay restitution and interest totaling \$4,261.01 to a public customer. Without admitting or denying the allegations, Anderson consented to the described sanctions and to the entry of findings that he recommended and engaged in the purchase and sale of numerous option spread contracts in the account of a public customer and did not have reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of the customer's financial situation, needs, and ability to evaluate the risks of such trading given the customer's knowledge and experience in financial matters and/or securities investments. **(NASD Case #C02990056)**

**Joshua David Arnold (CRD #828189, Registered Principal, Edina, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in a principal capacity for 30 days. Arnold also agreed to refrain for one year from accepting or maintaining employment in a sales capacity with any NASD member unless that firm has formulated special supervisory procedures to oversee and monitor his sales practices with customers. The firm must submit the special supervisory procedures to the NASD prior to, or no later than, 30 days after Arnold's association with the firm. Without admitting or denying the allegations, Arnold consented to the described sanctions and to the entry of findings that he recommended numerous purchases and sales of securities to public customers without having a reasonable basis for believing that

such recommendations were suitable in view of their investment objectives, financial resources, frequency of transactions, and type of securities. **(NASD Case #C04000003)**

**Aron K. Benny (CRD #2927597, Associated Person, Woodside, New York)** was barred from association with any NASD member in any capacity. The sanction is based on findings that Benny failed to respond to NASD requests for information regarding possible misappropriation of funds. **(NASD Case #C10990133)**

**Howard Charles Berkowitz (CRD #1293296, Registered Principal, Highland Mills, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$20,000, suspended from association with any NASD member in any capacity for 90 days, required to disgorge \$3,731 in commissions to the estate of a public customer, and required to requalify as a general securities representative within 90 days from the date this AWC is issued by the NASD. If Berkowitz fails to requalify within the mandated period, he will be suspended from association with any member firm in that capacity until such exam is successfully completed. Without admitting or denying the allegations, Berkowitz consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without written authority and without the knowledge and approval of his member firm. The findings also stated that Berkowitz failed to make reasonable efforts to obtain current information concerning the customer's investment objectives and financial, tax, and health status before making recommendations pursuant to his verbal discretionary authority. **(NASD Case #C10000020)**

**Gregory Dean Boynton (CRD #1983783, Registered Representative, Walnut Creek, California)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Boynton consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents. **(NASD Case #C01990019)**

**Brent Paul Calderone (CRD #2661084, Registered Representative, Staten Island, New York)** was barred from association with any NASD member in any capacity. The sanction is based on findings that Calderone failed to respond to NASD requests for information regarding possible unauthorized transactions in a customer account. **(NASD Case #C10990154)**

**Daniel Alan Camm (CRD #2568664, Registered Representative, Tampa, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine is due and payable prior to reassociation with a member firm following the suspension or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Camm consented to the described sanctions and to the entry of findings that he sold a \$13,500 promissory note to a public customer without obtaining prior written approval from his firm. **(NASD Case #C07000007)**

**Steven Berti Carosso (CRD #1476354, Registered Principal, Hackensack, New Jersey)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Carosso consented to the described sanctions and to the entry of findings that he submitted a request for payment form to his member firm that misrepresented the nature of the expense with a fictitious invoice for reimbursement of \$6,600 in alleged expenses. **(NASD Case #C10000025)**

**Paul E. Colontino (CRD #2407870, Registered Representative, Brooklyn, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Colontino used an impostor to take the Series 7 exam on his behalf. The findings also stated that Colontino failed to respond to NASD requests for information and for on-the-record interviews. **(NASD Case #C10990059)**

**Lance Reed Dalton (CRD #1944499, Registered Representative, Isle of Palms, South Carolina)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Dalton engaged in outside business activities and private transactions and failed to provide prior notification to, or to request approval from, his member firms. The findings also stated that Dalton failed to respond to NASD requests for an on-the-record interview. **(NASD Case #C07990044)**

**John Thomas Davis (CRD #62264, Registered Representative, East Pittsburgh, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanction was

based on findings that Davis received checks totaling \$40,188 from a public customer for deposit in the customer's account at his member firm, failed to deposit the checks, made the checks payable to himself, and converted the funds to his own use. The findings also stated that Davis failed to respond to NASD requests for information. **(NASD Case #C9A990052)**

**Michael Anthony Dietze (CRD #2692450, Registered Representative, Iselin, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Dietze consented to the described sanction and to the entry of findings that he failed to amend his Form U-4 to disclose that he was the subject of an investigation by the New York County District Attorney's Office. **(NASD Case #C9B000001)**

**Charles John Distefano (CRD #2198727, Registered Principal, Medford, New York)** was fined \$25,000, suspended from association with any NASD member in any capacity for two years, and ordered to requalify by exam for unauthorized trading and failure to execute a customer order. Distefano was also barred from membership with any NASD member in any capacity for nondisclosures, misrepresentation, and failure to respond. In addition, Distefano was required to pay \$146,983.13, plus pre-judgment interest, in restitution to public customers. The fine is due and payable prior to reentry in the securities industry. The sanctions were based on findings that Distefano made materially false and misleading statements and failed to disclose material facts in

connection with the sale of securities to public customers including the risks involved with investments and the financial remuneration he would receive from sales of securities. The findings also stated that Distefano failed to execute a customer's order to sell securities and effected unauthorized transactions in the accounts of public customers. In addition, Distefano failed to respond to NASD requests to give testimony and to produce documents. **(NASD Case #C3A990008)**

**Herman Epstein (CRD #201696, Registered Principal, Franklin Lakes, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Epstein failed to respond to an NASD request for information and to appear for testimony in connection with an investigation. **(NASD Case #CAF980013)**

**Nathaniel Gaddy (CRD #1069005, Registered Representative, Mount Laurel, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gaddy consented to the described sanction and to the entry of findings that he caused unauthorized withdrawals totaling \$75,600 from the variable annuity contract of a public customer and converted the proceeds to his own use and benefit. The findings also stated that Gaddy failed to respond to NASD requests for information and documents. **(NASD Case #C9A000003)**

**Harry Gliksman (CRD #223138, Registered Principal, Los Angeles, California)** was

censured, suspended from association with any NASD member in any capacity for six months, and required to requalify as a general securities representative. The SEC sustained the sanctions following appeal of a NAC decision. The sanctions were based on findings that Gliksman made unsuitable recommendations to a public customer.

Gliksman has appealed this action to the U.S. Court of Appeals for the Ninth Circuit and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C02960039)**

**James Joseph Harrington, Jr. (CRD #1592332, Registered Representative, Coral Springs, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 10 business days and required to pay \$9,000 in restitution to a public customer. Without admitting or denying the allegations, Harrington consented to the described sanctions and to the entry of findings that he executed discretion in the account of a public customer without obtaining prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The findings also stated that Harrington made baseless price predictions and/or predictions of returns in recommendations to public customers. In addition, Harrington negligently made statements of fact which were untrue or omitted to state facts necessary to make the statements not misleading, in light of the circumstances in which they were made. **(NASD Case #C04000005)**

**Daniel Scott Hernandez (CRD #2673877, Registered Representative, Hicksville, New York)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hernandez consented to the described sanction and to the entry of findings that he made a cold call to a public customer, misrepresenting his background and experience and the number of branches his firm had across the country. The findings also stated that Hernandez failed to appear for an NASD on-the-record interview regarding the cold call to the customer. **(NASD Case #C10990198)**

**Steven Eugene Herron (CRD #1860442, Registered Representative, Largo, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Herron consented to the described sanction and to the entry of findings that he effected sales of promissory notes to public customers, for which he received \$23,124.35 in commissions, without obtaining prior written approval from his member firm. **(NASD Case #C07000006)**

**Danforth Earl Holley (CRD #2037314, Registered Representative, Grosse Pointe, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Holley consented to the described sanction and to the entry of findings that he opened a checking account and obtained a

credit card in the name of a public customer. The findings also stated that Holley sold securities in the customer's account and spent the proceeds totaling approximately \$363,000 for his own use and benefit. **(NASD Case #C8A000009)**

**Daniel Hong (CRD #2497385, Registered Principal, Chicago, Illinois)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for one year. The fine is due and payable prior to reassociation with a member firm following the suspension or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Hong consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and information in a timely manner. **(NASD Case #C8A990079)**

**Michael Earl Hughes (CRD #1099917, Registered Principal, Highland Park, New Jersey)** was fined \$5,000, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$783.24 in restitution to his member firm. The fine is due and payable upon reentry into the securities industry. The sanctions were based on findings that Hughes accessed his account records for his firm's "advantage" credit line, increased his line of credit by \$800, and used the increased line of credit for transactions and purchases totaling \$783.24, without the firm's consent or authority. **(NASD Case #C9B990004)**

**Joseph Charles Hutchison (CRD #2031542, Registered Representative, Orion, Michigan)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hutchison consented to the described sanction and to the entry of findings that he participated in private securities transactions for compensation and failed to give written notice of his intention to engage in such activities to his member firm and failed to receive written approval from his firm prior to engaging in such activities. **(NASD Case #C8A000007)**

**Henry Irvin Judy, Jr. (CRD #2348528, Registered Representative, Hilton Head, South Carolina)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Judy converted the funds of a public customer by depositing the customer's check into his business checking account. The findings also stated that Judy engaged in improper communications with the public by distributing sales materials that contained false and misleading information. Judy also failed to respond to NASD requests for information. **(NASD Case #C07990024)**

**Steven Nelson Long (CRD #2948957, Registered Representative, Murray, Utah)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine is due upon reentry into the securities industry. Without admitting or denying the allegations, Long consented to the described sanctions and to the entry of findings that he effected transactions in a customer account

without the customer's authorization. **(NASD Case #C3A000003)**

**Ricky Allen Lubinsky (CRD #1082031, Registered Principal, Orlando, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lubinsky engaged in unsuitable and excessive trading in the accounts of a public customer. The findings also stated that Lubinsky failed to respond to NASD requests for information and documents. **(NASD Case #C07990006)**

**Edward Daniel McKechnie (CRD #2321046, Registered Representative, North Branford, Connecticut)** was barred from association with any NASD member in any capacity. The sanction was based on findings that McKechnie impersonated insurance policyholders in telephone calls, requested and obtained unauthorized changes of address for the policyholders which changed their addresses to his home address, and requested dividend releases that were sent to his home. The findings also stated that McKechnie forged the policyholders' signatures on the checks and deposited the checks into his personal account, thereby converting funds belonging to his customers to his own use and benefit. **(NASD Case #C11990043)**

**Leo Morrison (CRD #2618884, Registered Representative, Bonita Springs, Florida)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for four months. Without admitting or denying the allegations, Morrison consented to the described sanction and to the entry of findings that he engaged in private

securities transactions for compensation without providing written or oral notification to his member firm. The findings also stated that Morrison sent sales literature to a public customer and failed to have it approved by a registered principal of his firm prior to its use. **(NASD Case #C07990061)**

**Robert Franklin Mueller (CRD #2756171, Registered Representative, Edison, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mueller consented to the described sanction and to the entry of findings that he signed the signatures of public customers on property and casualty takeover request forms without the knowledge or consent of the customers and falsely testified during an NASD on-the-record interview that the customers had signed the forms. **(NASD Case #C9B000002)**

**Michael Stanley Muscarella (CRD #2530037, Registered Principal, East Brunswick, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Muscarella consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for documents and/or information. **(NASD Case #C10990218)**

**Erik Michael Nerzig (CRD #2616141, Registered Representative, Melville, New York)** submitted a Letter of Acceptance, Waiver, and Consent

pursuant to which he was fined \$18,189 (including \$3,189 representing disgorgement of commissions earned), suspended from association with any NASD member in any capacity for 60 business days, and required to pay \$43,874, plus interest, in restitution to a public customer. Nerzig must also requalify by exam as a general securities representative within 90 days from the date the AWC is accepted by the NAC. If he fails to requalify within this period, he will be suspended from acting in such capacity until the exam is successfully completed. Payment of the fine and satisfactory proof of payment of restitution will be prerequisites of any application for reentry. Without admitting or denying the allegations, Nerzig consented to the described sanctions and to the entry of findings that he solicited a public customer to purchase units in an IPO and minimized the investment risks and made unwarranted price predictions. The findings also stated that Nerzig's recommendation was unsuitable because the stock was speculative and involved a high degree of risk. **(NASD Case #C10000016)**

**Duane Arthur Nordquist (CRD #1402482, Registered Representative, Panora, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$13,000 and barred from association with any NASD member in any capacity. Payment of the fine shall be a prerequisite for consideration of any future application for registration with any member firm. Without admitting or denying the allegations, Nordquist consented to the described sanctions and to the entry of findings that he offered and sold promissory notes for compensation to public customers and failed to provide written notice

to, or to receive written authorization from, his member firm to participate in private securities transactions. **(NASD Case #C8A000002)**

**Alex Osterneck (CRD #1663321, Registered Representative, Bryn Mawr, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Osterneck consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information completely or to respond in a timely manner. **(NASD Case #C9A990050)**

**Charles Golden Paxton (CRD #1035500, Registered Representative, Snohomish, Washington)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Paxton failed to respond to NASD requests for information. **(NASD Case #C3B990026)**

**Robert Wayne Rodgers (CRD #2596775, Registered Representative, Dothan, Alabama)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$4,850 and suspended from association with any NASD member in any capacity for five days. The fine is due upon reentry to the securities industry. Without admitting or denying the allegations, Rodgers consented to the described sanctions and to the entry of findings that he failed to inform and to request permission, in writing, from his member firm to maintain third party trading authorization in order to trade securities accounts with another firm. **(NASD Case #C05990058)**

