

# Notices to Members

# YEAR 2000 UPDATE

January 1999

## Contingency Planning

Although most businesses are working diligently to ensure that their Year 2000-related issues will be resolved in time, everyone must anticipate that some things will be overlooked, ignored, or not completed on or before December 31, 1999. In addition, businesses must realize that there are things beyond their control that could impact various entities in 2000. One important way to be prepared is through the development and execution of a well-defined contingency plan. As mentioned in previous National Association of Securities Dealers, Inc. (NASD®) publications, each broker/dealer is responsible for developing a written plan that ensures business continuity through 2000. According to industry guidelines, organizations should already have begun constructing their contingency plans by the end of 1998 and should be spending 1999 detailing results and preparing business contingency operations where necessary.

While most organizations may already have contingency plans in place for natural disasters and other types of contingencies, the distinct difference with Year 2000-related problems is due to the potential for widespread and simultaneous failures, for which a traditional backup or contingency plan may be inadequate. Data compiled from NASD member firms' 1998 Forms BD-Y2K revealed that less than 50 percent of all member firms have a Year 2000 contingency plan in place, and less than 20 percent have a written contingency plan.

The best way to view the need for Year 2000 contingency planning is, "hope for the best, but prepare for the worst." What will you do if one or more of your "mission-critical" applications (telecommunications, personal computers, networks, electricity, gas, water, transportation) does not function? What if one of your "mission-critical" vendors (clearing firm, mail delivery, Internet service provider, payroll processing) is unable to perform? How would you be able to conduct your normal business activities? What "work-arounds" could you employ to ensure business continuity?

While the answers to these questions may not always be easy or foolproof, addressing such potential and significant issues before they occur may be much easier than having to address them after they occur.

A well-prepared Year 2000 contingency plan should include:

- 1 *The objective of the plan (e.g., continue normal operations, continue in a degraded mode, abort the function as quickly and safely possible, etc.)*
- 2 *Criteria for invoking the plan (e.g., missing a renovation milestone, reaching a Year 2000-related failure date, experiencing serious system failures, inability of a vendor to provide required service, etc.)*
- 3 *Schedule of activities, dependencies, and resources required from triggering events.*
- 4 *Expected life of the events (How long can operations continue in contingency operating mode?)*
- 5 *Roles, responsibilities, and authority (e.g., identify where roles are different than normal operations; establish lists of critical skills among personnel).*
- 6 *Procedures for invoking contingency mode (e.g., failure/interruptions of internal/external communications, loss of environmental controls, loss of power).*
- 7 *Procedures for operating in contingency mode (e.g., perform the operation manually, shift operation to alternate provider).*
- 8 *Resource plan for operating in contingency mode (e.g., staffing, scheduling, materials, supplies, facilities, temporary hardware and software, communications, etc.)*
- 9 *Criteria for returning to normal operating mode.*
- 10 *Procedures for returning to normal operating mode.*
- 11 *Procedures for recovering lost business events or data.*



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While the list of contingency plan components presented here is not meant to be all inclusive or specific to every firm, it is meant to be a high-level outline of what a typical contingency plan entails. Also, here are a few pointers to take into consideration when preparing a contingency plan. First, approach it from the business point of view, not the technology point of view. Looking at it strictly from the technology perspective, one would miss many non-technology failure points that must be addressed. Second, be sure to test your contingency plan; like any other business plan, a contingency plan is a theory until it is tested or implemented. In order to locate any problems or oversights within your contingency plan, you should test your plan before you are required to implement it.

In addition, the Internet is an excellent resource for gathering contingency planning information. While the NASD does not endorse any specific organization nor guarantee any information contained at the following Web sites, we do feel these sites offer beneficial and practical information pertaining to contingency planning.

<a href="http://www.y2k.gov">www.y2k.gov</a>	The President's Council on Year 2000 Conversion
<a href="http://www.gartner.com">www.gartner.com</a>	The Gartner Group
<a href="http://www.sba.gov">www.sba.gov</a>	The Small Business Administration
<a href="http://www.business-continuity.com">www.business-continuity.com</a>	The Business Continuity Info. Center
<a href="http://www.fdic.gov">www.fdic.gov</a>	FDIC
<a href="http://www.ffiec.gov">www.ffiec.gov</a>	Federal Financial Institutions Examination Council
<a href="http://www.gsa.gov/gsacio/ssay2kb1.htm">www.gsa.gov/gsacio/ssay2kb1.htm</a>	Social Security Administrations Cont. Plan
<a href="http://www.mitre.org/technology/y2k/">www.mitre.org/technology/y2k/</a>	Mitre Company
<a href="http://www.gao.gov/y2kr.htm">www.gao.gov/y2kr.htm</a>	U.S. General Accounting Office
<a href="http://www.year2000.com">www.year2000.com</a>	Year 2000 Web Site

Remember, contingency planning is the last, best step you can take to minimize the business risks posed by the Year 2000 problem. Plan now, so you won't have to put out fires later. For more information on required Year 2000 reporting, or help in developing a member firm Year 2000 contingency plan, contact the NASD Year 2000 Program Office by e-mail at [y2k@nasd.com](mailto:y2k@nasd.com) or by calling our toll-free number at (888) 227-1330.