**Thomas August Rusch (CRD #2685990, Registered Representative, Greenville, South Carolina)** was fined \$2,500 and suspended from association with any NASD member in any capacity for 60 days. The sanctions were based on findings that Rusch failed to respond to an NASD request for information in a timely manner. **(NASD Case #C07990047)**

**Desh Deepak Sahni (CRD #2652421, Registered Representative, Glen Cove, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 prior to reassociation with a member firm or prior to any application requesting relief from a statutory disqualification. Without admitting or denying the allegations, Sahni consented to the described sanctions and to the entry of findings that he failed to disclose an arrest on a compliance disclosure form that he submitted to a member firm. **(NASD Case #9B000005)**

**Joseph John Salerno, III (CRD #1846102, Registered Principal, Margate, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Salerno consented to the described sanctions and to the entry of findings that, as branch manager of a member firm, he sold penny stocks to public customers without obtaining signed receipts of the required penny stock transaction risk disclosure statement and trade agreements

and signed written statements relating to the purchaser's financial condition, investment experience, and investment objectives. Transactions also took place without disclosing the bid and ask price prior to the transactions or at the time of confirmation, and without disclosing compensation to the firm and registered representative at the time of confirmation. The findings also stated that Salerno engaged in private securities transactions without providing prior written notice to, and receiving written approval from, his member firm. In addition, Salerno accepted monies for investment without signed subscription agreements or any other indication that the customers intended to purchase Class "A" shares of the security's common stock and allowed an unregistered person to solicit public customers to invest. Salerno also failed to supervise registered representatives properly to ensure compliance with applicable rules and regulations and to prevent fraudulent price predictions and misrepresentations. Moreover, while the member firm participated in a distribution of shares of a common stock purchased from a selling security holder, Salerno posted bid and ask price quotations for the stock; he purchased, and permitted other registered representatives at the firm to purchase, shares from retail customers and other market participants; and he solicited, and permitted other registered representatives at the firm to solicit, purchases of the stock from retail customers and other market participants. **(NASD Case #C04000004)**

**Harlan James Scott (CRD #1545214, Registered Representative, Fort Collins, Colorado)** submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Scott consented to the described sanctions and to the entry of findings that he failed to amend his Form U-4 to disclose a guilty plea to a felony. **(NASD Case #C3A000004)**

**Robert Murray Smith (CRD #428820, Registered Representative, Bryn Mawr, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 45 days, suspended from association with any NASD member in any principal capacity for one year, and required to requalify by passing the Series 7 exam within 90 days after the acceptance of this AWC. If Smith fails to requalify within the 90 days, he may not continue to function as a registered representative until he does so. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase and sale transactions in the accounts of public customers without having reasonable grounds for believing that such recommendations and resultant transactions were suitable based on financial situation, investment objectives, needs, size and frequency of transactions, and the nature of the accounts. The findings also stated that Smith exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts

as discretionary by his member firm. **(NASD Case #C9A000002)**

**Ronna Sue Stark (CRD #2136690, Registered Representative, Lacey, Washington)** was barred from association with any NASD member in any capacity. The sanctions were based on findings that Stark failed to respond to NASD requests for information regarding a possible conversion of customer funds. **(NASD Case #C3B990030)**

**Ralph Anthony Stingo (CRD #729783, Registered Representative, Bellerose Terrace, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Stingo consented to the described sanctions and to the entry of findings that he deposited \$5,467.23 of customer funds into his personal account, thereby commingling the monies with other funds. **(NASD Case #C10000017)**

**Matthew Franklin Taylor, Jr. (CRD #3013563, Registered Principal, Dayton, Ohio)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Taylor failed to respond to NASD requests for information concerning his termination from a member firm and his possible participation in private securities transactions. **(NASD Case #C8B990027)**

**Thomas Arthur Turnure (CRD #1316278, Registered Principal, Wyckoff, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to

requalify as a general securities principal. Without admitting or denying the allegations, Turnure consented to the described sanctions and to the entry of findings that he failed to report customer complaints received by his former member firm to the NASD. **(NASD Case #C10000003)**

**Gary Lee Walker (CRD #2622510, Registered Representative, Sacramento, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$10,000 and barred from association with any NASD member in any capacity. The fine is due and payable prior to any membership application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Walker consented to the described sanctions and to the entry of findings that he borrowed \$10,400 from public customers when he knew that he would be unable to repay the loans when due. **(NASD Case #C01000002)**

**Susan Marie Wuest (CRD #1395441, Registered Representative, Gilbert, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wuest consented to the described sanction and to the entry of findings that she converted approximately \$194,000 from the accounts of public customers and approximately \$112,000 from her member firm to her own use. The findings also stated that, in connection with her conversion of funds from her firm, Wuest forged the required second signature on checks so that she could deposit the checks into her own account. **(NASD Case #C3A000002)**

## Individual Fined

**Leonard Alan Neuhaus (CRD #1871294, Registered Principal, Roslyn Heights, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and required to requalify by exam in all capacities within 90 days of the acceptance of this AWC by the NASD. If Neuhaus fails to requalify within this mandated period, he will be suspended from functioning in that capacity with any member firm until such exam is successfully completed. Without admitting or denying the allegations, Neuhaus consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to the designation of supervisory personnel, trade reporting, best execution, the Limit Order Protection Interpretation, Order Handling Rules, registration of persons with the NASD, the use of SOES, recordkeeping, locked and crossed markets, and anti-competitive practices. **(NASD Case #CMS990179)**

## Decision Issued

The following decision has been issued by the DBCC or the Office of Hearing Officers and has been appealed to or called for review by the NAC as of February 15, 2000. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

**Jim Newcomb (CRD #1376482, Registered Principal, Fort Collins, Colorado)** was fined \$32,000 and suspended from association with any NASD member in any capacity for 90 days. The sanctions were based on findings that Newcomb engaged in private securities transactions, received selling compensation for these transactions, and failed to give prior written notice to, or to receive written approval from, his member firm.

Newcomb has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C3A990050)**

## Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the 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.

**Gerard Bruzzese (CRD #2540877, Registered Representative, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that he effected transactions in the joint account of public customers without their knowledge, authorization, or consent. The complaint also alleges that Bruzzese failed to appear for an NASD on-the-record interview. **(NASD Case #C10000023)**

**Richard Alan Frondorf (CRD #2054157, Registered Representative, Abita Springs, Louisiana)** was named as a respondent in an NASD complaint alleging that he caused checks in the total amount of \$6,500 to be sent to public customers without their prior knowledge or consent, thereby creating margin loan balances in their accounts. The complaint also alleges that Frondorf induced the customers to provide false written statements concerning the activity which he tendered to his member firm. **(NASD Case #C05000002)**

**Patricia Leonora Gill (CRD #1079696, Registered Representative, Torrance, California)** was named as a respondent in an NASD complaint alleging that she sent a letter without the knowledge or consent of public customers, requesting liquidation of their interest in a mutual fund and to send the proceeds to her member firm. The complaint further alleges that a \$281,198.51 proceeds check was deposited in the firm's general account and was credited to an account of which Gill was a co-owner with her brother. The complaint further alleges that Gill converted the proceeds to her own use and benefit and no part of the proceeds were ever credited to the customers' account. In addition, the complaint alleges that Gill failed to

respond to NASD requests for information. **(NASD Case #C02000001)**

**Richard Scott Ginsberg (CRD #1516467, Registered Representative, Ft. Lauderdale, Florida)** was named as a respondent in an NASD complaint alleging that he made baseless price predictions and/or predictions of returns in his recommendations to public customers. The complaint also alleges that Ginsberg defrauded customers by recklessly making misstatements and omissions of material fact. The complaint further alleges that, through his actions, customers incurred realized and unrealized losses of at least \$850,000 and Ginsberg received ill-gotten gains in the form of commission income. **(NASD Case #C04000002)**

**Mark Lund Griffis (CRD #2767069, Registered Representative, West Palm Beach, Florida)** was named as a respondent in an NASD complaint alleging that he effected unauthorized transactions in the account of a public customer. The complaint also alleges that Griffis effected transactions in another public customer's individual and IRA accounts pursuant to oral discretion, without written authority and without the account approved as a discretionary account by his member firm. The complaint further alleges that Griffis failed to respond to NASD requests for information. **(NASD Case #C07000004)**

**Jeffrey Alan Klawitter (CRD #1439576, Registered Representative, Downers Grove, Illinois)** was named as a respondent in an NASD complaint alleging that he received checks totaling \$1,550 from public customers to pay for a financial plan or an asset allocation plan,

cashied the checks, and used the funds for his own benefit or for some purpose other than the customers' benefit. The complaint also alleges that Klawitter failed to respond to NASD requests for documents and information. **(NASD Case #C8A000006)**

**Joel Mark Warren (CRD #2676655, Registered Principal, Hyattsville, Maryland)** was named as a respondent in an NASD complaint alleging that he caused \$286,000 to be withdrawn from the securities account maintained by a public customer and to be transferred, in part, to the customer's bank account and, in part, to another bank account, without the authorization or consent of the customer. The complaint also alleges that Warren failed to respond to NASD requests to provide a written report concerning matters in a Form U-5. **(NASD Case #C9A000004)**

**John C. Welling (CRD #2837015, Registered Representative, Lee's Summit, Missouri)** was named as a respondent in an NASD complaint alleging that he obtained personal checks for the bank account of an individual in his firm, made the checks payable to himself, signed the individual's name to the checks, deposited them into an account Welling controlled, and converted the funds to his own use. The complaint alleges that Welling converted \$6,500. **(NASD Case #C04000008)**

**Michael Edmond Zulick (CRD #1834341, Registered Principal, Akron, Ohio)** was named as a respondent in an NASD complaint alleging that he converted payment for order flow checks payable to his member firm to his personal use. The complaint also alleges that Zulick charged numerous items for personal use to his firm's corporate

credit card and paid for the charged items with firm funds, thereby converting firm funds to his own use. The complaint further alleges that Zulick wrote corporate checks to himself or for cash which he used for his personal benefit and paid for personal items with checks drawn on his firm's checking account, thereby converting firm funds to his personal use. **(NASD Case #C8B000001)**

### **Firm Suspended**

The following firm was 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 8210 and Article VII, Section 2 of the NASD By-Laws. 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.

**Bright Cove Securities, Inc.,**  
Virginia Beach, Virginia  
(February 10, 2000)

### **Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations**

**Cruz, Paul,** Colorado Springs, Colorado (February 17, 2000)

**Gates, Donald R.,** Cabot, Arkansas (February 17, 2000)

**McVicar, Patrick J.,** Jersey City, New Jersey (February 17, 2000)

**Palma, Victor H.,** Staten Island, New York (February 17, 2000)

**Stone, Michael S.**, Eagan, Minnesota (February 17, 2000)

### **NASD Regulation Charges U.S. Rica Financial, Inc.; Firm President With Obtaining Secret Profits From Customers**

NASD Regulation announced that it issued a complaint charging U.S. Rica Financial, Inc., San Jose, CA and its president and owner, Vinh Huu Nguyen, with misrepresenting to customers, on its Web Site, *www.usrica.com*, and on trade confirmations, the amounts that the firm was charging customers for online trades. The complaint alleges that U.S. Rica and Nguyen advertised at different times on its Web Site that customers would be charged a fixed low commission for Internet trades, that it is "Ranked Top 10 for Overall Low Cost" by *Gomez.com*, and that trades would be done for free during a 1999 year-end, "Millennium Special." In fact, the firm was making secret profits on its customer trades by fraudulently charging undisclosed markups and markdowns.

In the complaint, NASD Regulation alleges that U.S. Rica and Nguyen violated the NASD's advertising rule, engaged in fraudulent conduct, issued false and misleading confirmations, and failed to maintain the necessary records regarding transactions in its inventory account. U.S. Rica's activities resulted in secret profits totaling more than \$37,000 from trading in January 1999. The complaint further alleges U.S. Rica made secret profits of nearly \$19,000 from 21 trades during December 1999 on a day when it advertised to customers that all Internet trades would be done for free. The firm is also alleged to have made more than \$58,000 in undisclosed charges to customers

in over 300 trades throughout the last two years. NASD Regulation charges that as recently as January 5, 2000, U.S. Rica and Nguyen charged customers undisclosed amounts for trades.

NASD Regulation alleges that Nguyen, through U.S. Rica, was placing trades for its customers on a principal, rather than agency basis. When assuming the role of principal in a trade, a brokerage firm takes an order from customers and buys the securities from or sells them to its customers from its own account, and charges a markup. In completing an agency transaction, the firm takes a customer's order, goes to the market, fills it, and then charges a commission.

In violation of NASD rules, U.S. Rica indicated to customers that their orders had been filled on an "agency basis" and that they would be charged a low, \$4.95 commission. NASD Regulation alleged that U.S. Rica and Nguyen actually filled customers' orders by purchasing the stock for the firm's inventory (acting as principal) and then selling it to customers charging a markup as well as the \$4.95 commission. For example, in one sale, a customer placed an order for 500 shares of a listed security. Nguyen purchased the stock for 22 3/8 in U.S. Rica's inventory account. He then sold the shares from the firm's inventory account to the customer for the price of \$23.00 per share. The customer's confirmation statement reflected that the trade was an agency trade with a commission of \$4.95. In reality, U.S. Rica's markup, and secret profit, was \$312.50 – a fact not disclosed to the customer.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD

Regulation 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 this complaint is unadjudicated, the respondents should be contacted before drawing any conclusion regarding the allegations. This case was investigated by NASD Regulation's San Francisco District Office.

### **NASD Regulation Announces Eight Day-Trading Enforcement Actions**

NASD Regulation announced the filing of eight new enforcement actions in the day-trading area. These formal disciplinary actions are the direct result of NASD Regulation's focused examinations of day-trading firms conducted over the course of the past year.

These eight cases include allegations and, in some settled cases, findings of violations in the following areas:

- Misuse of customer funds and securities;
- Improper lending and margin practices;
- Exaggerated and misleading advertising;
- Violations of NASD short sale rules;
- Improperly registered persons;
- Improper use of SOES; and
- Supervisory inadequacies.

#### **Misuse Of Funds**

Two of the cases involve allegations of misuse of funds, including one in which the owner of a day-trading management

company solicited more than \$150,000 from outside investors, falsely representing that these moneys would be used for “risk-free” loans to day-trading customers of the firm. In addition, the investors were promised returns of at least 15 percent per year or 20 percent of the profits earned by the day traders to whom the money was lent. Instead, the funds were loaned to customers with no controls or restrictions, were improperly used for branch operating expenses, and were eventually lost.

**Improper Lending/Margin Practices**

In two other cases, NASD Regulation found violations of its rules in connection with margin calls, including one in which a firm’s principal allowed a customer to effect 120 transactions after the customer’s account was coded “no more business” by the clearing firm for failing to meet a margin call. In another case, the firm’s registered representative established a separate entity account, which then loaned funds to firm customers to meet Regulation T margin calls.

**Violations Of Advertising Rules**

Four of the day-trading actions include allegations or findings of violations of the NASD’s advertising rules, including instances in which firms placed exaggerated and potentially misleading advertising on the Internet, as well as in local print and radio media. These firms typically exaggerated the ability of customers to access markets immediately, without disclosing the risks inherent in day-trading strategies, including market volatility. One advertisement told prospective day traders that they could “control [their] own destiny through electronic day trading” without any corresponding disclosure of the risks.

**Violations Of Short Sale Rules**

Violations of the NASD’s short sale rules were found in three cases, including failures to make affirmative determinations that securities could be delivered prior to the execution of each customer short sale transaction. In one case, a firm impermissibly allowed its day-trading customers to review daily postings of securities available to be borrowed and to make their own affirmative determinations of whether the securities could be borrowed prior to executing short sale transactions.

**Inadequate Supervision/Improper Registration**

NASD Regulation, in its formal complaints alleged and, in certain settled cases, made findings that firms failed to ensure that individuals actively engaged in their day-trading operations were properly registered, including one case in which the individual running the firm’s day-trading business was not registered as a principal. In other cases, employees of the firm were acting as equity traders without having completed the NASD’s Series 55 registration requirements. In one case, the firm allowed individuals to input trades for customers for periods of several weeks, without registering them in any capacity with the firm.

**Supervisory Deficiencies**

Certain actions involve serious supervisory deficiencies, including one case in which a firm engaged in day-trading activities without having any written procedures in place to address that area of the firm’s business.

The sanctions in the group of settled actions include censures, suspensions and individual fines, and fines against firms ranging from \$13,000 to \$37,500.

These actions were investigated and filed by NASD Regulation District Offices in New Orleans, Dallas, and Chicago.

**DAY TRADING ENFORCEMENT ACTIONS INCLUDE:**

**1. 1-800DAYTRADE.COM, Inc., Richardson, Texas – Case #C06000006**

1-800DAYTRADE.COM, Inc. settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

- using radio and newspaper advertisements that reflect exaggerated and unwarranted statements and failing to file advertisements with the NASD;
- failing to register traders;
- executing short sale on a “downtick” violations;
- failing to maintain accurate books and records; and
- failing to maintain adequate supervisory procedures.

The firm was censured and fined \$25,000, which includes unlawful profits of \$7,500.

**2. Donnelly & Co., Inc., Midland, Texas – Case #C06000004**

Donnelly & Co., Inc., along with its President, George Arthur Donnelly, III, settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

- executing proprietary trades through SOES in violation of the SOES rules;
- distributing a press release and promotional materials reflecting exaggerated and unwarranted

statements in violation of the advertising rules;

- failing to adhere to Continuing Education — Firm Element requirements; and
- failing to maintain adequate supervisory procedures.

Both the firm and Donnelly were censured and fined. The firm was fined \$17,500, of which the firm and George Donnelly are jointly responsible for \$15,000.

### **3. Self Trading Securities, Inc., Austin, Texas – Case #C06000005**

Self Trading Securities, Inc., along with John A. Pearson, are named as respondents in this complaint. The complaint sets forth allegations of:

- registration violations (use of licensed, but unregistered order input personnel);
- advertising violations (use of an Internet Web site to reflect exaggerated and unwarranted statements);
- Continuing Education — Firm Element; and
- inadequate supervisory procedures.

### **4. LaSalle St. Securities, L.L.C., Chicago, Illinois – Case #C8A000015**

LaSalle St. Securities, L.L.C. settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

- failing to designate a branch as an Office of Supervisory Jurisdiction;

- publishing newspaper advertisements which contained exaggerated and unwarranted statements;
- failure to evidence principal approval of new day-trading accounts; and
- trade reporting violations.

The firm was censured and fined \$13,000.

### **5. Heath A. Butler, et al., New Orleans, Louisiana – Case #C05000006**

Heath A. Butler and Don A. Rouzan are named in this complaint, which alleges:

- misuse of funds and fraud in the sale of securities consisting of investment contracts by which investors financed day-traders — to date, less than 10 percent of investors' money has been repaid having been lost by day traders or consumed by branch office expenses; and
- conducting private securities transactions in connection with the sale of these same securities.

### **6. Addison Securities, Inc., et al., Dallas, Texas – Case #C050000**

Addison Securities, Inc., along with Abel Garcia, Jr., without admitting or denying NASD Regulation allegations, settled the following charges. The findings include:

- the firm, acting through Garcia, lent funds to public customers through an entity owned in part by Garcia, for the purpose of meeting Regulation T margin calls;
- Garcia exercised discretion in a customer account without written authorization; failed to mark

trades in the account as discretionary; and signed the customer's name to documents, including letters of authorization, with oral, but not written authorization;

- the firm allowed Garcia to actively engage in the management of the firm's day-trading operations without requiring him to be registered as a principal;
- short sale rule violations, including exercising short sale transactions on a "downtick"; failing to make affirmative determination that stocks sold short could be delivered or borrowed; and failing to appropriately mark transactions as short sale; and
- deficiencies in its written supervisory procedures, specifically with respect to its day-trading operations, which were in draft form only, despite the fact that the firm conducted this business for 16 months.

The firm is censured and fined \$37,500, portions of which are joint and several against Garcia; Garcia is fined an additional \$5,000 and suspended for three weeks.

### **7. James Han, Case #C05000005**

The allegations in this complaint against James Han, formerly with Landmark Securities Corporation, include the following:

- unauthorized transfer of customer funds to Han's account;
- unauthorized transfer of customers' securities to Han's account; and
- failure to respond to staff requests for information.

**8. Choice Investments, Inc.,  
Austin, Texas – Case #C050000**

Choice Investments, Inc., along with a firm principal, Mark Wright, settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

- Wright allowed a customer to continue trading after the account had been coded “no more business” by the clearing firm; specifically, Wright transferred the customer’s transactions into an account that he controlled, and then, after three weeks, transferred positions back into the customer’s account after it had been cleared to trade again;
- the firm permitted an individual to execute equity security trades without the proper registration;
- the firm executed short sale transactions without having made an affirmative determination that the stock could be borrowed; and
- the firm’s supervisory procedures were deficient and the firm relied on customers to make their own affirmative determinations that stock could be borrowed, prior to entering into short sale transactions.

The firm is censured and fined \$27,000. The firm and Wright are jointly responsible for \$12,500 of that amount. Wright is also suspended for three weeks in all capacities.

**NASD Regulation Expels LT  
Lawrence & Co., Inc., Bars  
Principals For Fraud, And  
Obtains \$275,000 In  
Restitution For Investors**

NASD Regulation announced that it has expelled LT Lawrence & Co., Inc., of New York, NY, from the securities industry and permanently barred its Chief Executive Officer, Lawrence Principato, and its President, Todd E. Roberti, for defrauding investors through excessive markups and markdowns in 350 transactions. In settling the charges, Principato and Roberti have agreed to fully reimburse the 300 LT Lawrence customers, in 37 states and the United Kingdom, who sustained \$275,000 in damages.

NASD Regulation originally filed a complaint against LT Lawrence, Principato, and Roberti in September 1998 alleging that they charged the firm’s customers excessive or fraudulent markups or markdowns in transactions of EcoTyre Technologies, Inc. Common Stock and Class A Warrants. As alleged in the complaint, the fraudulent transactions occurred while LT Lawrence, after acting as managing underwriter for EcoTyre’s initial public offering, dominated and controlled the trading activity of these securities from February 6, 1996 through March 29, 1996. As part of this settlement, Principato and Roberti neither admitted nor denied the allegations.

In the September 1998 complaint, NASD Regulation also alleged that

the firm’s Compliance Officer, Mitchell J. Halpern, failed to establish, implement, and enforce supervisory procedures designed to prevent this type of conduct. As part of Halpern’s settlement, also announced, he neither admitted nor denied the allegations and has been suspended from associating with any NASD member, in any capacity, for a period of 30 days and fined \$20,000.

In July 1999, LT Lawrence’s Head Trader, Thomas J. Dalton, settled a related disciplinary proceeding by consenting, without admitting or denying NASD Regulation’s allegations, to findings that he also participated in the fraud. Mr. Dalton was suspended from associating with any NASD member, in any capacity for a period of three months and fined \$40,000.

NASD Regulation did not allege any wrongdoing on the part of EcoTyre.

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# For Your Information

## FOCUS Filing Dates

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) would like to remind members of their obligation to file the appropriate FOCUS reports by their due dates. The following schedule outlines remaining due dates for 2000 reports. Questions regarding the information to be filed can be directed to the appropriate District Office. Business questions as to how to file the FOCUS report, resetting passwords, and technical questions concerning system requirements, file uploads, and submission problems for Web-Based FOCUS can all be directed to (800) 321-NASD.

### FOCUS Due Dates For Remaining 2000 Reports

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#### *Annual Schedule I For 2000 Year End*

#### *Due Date*

2000 FOCUS Schedule I

January 25, 2001

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#### *Monthly And Fifth\* FOCUS II/IIA Filings For Remaining 2000 Reports*

#### *Period Ending*

#### *Due Date*

February 29, 2000

March 23, 2000

April 30, 2000

May 23, 2000

May 31, 2000

June 23, 2000

July 31, 2000

August 23, 2000

August 31, 2000

September 26, 2000

October 31, 2000

November 24, 2000

November 30, 2000

December 26, 2000

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\*A fifth FOCUS report is an additional report that is due from a member whose fiscal year end is a date other than the calendar quarter.

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#### *Quarterly FOCUS Part II/IIA Filings For 2000 Reports*

#### *Quarter Ending*

#### *Due Date*

March 31, 2000

April 26, 2000

June 30, 2000

July 26, 2000

September 30, 2000

October 24, 2000

December 31, 2000

January 25, 2001

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### **NASD Regulation Delays Implementation Date Of Phase III Of OATS From July 31, 2000 To October 31, 2000**

On March 9, 2000, NASD Regulation filed with the Securities and Exchange Commission (SEC) for immediate effectiveness a rule proposal that extends the implementation date of Phase III of the Order Audit Trail System (OATS<sup>SM</sup>) to **October 31, 2000**. As provided under National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 6957, Phase III applies the recording and reporting requirements under the OATS Rules to all manual orders.

Since the implementation of OATS, NASD Regulation has been closely

reviewing OATS activities with the goal of identifying ways in which to improve OATS by enhancing its effectiveness as a regulatory tool, while reducing the burdens it imposes. In this regard, NASD Regulation is considering certain changes and enhancements to OATS.

Several of these enhancements that the staff is considering would change the requirements that will become effective as part of Phase III under current OATS Rules. To provide NASD Regulation adequate time to fully analyze and consider these changes and determine whether further proposed rule changes are appropriate, NASD Regulation has proposed that the

effective date of Phase III implementation be extended from July 31, 2000 to October 31, 2000. If we are able to amend the OATS requirements, we will communicate any changes to you as soon as possible.

### **Questions/Further Information**

Questions concerning this information may be directed to Stephanie M. Dumont, Assistant General Counsel, Office of General Counsel, NASD Regulation at (202) 728-8176.

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### INFORMATIONAL

## Mutual Fund Performance

### NASD Regulation Reminds Members Of Their Responsibilities When Advertising Recent Mutual Fund Performance

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Advertising/Investment Companies
- Internal Audit
- Legal & Compliance
- Mutual Fund
- Registered Representatives
- Senior Management
- Variable Contracts

### KEY TOPICS

- Advertising
- Mutual Fund Performance

### Executive Summary

Recent unusually strong equity market performance helped some mutual funds, particularly those that are heavily invested in technology stocks, to achieve extraordinary total return figures during the last year (or shorter period). Some members are using advertisements that promote this total return information to attract new investors. NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) reminds members of their responsibilities to present fund performance information in a fair and balanced manner and not to create unrealistic investor expectations with regard to future fund performance.

### Questions/Further Information

You may direct questions concerning this *Notice* to Thomas M. Selman, Vice President, Investment Companies/Corporate Financing, NASD Regulation, at (202) 728-8068; Thomas A. Pappas, Director, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8330; Joseph P. Savage, Counsel, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8233; or Stephanie Dumont, Assistant General Counsel, NASD Regulation, at (202) 728-8176.

### Background

In 1999, strong equity market performance helped certain mutual funds achieve unusually high total returns. In some cases, equity mutual funds or subaccounts for variable contracts, particularly those with significant investments in technology stocks, achieved total returns exceeding 100 percent for the most recent 12-month period, or even for a shorter period. Some members that distribute or sell

these mutual funds or variable contracts are issuing sales material that prominently advertises this unusually high performance. Additionally, certain technology-related funds have been in existence for one year or less, and thus do not have a longer-term track record for investors to consider.

This *Notice* reminds members of their responsibilities to base their communications on principles of fair dealing and good faith and to avoid statements that are exaggerated, unwarranted, or misleading. In particular, this *Notice* cautions members that if they choose to present extraordinary recent fund performance information, they should do so in a manner designed to lessen the possibility that investors will have unreasonable expectations concerning the future performance of these mutual funds.

### General Standards

National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 2210(d)(1)(A) requires all member communications with the public to be based on principles of fair dealing and good faith, and such communications must provide a sound basis for evaluating the facts in regard to any particular security or securities, type of security, industry discussed, or service offered. Members may not omit any material fact or qualification if the omission would cause the communication to be misleading.

Likewise, Rule 2210(d)(1)(B) prohibits member communications with the public from including exaggerated, unwarranted, or misleading statements or claims. The rule provides that in preparing public communications, members should bear in mind that investments inherently involve the

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risks of fluctuating prices and the uncertainty of dividends, rates of return, and yield.

The manner in which a member presents performance is equally important. In this regard, Rule 2210(d)(1)(D)(iii) requires members to consider the overall clarity of a communication. The rule notes that disclosures made in an unclear manner can result in a serious misunderstanding of the statement. Similarly, material disclosures relegated to footnotes may not enhance a reader's understanding of the communication.<sup>1</sup>

### Application Of General Standards To Mutual Fund Performance Presentations

Taken together, these rules require members to carefully craft their advertisements and other communications, including those intended to promote the sale of mutual funds. In particular, depending on the circumstances, it may be necessary to include information beyond what is required under Securities and Exchange Commission Rule 482 when

unusual performance is presented in order for the sales material not to be misleading.

Members should take special care in crafting sales material that presents extraordinary performance. While advertising such performance may increase demand for a fund's shares, it also may lead investors to believe that a fund will continue to achieve the same rates of return in the future. Accordingly, in order to comply with the requirements of Rule 2210(d)(1), members should avoid overemphasizing recent high performance figures or implying that they will recur.

In addition, if a fund's recent performance was the result of its investment focus in an unusually "hot" industry or other factors (such as investing primarily in initial public offerings) that may not continue to exist, we believe members should include prominent, cautionary language in the text of the communication that balances the extraordinary performance presentation. For example, it may be necessary to prominently disclose in such sales material that

the advertised performance was attributable to the unusually favorable conditions that are likely not sustainable; to disclose what these conditions were; and to warn that the conditions might not continue to exist and that the advertised performance probably will not be repeated in the future.

### Endnote

<sup>1</sup>Securities and Exchange Commission (SEC) Rule 482 under the Securities Act of 1933 and SEC Rule 34b-1 under the Investment Company Act of 1940 also require certain disclosures when mutual fund performance is presented in sales material. In sales material for mutual funds (other than money market funds) that presents performance, the sales material must include a legend disclosing that the performance data quoted represents past performance and that the investment return and principal value will fluctuate, so that an investor's shares, when redeemed, may be worth more or less than their original cost.

© 2000, National Association of Securities Dealers, Inc. (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.

### INFORMATIONAL

# Single Arbitrator Pilot Program

SEC Approves New Voluntary Single Arbitrator Pilot Program For A Two-Year Period;  
**Effective Date:**  
**May 15, 2000**

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Legal & Compliance
- Registered Representatives
- Senior Management

### KEY TOPICS

- Arbitration
- Direct Communication with Single Arbitrator
- Neutral List Selection System
- Reduced Hearing Session Fees
- Single Arbitration Pilot

### Executive Summary

On February 15, 2000,<sup>1</sup> the Securities and Exchange Commission approved the proposal of NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) to add a new rule to the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Code of Arbitration Procedure (Code). The new rule—Rule 10336—will be entitled “Single Arbitrator Pilot Program” and will be effective for a two-year period. The Pilot Program is voluntary and will allow parties with claims of \$50,000.01 to \$200,000 to select a single arbitrator to hear their cases, rather than the panel of three arbitrators they would otherwise select. The Pilot Program will also allow the parties to communicate directly with the single arbitrator under certain conditions. Rule 10336, which will become effective on May 15, 2000, will result in lower arbitration fees to the parties and will enhance the dispute resolution process by affording quicker resolution of arbitration claims by participants.

Included with this *Notice* is Attachment A, the text of the amendments that will become effective on May 15, 2000.

### Questions/Further Information

Questions regarding this *Notice* may be directed to Jean I. Feeney, Special Advisor, Office of Dispute Resolution, NASD Regulation, at (202) 728-6959, or via e-mail at: [jean.feeney@nasd.com](mailto:jean.feeney@nasd.com).

### Background

In developing a proposal to provide parties in a public customer case with the alternative of a single arbitrator at a reduced cost, NASD Regulation sought feedback from the Public Investors Arbitration Bar

Association, the Securities Industry Association, and the Small Firm Advisory Board of the NASD to determine if investors and the industry would support such a program. After evaluating the feedback provided, NASD Regulation decided to offer, on a trial basis, an optional modification of current Neutral List Selection System (NLSS) procedures. NLSS is a computerized program developed in November 1998 to generate lists of proposed arbitrators (neutrals) for selection by the parties under Rule 10308 of the Code.

### Description Of The Single Arbitrator Pilot Program

The Single Arbitrator Pilot Program is designed to allow parties in a public customer case with claims of \$50,000.01 to \$200,000, inclusive of interest, attorneys' fees, and other costs, to agree to select a single arbitrator to hear their cases, rather than a panel of three arbitrators as would normally be the procedure under the Code. The Pilot Program will exclude any case seeking punitive damages unless all of the parties in such a case request a single arbitrator. All types of claims by all parties, including counterclaims, third-party claims, and cross-claims, will be counted in the \$200,000 claim limitation. Forum fees provided for in Rule 10332(c) of the Code will not be counted in the \$200,000 limitation.

The Pilot Program provides that the parties will participate in the selection of the single arbitrator. After the parties receive notice that a panel of three arbitrators has been selected, the parties will have 15 days to determine whether they want to choose one of the three selected arbitrators to serve as the single arbitrator under the Pilot Program. The 15-day period

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corresponds with the 15-day period that parties have to select a chairperson of the panel under Rule 10308(c)(5) of the Code. Thus, if the parties decide not to proceed in the Pilot Program, they can proceed under regular NLSS selection procedures without delay.

The Pilot Program also allows the parties to communicate directly with the arbitrators under certain conditions, a unique feature not found elsewhere in the Code.

### Frequently Asked Questions Relating To The Single Arbitrator Pilot Program

To help explain the details of the Single Arbitrator Pilot Program to investors, members, and associated persons, NASD Regulation staff designed the following comprehensive list of questions and answers:

#### Q. What is the Single Arbitrator Pilot Program (Pilot Program) designed to do?

A. The Pilot Program is designed to allow parties with claims of \$50,000.01 to \$200,000, inclusive of interest, attorneys' fees, and other costs, to agree to select a single arbitrator to hear their cases, rather than a panel of three arbitrators as would normally be the case under the Code. This will result in lower arbitration fees and quicker resolution of arbitration claims. The Pilot Program also allows the parties to communicate directly with the arbitrators under certain conditions, as described below.

#### Q. Is the Pilot Program mandatory or voluntary?

A. The Pilot Program is voluntary. All parties must agree to the use of the Pilot Program.

#### Q. What types of claims are eligible for the Pilot Program?

A. Claims arising between a customer and an associated person or a member are eligible for the Pilot Program. The Pilot Program will be limited to cases involving aggregate claims between \$50,000.01 and \$200,000. Cases involving claims of \$50,000 or less normally have only one arbitrator under the Code.

#### Q. Are there any types of claims not eligible for the Pilot Program?

A. The Pilot Program is not available for the resolution of employment disputes or other intra-industry disputes.

#### Q. Are claims that include a request for punitive damages eligible for the Pilot Program?

A. No. The Pilot Program will exclude any case seeking punitive damages unless all of the parties in such a case request a single arbitrator. If the parties agree to include requests for punitive damages, the \$200,000 limitation will still apply unless the parties agree to a higher amount.

#### Q. Will interest, attorneys' fees, and other costs be included within the Pilot Program's \$200,000 claim limitation?

A. Yes.

#### Q. Will filing fees, hearing session fees, member surcharges, and member process fees be included within the Pilot Program's \$200,000 claim limitation?

A. No.

#### Q. Will all types of claims by all parties, including any counter-claims, third-party claims, and cross-claims be counted towards the \$200,000 limitation?

A. Yes.

#### Q. When do the parties decide on whether to use the Pilot Program?

A. The parties will participate in the usual arbitrator selection method provided under the Code, known as the Neutral List Selection System. After the parties receive notice that a panel of three arbitrators has been selected, Rule 10308(c)(5) of the Code provides that they have 15 days in which to select a chairperson. If it appears that the case fits the criteria for the Pilot Program, the parties can determine pursuant to Rule 10336(b)(1) whether they want to choose one of their three selected arbitrators to serve as the single arbitrator in the Pilot Program.

#### Q. May the parties choose any of the three arbitrators as the single arbitrator?

A. Yes. The parties may choose any of the three arbitrators, including the non-public arbitrator, to serve as the single arbitrator.

#### Q. How many days do the parties have to agree on a single arbitrator?

A. Rule 10336(b)(2) provides that the parties will have 15 days from the date the Director sends notice of the names of the arbitrators to agree on a single arbitrator. This 15-day period will run concurrently with the time period to select a chairperson under Rule 10308(c)(5).

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### Q. What if the parties do not agree on a single arbitrator?

A. If the parties do not agree on a single arbitrator, Rule 10336(b)(3) provides that the case will proceed under the usual procedures of Rule 10308. This means the case will be heard by a panel of three arbitrators, with the parties being given a chance to select the chair from among these arbitrators.

### Q. May parties communicate orally with the arbitrator outside the presence of other parties?

A. No. The parties may not communicate orally with the arbitrator unless all parties participate.

### Q. May the parties communicate directly in writing with the single arbitrator?

A. Yes. The Pilot Program will allow parties to agree to communicate directly with the arbitrator without Office of Dispute Resolution (ODR) staff involvement. Rule 10336(c)(1) provides that parties will be permitted to send written materials, including information (discovery) requests and motions, directly to the selected arbitrator. This is different from the procedures normally used under the Code, and is a special feature of the Pilot Program. Copies of such materials must be sent simultaneously and in the same manner to all parties and to the ODR staff member assigned to the case.

### Q. Are the parties required to send proof of service of written materials?

A. Yes. Parties must send to the ODR staff member assigned to the case, the arbitrator and all

parties proof of service of written materials, indicating the time, date, and manner of service upon the arbitrator and all parties.

### Q. Do you require a particular format for proof of service?

A. No. Parties may use the same type of Certificate of Service used in state or federal courts or another format that includes the necessary information, including the address to which the materials were sent. As is true under Rule 5(b) of the Federal Rules of Civil Procedure, service by mail is complete upon mailing.

### Q. May parties serve the materials on the arbitrator by facsimile (fax) or other electronic means?

A. Yes. If the arbitrator and all parties agree, written materials may be served by fax or other electronic means. Such agreement might be given at the point of entry into the Pilot Program or at any time thereafter by providing an electronic mail (e-mail) address or a fax number. Once such agreement is reached, it will be presumed to continue unless the arbitrator and parties are notified otherwise. If the arbitrator or any party does not have access to an electronic means of communication, then such means may not be used.

### Q. May parties initiate conference calls with the arbitrator?

A. Yes. Rule 10336(c)(2) provides that, if the arbitrator agrees, parties may initiate conference calls with the arbitrator, provided that all parties are on the line before the arbitrator joins the call.

### Q. May the arbitrator initiate conference calls with the parties?

A. Yes. Rule 10336(c)(3) provides that the arbitrator may initiate conference calls with the parties, provided all parties are on the line before the conference begins.

### Q. Will filing fees, member surcharges, and member process fees change under the Pilot Program?

A. No.

### Q. Are any fees reduced in the Pilot Program?

A. Yes. Hearing session fees have been reduced in the Pilot Program to reflect lower arbitrator honoraria (payments) and other cost savings:

- For claims of \$50,000.01 to \$100,000, hearing session fees under the Pilot Program will be \$550 per session or \$1,100 for a two-session day.
- For claims of \$100,000.01 to \$200,000, hearing session fees under the Pilot Program will be \$750 per session or \$1,500 for a two-session day.

### Q. What are the savings?

A. For claims of \$50,000.01 to \$100,000, the Pilot Program fee structure represents a reduction of \$200 per session for the parties as compared with normal case procedures (or a \$400 reduction for a two-session day).

For claims of \$100,000.01 to \$200,000, the new fee structure represents a reduction of \$375 per session for the parties as compared with normal case

## NASD Notice to Members 00-22

procedures (or a \$750 reduction for a two-session day).

**Q. What if, after agreeing to the Single Arbitrator Pilot Program, a party learns of information that leads the party to believe there are additional claims or higher claims than originally made, which would raise the total amount in controversy over the \$200,000 maximum for the Pilot Program?**

A. Because the Pilot Program is designed to add flexibility to the Code, parties and arbitrators faced with these facts could, for example, agree to continue with a single arbitrator who would be empowered to award more than \$200,000, or determine whether two other arbitrators already ranked in the initial list selection process might still be available, allowing the case to continue without serious interruption as a three-arbitrator case (fees would be adjusted to the normal three-arbitrator schedule).

The single arbitrator has discretion to determine whether to allow a party to file a new or amended pleading, except when a party is responding to a new or amended pleading. See Rule 10328(b). Accordingly, if a party seeks to amend a pleading to raise the total amount in controversy over the \$200,000 maximum, the party must first receive the arbitrator's consent.

**Q. What if the parties do not agree to amend the claim and continue with either a single arbitrator or a three-arbitrator panel?**

A. A party may move to dismiss the claim without prejudice and, if the arbitrator grants the motion, the claim can then be re-filed as a regular, three-person case.

Parties considering the option to re-file the revised claim as a regular, three-arbitrator case should understand that filing a new case would involve the payment of the initial filing fees and hearing session deposit for the new case. They should also consider any applicable eligibility or statute of limitations defenses the new filing date might raise.

**Q. What is the procedure for seeking a dismissal without prejudice?**

A. Rule 10305(a) provides that arbitrators may dismiss a proceeding at the request of a party or on the arbitrator's own initiative. Another party to the case may object to the dismissal. The single arbitrator has the discretion to determine whether or not to grant a request for dismissal. Rule 10305(c) provides that arbitrators shall dismiss a proceeding at the joint request of all the parties.

**Q. What happens if the request to dismiss without prejudice is denied?**

A. If the request to dismiss is denied, then the case will proceed with the single arbitrator, who cannot award more than the \$200,000 jurisdictional limit (unless the parties have agreed otherwise).

**Q. What happens if the request to dismiss without prejudice is granted?**

A. When a case is dismissed, hearing session deposits will be returned for any hearings that were not held. Filing fees, member surcharges, and process fees are non-refundable. If any hearing sessions were held, the arbitrator will determine the allocation of forum fees.

**Q. Where can I get more information on the Pilot Program?**

A. Speak with the staff in any ODR office, or visit the Arbitration/Mediation Web pages on the NASD Regulation Web Site at [www.nasdr.com](http://www.nasdr.com).

### Endnote

<sup>1</sup>Exchange Act Release No. 42226 (February 15, 2000) (File No. SR-NASD-99-54), 65 Federal Register 8753 (February 22, 2000).

**ATTACHMENT A**

**Text Of Amendments**

*(All rule language is new.)*

**Rules Of The Association**

**10000. Code Of Arbitration Procedure**

\*\*\*\*\*

**10336. Single Arbitrator Pilot Program**

*This Rule allows parties with claims of \$50,000.01 to \$200,000 to select a single arbitrator to hear their cases, rather than the panel of three arbitrators they would otherwise select. This Pilot Program is voluntary, and includes provisions that allow the parties to communicate directly with the arbitrators under certain conditions. The Pilot Program should result in lower arbitration fees and quicker resolution of arbitration claims for participants.*

**(a) Claims Eligible for Single Arbitrator Pilot Program**

(1) Claims arising between a customer and an associated person or a member for amounts from \$50,000.01 to \$200,000, including damages, interest, costs, and attorneys' fees, will be eligible to be heard by a single arbitrator pursuant to this Rule ("Pilot Program"), except as provided in paragraph (a)(2) or (b)(3) below.

(2) Claims that include a request for punitive damages will not be eligible for the Pilot Program unless all parties agree.

**(b) Arbitrator Selection Procedure**

(1) After parties receive notice that a panel of three arbitrators has been selected for their case, as provided in Rule 10308, the parties may agree to have one of the arbitrators serve as the single arbitrator who will hear their case.

(2) The parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to agree on a single arbitrator. This 15-day period will run concurrently with the time period to select a chairperson under Rule 10308(c)(5).

(3) If the parties do not agree to have one of the arbitrators serve as the single arbitrator, then the claim will not be eligible for the Pilot Program and will proceed instead under the usual procedures of Rule 10308.

**(c) Communications with Arbitrators**

(1) Parties may send written materials, including information requests and motions, directly to the single arbitrator, provided that copies of such materials are sent simultaneously and in the same manner to all parties and to the Director. Parties shall send the Director, arbitrator, and all parties proof of service of such written materials, indicating the time, date, and manner of service upon the arbitrator and all parties. Service by mail is complete upon mailing. If the arbitrator and all parties agree, written materials may be served electronically.

(2) If the arbitrator agrees, parties may initiate conference calls with the arbitrator, provided that all parties are on the line before the arbitrator joins the call. At the discretion of the arbitrator, such conference calls may be tape recorded.

(3) The arbitrator may initiate conference calls with the parties, provided all parties are on the line before the conference begins. At the discretion of the arbitrator, such conference calls may be tape recorded.

(4) Parties may not communicate orally with the arbitrator unless all parties are present.

**(d) Fees**

(1) Filing fees, member surcharges, and process fees for the Pilot Program will be the same as in Rules 10332 and 10333.

(2) Hearing session deposits for the Pilot Program are as follows:

(A) Hearing session deposits for claims of \$50,000.01 to \$100,000 will be \$550 per session.

(B) Hearing session deposits for claims of \$100,000.01 to \$200,000 will be \$750 per session.

(C) The forum fee for a telephone pre-hearing conference call with the arbitrator will be \$450.

**(e) Awards**

The single arbitrator may not award the parties more than a total of

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\$200,000, including damages, interest, costs, and attorneys' fees, unless all parties agree that the arbitrator may award a larger amount. In addition, the arbitrator shall allocate forum fees to the parties as provided in Rule 10332(c).

### **(f) Applicability of Code**

Except as provided in this Rule, the remaining provisions of the Code will apply to the Pilot Program.

### **(g) Temporary Effectiveness**

This Rule shall remain in effect until May 15, 2002.

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### INFORMATIONAL

# Bond Mutual Fund Volatility Ratings

## SEC Approves New Rules Relating To Bond Mutual Fund Volatility Ratings

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Advertising/Investment Companies
- Executive Representatives
- Legal & Compliance
- Mutual Fund
- Registered Representatives
- Senior Management

### KEY TOPICS

- Bond Mutual Fund Volatility Ratings
- NASD Rule IM-2110-5

### Executive Summary

On February 29, 2000, the Securities and Exchange Commission (SEC) approved a National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rule change relating to bond mutual fund volatility ratings. New NASD Rule IM-2210-5 permits members and associated persons to include bond mutual fund volatility ratings in supplemental sales literature for an 18-month pilot period. Previously, NASD rules prohibited the use of bond fund volatility ratings. The rules are effective immediately and the pilot program will expire on August 31, 2001, unless extended or permanently approved by the NASD at or before such date.

The new rule permits the use of bond fund volatility ratings subject to certain conditions and disclosure requirements. In addition, NASD Rule 2210 regarding communications with the public was amended by adding new subparagraph (c)(3) to require supplemental sales literature containing bond mutual fund volatility ratings to be filed with the Advertising/Investment Companies Regulation Department (the Department) for review and approval at least 10 days prior to use.

Included with this *Notice* are Attachment A (text of the new rule and rule amendments) and Attachment B (sample Disclosure Statement).

### Questions/Further Information

Questions or comments concerning this *Notice* may be directed to Thomas M. Selman, Vice President, Investment Companies/Corporate Financing, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) at (202) 728-8330; Thomas A. Pappas, Director, Advertising/Investment Companies Regulation, NASD Regulation, at

(202) 728-8330; or Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

### Background

Bond mutual fund volatility ratings describe the sensitivity of bond mutual fund portfolios to changing market conditions. Previously, NASD Regulation interpreted its rules to prohibit members from using bond mutual fund volatility ratings in supplemental sales literature. Supplemental sales literature refers to sales literature that is given to customers or prospective customers when, or after, a prospectus is given to them and supplements, but does not replace, the information contained in the prospectus. Supplemental sales literature is thus differentiated from mass media advertising or other sales material that is provided to prospective investors who have not yet received a prospectus. The prohibition derived from the concern that judgments of how a bond mutual fund may react to changes in various market conditions may be predictive of fund performance or misleading.<sup>1</sup>

In *Notice to Members 96-84* (December 1996), NASD Regulation requested comment on the appropriateness of its interpretation prohibiting the use of bond mutual fund volatility ratings in supplemental sales literature. A majority of the commenters believed that NASD Regulation should allow members to use the volatility ratings in supplemental sales literature, and all of the commenters representing investor groups supported the goal of making accurate information regarding risk and volatility characteristics of bond mutual funds available to investors. A special subcommittee of the NASD

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Regulation Board of Directors also recommended permitting the use of volatility ratings subject to certain conditions. In 1997, the NASD Regulation Board of Directors and the NASD Board of Governors approved the rule change and its filing with the SEC. The rule change was amended several times prior to approval by the SEC. In particular, the rule change was amended to remove the prohibition against using "a single symbol, number or letter" to describe a volatility rating. The rule change, as amended, was approved by the SEC on February 29, 2000.<sup>2</sup>

### Description Of The New Rule Pilot Period

The new bond mutual fund volatility ratings rule, IM-2210-5, permits during an 18-month pilot period, ending August 31, 2001, the use of bond fund volatility ratings in supplemental sales literature, subject to certain conditions. As indicated in the SEC order approving the rule, during the 18-month pilot period the staff will consider whether:

- the rule has facilitated the dissemination of useful, understandable information to investors;
- the rule has prevented the dissemination of inappropriate or misleading information by members and associated persons;
- additional guidance concerning the use of certain terminology may be necessary;
- the rule should apply to in-house ratings;
- the rule should apply to all investment companies; and

- additional standards or guidance is needed to prevent investor confusion or minimize excessive variability among ratings of similar portfolios.

In addition, the staff will consider whether the use of a single symbol, number or letter describing a volatility rating, particularly those that are similar to or the same as credit ratings, might confuse investors. At the conclusion of its evaluation, NASD Regulation will determine whether to continue to permit use of the ratings; permit their use with modifications to the rule; or prohibit their use.

### Definition Of Bond Mutual Fund Volatility Rating

Section (a) of the new rule defines the term "bond mutual fund volatility rating" to mean, in part, a description issued by an independent third party relating to the sensitivity of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, based on an evaluation of objective factors regarding the fund's current characteristics and its past performance. The definition applies only to bond mutual fund volatility ratings provided by an independent third party and only to open-end investment companies.

### Prohibitions

Section (b) of the new rule permits members and associated persons to use a bond mutual fund volatility rating only in supplemental sales literature and only when the following requirements are satisfied.

- Subsection (b)(1) prohibits the use of a bond mutual fund volatility rating that uses the word "risk" to describe the rating.

- Subsection (b)(2) prohibits the use of a bond mutual fund volatility rating unless it incorporates the most recently available rating and is current to the most recent calendar quarter ended prior to use. This prohibition is intended to ensure that stale ratings are not provided to investors.

- Subsection (b)(3) prohibits the use of a bond mutual fund volatility rating that is not based exclusively on objective, quantifiable factors. This subsection also requires that the rating and the accompanying Disclosure Statement (as described below) be clear, concise, and understandable.

- Subsection (b)(4) prohibits the use of a bond mutual fund volatility rating unless the supplemental sales literature containing the rating conforms to the disclosure requirements in section (c) (as described below).

- Subsection (b)(5) prohibits the use of a bond mutual fund volatility rating unless the entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web site, or both. Access to such supplemental information will enable investors to obtain answers to questions regarding the meaning of the rating or how it is calculated or derived.

### Disclosure Requirements

Section (c) of the new rule requires that the following disclosures accompany any bond mutual fund volatility rating used in supplemental sales literature by members or associated persons of members.

## NASD Notice to Members 00-23

- Subsection (c)(1) requires that supplemental sales literature containing a bond mutual fund volatility rating include a Disclosure Statement containing all the information required by the rule, but also permits the Disclosure Statement to contain any additional information that is relevant to an investor's understanding of the rating. Permitting the Disclosure Statement to contain additional relevant information could help elucidate the meaning of the rating.
- Subsection (c)(2) requires that supplemental sales literature containing a bond mutual fund volatility rating include all other current volatility ratings that have been issued with respect to the same fund. This subsection also permits information concerning multiple ratings to be combined in the Disclosure Statement, provided that the applicability of the information to each rating is clear. This serves the purpose of avoiding redundant and potentially confusing information. Subsection (c)(3) requires that all bond mutual fund volatility ratings be contained within the text of the Disclosure Statement.
- Subsections (c)(3)(A) - (B) of the new rule require that supplemental sales literature containing a bond mutual fund volatility rating disclose the name of the rating entity, the most current rating accompanied by the date of the

rating and, if there is any change in the current rating from the most recent prior rating, an explanation of the change. It is important for investors to see how a fund's rating may have changed and understand the reasons for the change.

- Subsection (c)(3)(C) of the new rule requires that supplemental sales literature containing a bond mutual fund volatility rating describe the rating in narrative form. Under subsections (c)(3)(C)(i) - (vii), the narrative description must also include:
  - (i) a statement that there is no standard method for assigning ratings;
  - (ii) a description of the criteria and methodologies used to determine the rating;
  - (iii) a statement that not all bond funds have volatility ratings;
  - (iv) a statement concerning whether consideration was paid in connection with obtaining the issuance of the rating;
  - (v) a description of the types of risks the rating measures, such as short-term volatility;
  - (vi) a statement that the portfolio may have changed since the date of the rating; and
  - (vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

A sample Disclosure Statement is included in Attachment B to assist members in drafting Disclosure Statements that comply with the requirements of the rule.

### **Filing Requirement**

The rule change also amends NASD Rule 2210 regarding communications with the public by adding new subsection (c)(3) to require sales literature containing bond mutual fund volatility ratings to be filed with the Department for review and approval at least 10 days prior to use. Members filing sales literature containing bond mutual fund volatility ratings also must provide any supplemental information requested by the Department pertaining to the rating that is in the member's possession. Members must complete any changes requested by the Department and await approval by the Department before using the sales literature.

The rules are effective immediately and will expire on August 31, 2001, unless extended or permanently approved by the NASD at or before such date.

### **Endnotes**

<sup>1</sup>NASD Conduct Rule 2210 prohibits the use by members and associated persons of information that is misleading; that contains exaggerated, unwarranted, or misleading statements or claims; or that predicts or projects investment results.

<sup>2</sup>See Securities Exchange Act Release No. 42476 (February 29, 2000).

## NASD Notice to Members 00-23

### ATTACHMENT A

(Note: Text of the new rule and rule amendments is underlined.)

#### **IM-2210-5. Requirements for the Use of Bond Mutual Fund Volatility Ratings**

**(This rule will expire on August 31, 2001, unless extended or permanently approved by the Association at or before such date.)**

##### **(a) Definition of Bond Mutual Fund Volatility Ratings**

For purposes of this Rule and any interpretation thereof, the term "bond mutual fund volatility rating" is a description issued by an independent third party relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, and is based on an evaluation of objective factors, including the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk, and currency risk.

##### **(b) Prohibitions on Use**

Members and persons associated with a member may use a bond mutual fund volatility rating only in supplemental sales literature and only when the following requirements are satisfied:

(1) The rating does not identify or describe volatility as a "risk" rating.

(2) The supplemental sales literature incorporates the most recently available rating and

reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.

(3) The criteria and methodology used to determine the rating must be based exclusively on objective, quantifiable factors. The rating and the Disclosure Statement that accompanies the rating must be clear, concise, and understandable.

(4) The supplemental sales literature conforms to the disclosure requirements described in paragraph (c).

(5) The entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web site, or both.

##### **(c) Disclosure Requirements**

(1) Supplemental sales literature containing a bond mutual fund volatility rating shall include a Disclosure Statement containing all the information required by this Rule. The Disclosure Statement may also contain any additional information that is relevant to an investor's understanding of the rating.

(2) Supplemental sales literature containing a bond mutual fund volatility rating shall contain all current bond mutual fund volatility ratings that have been issued with respect to the fund. Information concerning multiple ratings may be combined in the Disclosure Statement, provided that the applicability of the information to each rating is clear.

(3) All bond mutual fund volatility ratings shall be contained within

the text of the Disclosure Statement. The following disclosures shall be provided with respect to each such rating:

(A) the name of the entity that issued the rating;

(B) the most current rating and date of the current rating, with an explanation of the reason for any change in the current rating from the most recent prior rating;

(C) a description of the rating in narrative form, containing the following disclosures:

(i) a statement that there is no standard method for assigning ratings;

(ii) a description of the criteria and methodologies used to determine the rating;

(iii) a statement that not all bond funds have volatility ratings;

(iv) whether consideration was paid in connection with obtaining the issuance of the rating;

(v) a description of the types of risks the rating measures (e.g., short-term volatility);

(vi) a statement that the portfolio may have changed since the date of the rating; and

(vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

\* \* \* \* \*

**2200. COMMUNICATIONS  
WITH CUSTOMERS AND THE  
PUBLIC**

**2210. Communications with  
the Public**

\* \* \* \* \*

**(c) Filing Requirements and  
Review Procedures**

\* \* \* \* \*

(3) Sales literature concerning  
bond mutual funds that include or

incorporate bond mutual fund  
volatility ratings, as defined in  
Rule IM-2210-5, shall be filed  
with the Department for review at  
least 10 days prior to use (or  
such shorter period as the  
Department may allow in  
particular circumstances) for  
approval and, if changed by the  
Association, shall be withheld  
from publication or circulation  
until any changes specified by  
the Association have been made  
or, if expressly disapproved, until  
the sales literature has been  
refiled for, and has received,

Association approval. Members  
are not required to file advertising  
and sales literature which have  
previously been filed and which  
are used without change. The  
member must provide with each  
filing the actual or anticipated  
date of first use. Any member  
filing sales literature pursuant to  
this paragraph shall provide any  
supplemental information  
requested by the Department  
pertaining to the rating that is  
possessed by the member.

\* \* \* \* \*

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## NASD Notice to Members 00-23

### ATTACHMENT B

#### Sample Disclosure Statement

The volatility rating for this fund issued by [XYZ rating entity] (XYZ) is: *[insert narrative rating]*. The rating seeks to measure *[description of what risks the rating measures, e.g., "how the value of the fund's current portfolio might respond to changing market conditions"]*. XYZ arrived at its rating in the following way: *[insert description of methodology]*. There is no standard method for determining volatility ratings. The rating is current as of *[date]*. The fund's portfolio may have changed since this date and there is no guarantee that the fund will continue to have the same rating or perform in the future as rated. Not all bond mutual funds have volatility ratings and those that do may have paid for them. The fund *[did/did not pay for]* the volatility rating issued by XYZ. The fact that a fund has a rating is not an indication that it is more or less risky or volatile than a fund that does not. If you would like more specific information on the rating or the methodology used to determine the rating, call XYZ at (800) 000-000 or visit XYZ's web site at *[insert web site address]*.

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## NASD Notice to Members 00-24

### INFORMATIONAL

## FIPS Changes

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of February 23, 2000

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Corporate Finance
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Senior Management
- Trading & Market Making

### KEY TOPIC

- FIPS

As of February 23, 2000, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
CRHI.GB	Carter Holdings Inc.	12.000	10/01/08
FMY.GA	Fred Meyer Inc.	7.375	03/01/05
FMY.GB	Fred Meyer Inc.	7.450	03/01/08
FMY.GC	Fred Meyer Inc.	7.150	03/01/03
MCDT.GA	McDermott Inc.	9.375	03/15/02
GRO.GA	Mississippi Chemical Corp.	7.250	11/15/17
NHI.GA	Nat'l Health Investors Inc.	7.300	07/16/07
NXTL.GC	Nextel Communications Inc.	9.375	11/15/09
RTHM.GB	Rhythms Netconnections Inc.	14.000	02/15/10
SRV.GB	Service Corp Int'l.	8.375	12/15/04
SRV.GC	Service Corp Int'l.	7.000	06/01/15
SRV.GD	Service Corp Int'l.	6.375	10/01/00
SRV.GE	Service Corp Int'l.	6.875	10/01/07
SRV.GF	Service Corp Int'l.	6.750	06/01/01
SRV.GG	Service Corp Int'l.	7.200	06/01/06
SRV.GH	Service Corp Int'l.	7.375	04/15/04
SRV.GK	Service Corp. Int'l	7.700	04/15/09
SRV.GI	Service Corp. Int'l.	6.000	12/15/05
SRV.GJ	Service Corp. Int'l.	7.875	02/01/13
STEI.GA	Stewart Enterprises Inc.	6.700	12/01/03
STEI.GB	Stewart Enterprises Inc.	6.400	05/01/13
TCBV.GA	Triarc Consumer/Bev Hldgs Corp.	10.250	02/15/09
TRTL.GA	Tritel PCS Inc.	12.750	05/15/09
ULAB.GB	Unilab Corp.	12.750	10/01/09
WCTT/GA	Warner Chilcott Inc.	12.625	02/15/08

As of February 23, 2000, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
AMLU.GA	Amer Cellular Corp.	10.500	05/15/08
BCC.GC	Boise Cascade Corp.	9.900	03/15/00
CHCA.GD	Chancellor Media Corp.	9.375	10/01/04
CCAL.CA	Chemical Leaman Corp.	10.375	03/15/00
CNMK.GA	Cinemark USA Inc.	12.000	06/01/02
CCMH.GA	Coinmach Corp.	11.750	11/15/05
ESOL.GC	Employee Solutions Inc.	10.000	10/15/04
MAK.GA	Group Maintenance Amer Corp.	9.750	01/15/09
LDCI.GA	Long Distance Int'l Inc.	12.250	04/15/08
MTZ.GA	Mastec Inc.	7.750	02/01/08
OVRD.GA	Overhead Door Corp.	12.250	02/01/00
PHNT.GA	Phonetel Technologies Inc.	12.000	12/15/06
TTG.GA	Trans Texas Gas Corp.	13.750	12/31/01
TRSM.GA	Trism Inc.	10.750	12/15/00

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## NASD Notice to Members 00-24

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As of February 23, 2000, changes were made to the symbols of the following FIPS bonds.

<b>New Symbol</b>	<b>Old Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
IPI.GA	IPCX.GA	PC Communications	10.875	05/01/08
SQAA.GA	SQA.GF	Sequa Corp.	9.000	08/01/09
WXS.GD	WPSN.GC	Westpoint Stevens Inc.	7.875	06/15/08
WXS.GC	WPSN.GD	Westpoint Stevens Inc.	7.875	06/15/05

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, Market Regulation, NASD Regulation<sup>SM</sup>, at (301) 590-6447.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq<sup>®</sup> Market Operations, at (203) 385-6310.

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## NASD Notice to Members 00-25

### INFORMATIONAL

## Trade Date— Settlement Date

### Memorial Day: Trade Date—Settlement Date Schedule

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Internal Audit
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Trading & Market Making

### KEY TOPIC

- Holiday Trade Date—Settlement Date Schedule

### Memorial Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, May 29, 2000, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
May 23	May 26	May 31
24	30	June 1
25	31	2
26	June 1	5
29	Markets Closed	—
30	2	6

\*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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# Disciplinary Actions

## Disciplinary Actions Reported For April

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, April 17, 2000. The information relating to matters contained in this *Notice* is current as of the end of March 24, 2000.

### Firms And Individuals Fined

**Capital Strategies Limited (CRD #10253, Philadelphia, Pennsylvania)** and **Bart Steven Kaplow (CRD #264208, Registered Principal, Philadelphia, Pennsylvania)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured; fined \$13,500, jointly and severally; and required to pay \$1,792.32 in restitution to public customers. Without admitting or denying the allegations, the firm and Kaplow consented to the described sanctions and to the entry of findings that the firm, acting through Kaplow, failed to evaluate and prioritize its training needs and failed to develop a written training plan. The findings also stated that the firm, acting through Kaplow, effected transactions in equity securities prior to receiving a modification to, or removal of, the restriction limiting its business transactions in specified securities which did not include equities. In addition, the firm, acting through Kaplow, failed to establish written procedures to supervise its equities business and the activities of its registered representatives in effecting equities transactions. Furthermore, the firm, acting

through Kaplow, failed to fulfill its obligation to obtain the best execution of market orders pertaining to an equity security in that it failed to process orders internally and transmit them to the firm's clearing house in a timely manner. **(NASD Case #C9A000009)**

**Charter One Securities, Inc. (CRD #13373, Cleveland, Ohio)** and **Robert Joseph Thompson, Jr. (CRD #2667325, Registered Principal, Cleveland, Ohio)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the firm and Thompson consented to the described sanctions and to the entry of findings that the firm, acting through Thompson, effected transactions in securities when it failed to maintain the minimum required net capital. The findings also stated that the firm, acting through Thompson, filed materially false monthly FOCUS reports. **(NASD Case #C8B000003)**

**First Security Investments, Inc. (CRD #24035, Kingston, Pennsylvania)** and **Margaret Charles Slusser (CRD #1977559, Registered Principal, Wilkes-Barre, Pennsylvania)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the firm and Slusser consented to the described sanctions and to the entry of findings that the firm, acting through Slusser, failed to evaluate the firm's training needs, to develop a written training plan, and to administer Firm Element training to its covered registered persons pursuant to a written plan. The findings also

stated that the firm, acting through Slusser, failed to prevent representatives from performing duties as representatives even though they had failed to complete the Regulatory Element of Continuing Education by the required date. **(NASD Case #C9A000006)**

**Janssen-Meyers Associates, L.P. (CRD #34171, New York, New York) and Bruce Meyers (CRD #1045447, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. The firm was also fined an additional \$16,000 and ordered to pay \$5,819 in restitution to public customers. Without admitting or denying the allegations, the firm and Meyers consented to the described sanctions and to the entry of findings that the firm, acting through Meyers, failed to enforce the firm's written supervisory procedures regarding trading restrictions. The findings also stated that the firm traded ahead of the execution of customer limit orders. **(NASD Case #C3A000005)**

#### **Firms Fined**

**Chase Securities, Inc. (CRD #10793, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent (AWC) pursuant to which the firm was censured, fined \$12,500, and required to submit revised written supervisory procedures concerning transaction reporting within 60 days of acceptance of this AWC by the National Adjudicatory Council (NAC). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in Nasdaq National

Market<sup>®</sup> (NNM) securities to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) in a timely manner and failed to designate them as late to ACT. The firm also failed to report transactions executed outside normal market hours, to report their time of transaction, and to report listed securities transactions to ACT in a timely manner. The findings also stated that the firm failed to accept or decline transactions in eligible securities in a timely manner. Furthermore, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning transaction reporting. **(NASD Case #CMS000012)**

**Credit Suisse First Boston Corporation (CRD #816, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$40,000. 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, failed to make an affirmative determination for each of the transactions, and failed to report short-sale transactions to ACT with a short-sale indicator. The findings also stated that the firm submitted an erroneous short interest position paper to the NASD and failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the short-sale rules. **(NASD Case #CMS990030)**

**Direct Access Brokerage Service (CRD #30057, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to

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 respond in a timely manner to NASD requests for an automated submission of trading data for securities included in The Nasdaq Stock Market<sup>®</sup>, traded on a national securities exchange, or for non-Nasdaq<sup>®</sup> securities. The findings also stated that the firm submitted automated submissions of trading data after the date such information was required to be provided. **(NASD Case #CMS000023)**

**Donald & Co. Securities, Inc. (CRD #7776, Tinton Falls, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to retain an independent consultant to review, and make recommendations to improve, the firm's net capital procedures. 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 failed to maintain the required minimum net capital. **(NASD Case #C10970175)**

**First Albany Corporation (CRD #298, Albany, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 execute customer limit orders contemporaneously after it traded each security for its own market-making account at a price that would have satisfied each customer limit order. The firm failed to display customer limit orders immediately when the orders were at a

price that would have improved the firm's bid or offer in each security related to those orders. The findings also stated that the firm failed to display the full size of customer limit orders when the orders were priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a *de minimus* change in relation to the size associated with the firm's bid or offer in each security. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable rules regarding recordkeeping, best execution, limit order display, the Quote Rule, limit order protection, anti-competitive practices, and trade reporting for equity and fixed income transactions. **(NASD Case #CMS000029)**

**GKN Securities Corp. (CRD #19415, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured; fined \$68,500; required to pay \$1,356.25, plus interest, in restitution to public customers; and required to revise its written supervisory procedures relating to ACT compliance, best execution, limit order protection, trade reporting, and other rules and regulations within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it aggregated customer trades in NNM securities, Nasdaq SmallCap<sup>SM</sup> securities, and an OTC Bulletin Board<sup>®</sup> security for trade reporting purposes without designating reports with a .B modifier and without noting the aggregations on corresponding order tickets. The firm also reported transactions late without an .SLD modifier. The findings also stated that the firm failed to contemporaneously, or

partially, execute customer limit orders in Nasdaq securities after it traded each security for its own market-making account at a price that would have satisfied each customer's limit order and failed to use reasonable diligence to ascertain the best inter-dealer market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The firm failed to display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a *de minimus* change in relation to the size associated with the firm's bid or offer in each security. The firm failed to report the correct capacity to ACT, failed to cancel a trade through ACT, and reported the wrong execution time to ACT. Furthermore, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with regard to the above matters. **(NASD Case #CMS000024)**

**Goldman, Sachs & Company (CRD #361, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it untimely filed transactions in OTC equity securities on Form Ts with the NASD. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market for the security and to buy and sell in such market so that the resultant price to each

customer was as favorable as possible under prevailing market conditions. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules relating to transaction reporting via Form T. **(NASD Case #CMS000016)**

**Pacific Growth Equities, Inc. (CRD #24835, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to revise the firm's written supervisory procedures relating to firm quote compliance within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders presented at its published bid or offer in an amount up to its published quotation size, thereby failing to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning the Securities and Exchange Commission (SEC) and the NASD firm quote rules. **(NASD Case #CMS000021)**

**William V. Frankel & Co. (CRD #1895, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures relating to firm quote compliance in a manner acceptable to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the

allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders presented at its published bid or offer in an amount up to its published quotation size, thereby failing to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations concerning the SEC and the NASD firm quote rules. **(NASD Case #CMS000018)**

### **Individuals Barred Or Suspended**

**Kent Anderson (CRD #2717386, Registered Representative, Waterford, Michigan)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Anderson deposited a customer refund check into his personal account without the customer's knowledge or consent, failed to pay the premium for the customer's insurance policy, and, instead, used the funds for some purpose other than for the customer's benefit, thereby improperly using customer funds. The findings also stated that Anderson failed to respond to NASD requests for information. **(NASD Case #C8A990053)**

**Mark Joel Appleton (CRD #702513, Registered Principal, Arvada, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$12,500 and suspended from association with any NASD member in any supervisory capacity for 10 business days. The fine is due and payable prior to reassociation with a member firm following the suspension. Without admitting or denying the allegations, Appleton

consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative in a manner reasonably designed to achieve compliance with applicable laws, rules, and regulations. The findings also stated that Appleton failed to establish written supervisory procedures to address adequately minimum sales contingencies, private securities transactions, membership and registration rules, and supervision. **(NASD Case #C3A990067)**

**Jason Todd Ash (CRD #2608941, Registered Representative, Miller Place, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Ash failed to respond to NASD requests for information regarding his termination from a member firm. **(NASD Case #C10990130)**

**Dudley Alexander Biggs (CRD #2994166, Registered Principal, Yonkers, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Biggs consented to the described sanctions and to the entry of findings that he failed to disclose criminal charges on a Form U-4. **(NASD Case #C10000028)**

**Merle Seth Brower, Jr. (CRD #1564817, Registered Representative, Austin, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brower consented to the described sanction and to the entry of findings

that he submitted life insurance applications to his member firm that were false and misleading in that they related to a fictitious person. **(NASD Case #C06000008)**

**Daniel James Butchello, Jr. (CRD #2247132, Registered Representative, Olean, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Butchello failed to respond to NASD requests for information concerning termination from his member firm. **(NASD Case #C8B990029)**

**Sylvester Cannon, Jr. (CRD #2766126, Registered Representative, Detroit, Michigan)** was fined \$25,000 and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The decision became final following Cannon's dismissed appeal to the SEC. The sanctions were based on findings that Cannon failed to respond to NASD requests for information. **(NASD Case #C8A980054)**

**Michael Kyle Faulkner (CRD #1182049, Registered Principal, Springfield, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Faulkner consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information relating to his conduct while at a member firm. **(NASD Case #C04000012)**

**Philip Ralph Friedenn, Jr. (CRD #2403375, Registered Representative, Ft. Lauderdale,**

**Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Friedenn consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to obtain prior written approval from his member firms. **(NASD Case #C07000010)**

**Laronda Joyce Fuller n.k.a. Laronda Franklin (CRD #2794996, Registered Representative, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fuller consented to the described sanction and to the entry of findings that she changed the addresses for accounts belonging to public customers and processed unauthorized withdrawal requests from these accounts that involved the unauthorized liquidation of securities. Fuller directed that checks totaling \$64,774.39 drawn against the accounts be sent to the addresses she had previously designated for these accounts where they were received, endorsed by a third party, and deposited into a bank account in which she had a beneficial interest. The findings also stated that Fuller failed to respond to an NASD request to provide testimony. **(NASD Case #C06000003)**

**Larry Lynn Graham (CRD #1965936, Registered Principal, Littleton, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the

allegations, Graham consented to the described sanctions and to the entry of findings that he participated in a course of conduct that constituted the mishandling of a customer's funds. **(NASD Case #C3A990073)**

**Joel Marc Grant (CRD #1518004, Registered Principal, Roslyn, New York)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grant consented to the described sanction and to the entry of findings that he made baseless and improper price predictions as to speculative securities to public customers, failed to execute customer sell orders, and placed unauthorized trades. The findings also stated that Grant required that customers purchase aftermarket shares as a condition of purchasing initial public offering (IPO) units. **(NASD Case #CAF980031)**

**Eliezer Gurfel (CRD #1409216, Registered Representative, Washington, D.C.)** was censured and barred from association with any NASD member in any capacity. The SEC affirmed the findings of the NAC. The decision became final following a denial of Gurfel's appeal petition by the U.S. Court of Appeals for the District of Columbia. The sanctions were based on findings that Gurfel forged, or caused to be forged, the signature of the firm's president on commission checks totaling \$9,625.64, and converted the proceeds to his own use. **(NASD Case #C9B950010)**

**George Earl Harper (CRD #1632256, Registered Representative, Dayton, Nevada)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and

suspended from association with any NASD member in any capacity for six months. The fine is due and payable prior to reassociation with a member firm. Without admitting or denying the allegations, Harper consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior notice to, or authorization from, his member firm. **(NASD Case #C01000005)**

**Horace Richard Hillberry (CRD #1136754, Registered Representative, Clearwater, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Payment of the fine shall be a prerequisite for consideration of any application for reentry into the securities industry. Without admitting or denying the allegations, Hillberry consented to the described sanctions and to the entry of findings that he misrepresented to public customers that a new variable life insurance policy could be acquired for little or no additional cash payments by using cash values and/or future dividends from existing life insurance policies when, in fact, the customers were required to make payments to keep the insurance in force. The findings also stated that Hillberry sold variable life insurance to customers for whom the purchases were not suitable. In addition, Hillberry misrepresented that variable life insurance was a pension plan and failed to disclose the life insurance elements of the product. **(NASD Case #CAF000004)**

**Cindy Rae Kolb (CRD #1433552, Registered Principal, San Marcos, Texas)** was fined \$10,000 and suspended from association

with any NASD member in any capacity for 30 business days for exercising discretion without her firm's approval. Kolb was also barred from association with any NASD member in any capacity and ordered to pay \$71,068.67, plus pre-judgment interest, in restitution to public customers for fraudulent conduct, conversion of customer funds, and excessive trading. The fine is due and payable prior to application for reentry into the securities industry. The sanctions are based on findings that Kolb effected unauthorized transfers and disbursements by forging, or causing the forgery of, signatures on letters of authorization and submitting requisitions to her member firm. Kolb, thereby, converted \$486,772.50 received from public customers to her personal benefit and the benefit of a third party. The findings also stated that Kolb engaged in excessive trading in the accounts of public customers and exercised discretion in customers' accounts without the prior authorization of the customers and the acceptance of the accounts as discretionary by her member firm. **(NASD Case #C05970037)**

**Ansula Pet Hwa Liu (CRD #1373612, Registered Representative, Minneapolis, Minnesota)** was fined \$50,000 and barred from association with any NASD member in any capacity. The fine was reduced from \$100,000 if Liu pays \$50,000, plus interest, in restitution to public customers within six months of this decision. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Liu engaged in private securities transactions without providing prior written notification to her member firm and failed to respond to NASD requests for information. **(NASD Case #C04970050)**

**Troy Wayne Long (CRD #2708824, Registered Representative, Antelope, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Long failed to respond to NASD requests for information relating to his termination from a member firm. **(NASD Case #C01990017)**

**Herman Paul Manalili (CRD #856842, Registered Representative, Hilo, Hawaii)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 120 days. Without admitting or denying the allegations, Manalili consented to the described sanction and to the entry of findings that, prior to his association with member firms, he opened a brokerage account with another member firm, and continued to engage in securities trades in that account during the course of his association with the firms. Furthermore, the findings stated that Manalili failed to disclose the existence of the account to his member firms and failed to inform the executing firm that he had become an associated person. Manalili also failed to disclose his involvement in private securities transactions to his member firms. **(NASD Case # C01000004)**

**John Vincent McEwan (CRD #2238252, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for 13 months, and required to pay \$5,784.02 in restitution to a public customer within 60 days of acceptance of this AWC by the

NASD. McEwan was also required to requalify by exam in all capacities within 90 days from the date the AWC was issued by the NASD. If McEwan fails to requalify within that time, he will be suspended from acting in any capacity requiring registration until such exams are successfully completed. Payment of the fine and satisfactory proof of payment of restitution, plus interest, shall be prerequisites for consideration of any application for reentry into the securities industry. Without admitting or denying the allegations, McEwan consented to the described sanctions and to the entry of findings that he effected securities transactions in a public customer's account without the customer's prior knowledge or consent. The findings also stated that McEwan completed and signed a new account form for the customer when he knew that the customer's residence address on the new account form was incorrect. **(NASD Case #C10000024)**

**Phillip John Milligan (CRD #1874103, Registered Principal, Guttenberg, New Jersey)** was barred from association with any NASD member in any capacity. The decision became final following Milligan's dismissed appeal to the NAC. The sanction was based on findings that Milligan failed to respond to NASD requests to appear for on-the-record testimony. **(NASD Case #C10990058)**

**Marc Schuman Nemeth (CRD #2573956, Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 90 business days. The fine is payable in full 30 days after the conclusion of the suspension. Without

admitting or denying the allegations, Nemeth consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C10990077)**

**Mark Edward Nichols (CRD #1778988, Registered Principal, Naples, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Nichols consented to the described sanction and to the entry of findings that he sold \$1,491,888 in promissory notes to investors without providing prior written notification to, or receiving prior written approval from, his member firm. **(NASD Case #C07000009)**

**Michael William O'Donnell (CRD #1254156, Registered Principal, Northridge, California)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, O'Donnell consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firms describing the proposed transactions and his proposed role therein. The findings also stated that O'Donnell made material misrepresentations and/or omissions to investors regarding the risk and registration status of an investment company. O'Donnell also misrepresented to public customers his qualifications, his indebtedness, his placement of funds in an escrow account, and his purchase of life insurance policies naming investors as beneficiaries to

protect their investments in case of his death. In addition, O'Donnell made unrealistic projections regarding expected profitability. **(NASD Case #C02990047)**

**Remo P. Rei (CRD #2348000, Registered Representative, Cugnasco, Italy)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Rei failed to respond to NASD requests for information relating to complaints concerning the misappropriation of customer funds. **(NASD Case #C10990155)**

**Daniel Reyes (CRD #2557051, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Reyes failed to respond to NASD requests for information regarding his termination from a member firm. **(NASD Case #C10990157)**

**Dennis Frank Riggi (CRD #1052272, Registered Principal, Los Angeles, California)** was fined \$1,200, suspended from association with any NASD member in any capacity for 30 days, and barred from association with any NASD member in any principal capacity. The sanctions were based on findings that Riggi, while president and sole owner of a member firm, distributed a private placement memorandum that misrepresented the amount of commissions his firm would receive from the sale of securities. **(NASD Case #C02990017)**

**Bela Standard Rossmann (CRD #2296135, Registered Principal, Chalfont, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD

member in any capacity and required to pay \$50,000, plus interest, in restitution to a public customer. The restitution is due and payable prior to any application requesting relief from statutory disqualification. Without admitting or denying the allegations, Rossmann consented to the described sanctions and to the entry of findings that he received \$100,000 from a public customer to conduct securities transactions, failed to conduct the transactions, and, instead, converted the funds to his own use and benefit without the customer's knowledge or consent. The findings also stated that Rossmann failed to respond to NASD requests for information and documentation regarding the customer's complaint of conversion and other violative conduct. **(NASD Case #C9A000008)**

**Michael Humphrey Salandy (CRD #1686500, Registered Representative, Stone Mountain, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Salandy consented to the described sanction and to the entry of findings that he entered fictitious trades into a public customer's account and journaled trades between the firm's proprietary account and the customer's account via the firm's computer system, thereby creating \$216,002.24 in false and improper profits in the account of which Salandy personally received at least \$9,100 from the customer. **(NASD Case #C07000011)**

**Jean Guiteaud Severe (CRD #2688594, Associated Person, Orange, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and

suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Severe consented to the described sanctions and to the entry of findings that he failed to disclose a *nolo contendere* plea to non-securities related felony charges involving the wrongful taking of property on his Form U-4. **(NASD Case #C10990147)**

**Andrew Frank Soldo, Jr. (CRD #2448880, Registered Representative, East Islip, New York)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Soldo consented to the described sanction and to the entry of findings that he made material misrepresentations, omitted to disclose material facts, and predicted the future prices of speculative securities in connection with the offer and sale of securities. The findings also stated that Soldo effected transactions in customer accounts without the customer's prior authorization. Soldo then represented to the customer that the failure to pay for the unauthorized purchase would cause the sale of a profitable position in his account and the entry of a judgment that would affect his credit rating. **(NASD Case #C3A990016)**

**David Ray Steele (CRD #1126752, Registered Representative, El Cajon, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Steele consented to the described

sanctions and to the entry of findings that he executed transactions in the securities account of a public customer and exercised discretionary power in the account without prior written authorization from the customer or written acceptance by his member firm of the account as discretionary. **(NASD Case #C02000002)**

**Christopher Duncan Strachan (CRD #2660920, Registered Principal, Fruit Heights, Utah)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Strachan consented to the described sanction and to the entry of findings that he engaged in business activities outside the scope of his employment with a member firm without providing the firm prompt written notice of his activities. The findings also stated that Strachan issued a promissory note to reimburse public customers in order to settle their complaint away from his member firm. In addition, Strachan failed to respond completely to NASD requests for information. **(NASD Case #C3A000009)**

**Kenneth Allen Thompson (CRD #1759914, Registered Principal, Morton, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Thompson failed to respond to NASD requests for information. **(NASD Case #C9A990042)**

**Charles Edward Warner (CRD #459110, Registered Representative, Nashville, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD

member in any capacity. Without admitting or denying the allegations, Warner consented to the described sanction and to the entry of findings that he received approximately \$25,500 from public customers for investing in variable annuity contracts, failed to make the investments on the customers' behalf, and, instead, converted the funds to his own use and benefit. The findings also stated that Warner failed to respond to NASD requests for information. **(NASD Case #C05000004)**

**Gail S. Yamauchi (CRD #2838913, Registered Representative, Los Angeles, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Yamauchi failed to respond to NASD requests for information regarding possible misappropriation of customer funds. **(NASD Case #C02990058)**

### Complaints Filed

The following complaints were issued by the NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by the 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.

**Thomas Patrick Gorman (CRD #3144585, Registered Representative, Hampden, Massachusetts)** was named as a respondent in an NASD complaint alleging that he received cash and checks totaling \$30,626.81 from a public customer for investment in

mutual fund accounts, failed to deposit the funds in the accounts, and converted the funds for his own use and benefit. The complaint also alleges that Gorman failed to respond to NASD requests for information. **(NASD Case #C11000003)**

**Millennium Securities Corp. (CRD #31695, New York, New York), Richard Allen Sitomer (CRD #1995999, Registered Principal, New York, New York) and Todd Michael Rome (CRD #2082803, Registered Principal, New York, New York)** were named as respondents in an NASD complaint alleging that they bid for, purchased, or induced others to purchase common stocks and warrants while the IPO was continuing or while the firm was engaged in a secondary distribution of the securities. The complaint also alleges that the firm, Sitomer, and Rome committed fraud by failing to disclose to public customers material facts relating to the distribution of the securities. **(NASD Case #CAF000005)**

**Bertram Howard Rosenblatt (CRD #1275489, Registered Principal, Syosset, New York)** was named as a respondent in an NASD complaint alleging that he fabricated, and forged the signature of a public customer on, a letter of authorization that purportedly directed Rosenblatt to transfer shares of stock from the customer's account to the joint account of other customers and forged the customer's signature on the letter. The complaint also alleges that Rosenblatt transferred shares of stock from the customer's account to the joint account of other public customers without the knowledge, authorization, or consent of the customer. In addition, the complaint alleges that Rosenblatt failed to respond to NASD requests for

information, documentation, and to appear for an on-the-record interview. **(NASD Case #C10000027)**

### **Firms Suspended**

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 actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. 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.

**DPP Securities, Inc.**, Austin, Texas (March 7, 2000)

**MZB Select Management, L.L.C.**, New York, New York (March 7, 2000)

**RBG Investments, Inc.**, Chicago, Illinois (March 7, 2000)

**Talented Tenth Investments, Inc.**, New York, New York (March 16, 2000)

**TAP Capital, Inc.**, Plano, Texas (March 7, 2000)

### **NASD Regulation Issues Complaint Against Former CEO And 11 Brokers Of State Capital Markets Corporation**

NASD Regulation announced that it has issued a complaint charging the former Chief Executive Officer and 11 former brokers of now defunct State Capital Markets Corporation with fraudulent sales practices, supervision deficiencies, and the failure to cooperate with an NASD Regulation investigation.

The complaint charges State Capital's former Chairman and Chief Executive Officer, John Doukas, with several violations committed while at State Capital. Specifically, Doukas is alleged to have put in place or enforced a "policy" that prevented some customers from selling specific securities from their accounts. When Doukas imposed and/or enforced a "no net sell" policy at the firm, brokers were not allowed to sell certain securities unless another customer could be found to buy them. The complaint further alleges that as a result of this policy, customers in certain instances had their sales delayed or could not sell securities from their accounts.

Doukas violated NASD rules by permitting Felix Sater, a statutorily disqualified individual, to play a significant role in the firm's securities-related activities. Doukas allowed Sater to conduct meetings with the firm's brokers, hold sales contests, and award cash to brokers who sold the firm's securities despite the fact that Sater was disqualified from the securities industry as a result of a prior felony conviction.

NASD Regulation further alleges that 11 brokers engaged in improper sales practices in their sale of low-priced, highly speculative securities to retail customers, including:

- trading without customer authorization;
- failing to execute customer orders;
- failing to execute orders promptly; and
- making improper price and performance predictions.

The brokers named in the complaint are: Radcliffe Bent; George Christodoulou; Damien Douglas; Paul Guercio; Stephen Guercio; Robert Guidici Pietro, alias Robert Peters; Adam Kaplan; Anthony Mundy; Andrew Ruscio; John Sciascia; and Donald Sedy. In the complaint, NASD Regulation requests that these respondents make restitution to defrauded investors. According to the complaint, at least 40 investors were victimized through the brokers' violative practices.

Three of the individuals named are also charged with providing false or inaccurate information to the NASD Regulation staff about a number of matters including Sater's presence and involvement at the firm. Previously, six individuals associated with State Capital agreed to be suspended or barred from the securities industry as a result of the investigation of State Capital by NASD Regulation's New York District Office.

The alleged violative conduct occurred principally in three securities that the firm had underwritten: U.S. Bridge of N.Y., Inc.; Cable & Co. Worldwide, Inc.; and Fun Tyme Concepts, Inc. NASD Regulation does not allege any wrongdoing on the part of the issuers.

### **NASD Fines Prudential Securities \$100,000 For Seeking To Undermine Competition For IPO Underwriting Services**

NASD Regulation announced that it has censured and fined Prudential Securities, Inc. \$100,000 for improper conduct in connection with its potentially anti-competitive efforts to become lead manager in the underwriting of an IPO. The violative conduct took place while

Prudential was competing with another firm for the lead manager position. In settling this matter, Prudential neither admitted nor denied NASD Regulation's findings.

In 1996, Prudential was competing with other firms to lead manage a \$59 million IPO. After the issuer selected Prudential and a smaller regional investment firm as co-managers, it offered the lead position to Prudential on condition that the offering be priced with a six percent underwriting spread. The underwriting spread is the fee that a firm charges a company to bring its stock to market.

Prudential refused to participate in the offering at a spread of less than seven percent, while the smaller regional firm made a lower competitive bid of six percent. Because the issuer repeatedly rejected Prudential's higher fee, Prudential's investment bankers called their counterparts at the competing firm and asked if they would join with them to persuade the issuer to accept the higher seven percent spread with Prudential as lead manager. Prudential did this to dissuade the issuer from accepting the competitor firm's lower-priced bid for lead manager services. Ultimately, however, the competing firm refused to do what Prudential had asked, and it eventually was chosen as the lead manager with a six percent spread.

In the underwriting business, the lead manager generally earns the largest portion of the underwriting spread and its position, as lead, is prominently displayed on the prospectus as the investment banking firm responsible for the transaction. In this instance, the total fees paid by the issuer at a seven percent underwriting spread would have been over \$4 million dollars, \$600,000 more than the

fees that were actually generated from the six percent spread.

While Prudential's efforts were unsuccessful, its conduct, with its potentially anti-competitive effect, violated the NASD's rule requiring all members to adhere to high standards of commercial honor and just and equitable principles of trade.

This case was brought by NASD Regulation's Enforcement Department with assistance from the Corporate Financing Department in Washington, D.C.

### **NASD Regulation Charges Global Equities Group, Inc. And Five Employees With Fraud And Stock Manipulation**

NASD Regulation announced that it has filed a complaint against Global Equities Group, Inc. and five of its brokers, charging stock fraud and manipulation and for using abusive, high-pressure sales tactics to sell investors low-priced, speculative securities that were part of an IPO. After the investigation began, Global, located in New York, New York, closed in January 1998.

Named in the complaint, and charged with a variety of sales practice and supervisory violations, are the firm's majority owner, Aleksandr Shvarts; President, Michael Christ; Vice-President, Thomas McDermott; and two registered persons, Damiano Coraci; and Eric "Igor" Kuvykin.

Shvarts, Coraci, and Kuvykin are charged with fraud in connection with the July 1996 underwriting of CluckCorp International, Inc. NASD Regulation's investigation uncovered the use of illegal boiler room sales tactics, including high pressure sales tactics. NASD Regulation charged that Global's

brokers, several of whom were not registered with the NASD, sold securities offered in the IPO, made material misrepresentations including making baseless price predictions; omitted material information; and guaranteed future stock performance.

In addition, NASD Regulation charged that before the effective date of the CluckCorp IPO, Shvarts, Coraci, and Kuvykin offered, to prospective employees, undisclosed compensation in the form of CluckCorp warrants that were offered in the IPO. The complaint alleges that the compensation was offered as an incentive to join Global and solicit indications of interest in the IPO. The complaint alleges that Shvarts, Coraci, and Kuvykin told the prospective employees to place the warrants in accounts that the employees controlled or that could be a source of client referrals.

NASD Regulation's investigation also uncovered instances in which Shvarts, Coraci, and Kuvykin funneled portions of the IPO allocation to accounts restricted under NASD's free-riding and withholding rule. Shvarts generated windfall profits for himself by directing shares to restricted accounts and for others, through accounts he controlled.

Finally, the complaint charges Christ and McDermott inadequately supervised the firm and its employees. In addition, Coraci and Kuvykin acted as principals while not registered in that capacity and that Coraci allowed unregistered individuals to act as brokers.

Separately, Shvarts and Kuvykin have both plead guilty to conspiracy to commit securities fraud, wire fraud, and mail fraud in a case brought by the United States Attorney's Office for the Eastern

District of New York involving the CluckCorp IPO, among other matters. The prosecutors handling that case requested and were provided with information obtained in the pre-existing NASD Regulation investigation. The federal prosecution includes allegations of money-laundering which are outside the jurisdiction of NASD Regulation.

The complaint does not allege any wrongdoing on the part of CluckCorp International, Inc.

The investigation leading up to the filing of this complaint was conducted by NASD Regulation's District Office, in New York City.

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