## **Reminder:**

The second BD-Y2K Report must be filed by April 30, 1999. Broker/dealers that are required to file Part II of Form BD-Y2K must also file a report prepared by an independent public accountant regarding the broker/dealer's process for preparing for the Year 2000. The independent public accountant's report must be prepared in accordance with standards that have been reviewed by the Securities and Exchange Commission (SEC) and that have been issued by a national organization that is responsible for promulgating authoritative accounting and auditing standards. The SEC has already stated that an independent public accountant's report prepared in accordance with the American Institute of Certified Public Accountants (AICPA) Statement of Position 98-08 (SOP 98-08) would satisfy this standard. A copy of SOP 98-08 will be included with the Forms BD-Y2K that will be mailed to members soon. Additional information regarding Form BD-Y2K and the independent public accountant's report is available on the SEC's Web Site ([www.sec.gov](http://www.sec.gov)). Additional information regarding SOP 98-08 is available on the AICPA's Web Site ([www.aicpa.org](http://www.aicpa.org)).

## **More Information/Questions**

**NASD Year 2000 Program Office**

e-mail: [y2k@nasd.com](mailto:y2k@nasd.com)  
phone: (888) 227-1330

# Year 2000 Education And Events

## Virtual Workshops

As published in previous *Notices to Members*, the NASD Year 2000 Program Office is holding Virtual Workshops—workshops in which NASD members may hear about important Year 2000 issues via conference call-in sessions. During the call-in sessions, members will hear a presentation, followed by a question and answer period. The following sessions will provide an opportunity for members to share ideas and learn from other firms' experiences. Please note that all Virtual Workshops begin at 11 a.m. Following is a description of each of the workshops, and further below is a listing of times and other vital information.

### **Legal Issues**

Issues to be covered:

- ◆ Due diligence efforts for brokers/dealers
- ◆ Litigation helpful hints
- ◆ Recent developments in disclosure

### **Mandatory Testing**

Issues to be covered:

- ◆ internal testing
- ◆ SIA-sponsored industry-wide testing
- ◆ Testing with the NASD

### **BD-Y2K for Small Firms**

Issues to be covered:

- ◆ Upcoming BD-Y2K Report and a small firm approach
- ◆ 1999 Report vs. 1998 Report

### **Part III of BD-Y2K**

Issues to be covered:

- ◆ How completing Part III of your BD-Y2K Form affects you
- ◆ What does the SOP cover
- ◆ Helpful hints in the completion of Part III

To participate in the **Virtual Workshops**, the NASD strongly encourages registration, but it is not required. To register call MCI at (800) 839-9159 for the January workshops and at (888) 567-0578 for the February workshops, listen to the greeting, and provide the following information when prompted: firm name, Broker/Dealer #, and workshop date. On the day of the session, call the phone number listed below with the associated workshop, and indicate the password, conference leader, and confirmation number provided for the specific workshop (see below for a list of these specifics organized by date of session).

#### **January 12 - Legal Issues**

Password: Legal

Leader: Angela Lacroix

Conf #: 2519205

Call-in phone number:

(888) 282-9568

#### **January 14 - Mandatory Testing**

Password: Mandatory Testing

Leader: Donna Nichols

Conf #: 3402274

Call-in phone number:

(888) 455-5419

#### **January 20 - BD-Y2K (small firms)**

Password: BD-Y2K

Leader: Donna Nichols

Conf #: 3402355

Call-in phone number:

(888) 455-5419

#### **January 27 - Part III of BD-Y2K**

Password: SOP

Leader: Brooks Johnson

Conf #: 3402391

Call-in phone number:

(888) 455-5419

#### **January 28 - Mandatory Testing**

Password: Mandatory Testing

Leader: Donna Nichols

Conf #: 3402436

Call-in phone number:

(888) 455-5419

#### **February 16 – BD-Y2K (small firms)**

Password: BD-Y2K

Leader: Brooks Johnson

Conf #: 3818571

Call-in phone number:

(888) 455-5419

#### **February 18 – Part III of BD-Y2K (large firms)**

Password: SOP

Leader: Brooks Johnson

Conf #: 3818625

Call-in phone number:

(888) 455-5419

#### **February 23 – BD-Y2K (small firms)**

Password: BD-Y2K

Leader: Brooks Johnson

Conf #: 3818611

Call-in phone number:

(888) 455-5419

#### **February 25 – Part III of BD-Y2K (large firms)**

Password: SOP

Leader: Brooks Johnson

Conf #: 3818652

Call-in phone number:

(888) 455-5419

# Year 2000 Education And Events

## District Office Workshops

The NASD Year 2000 Program Office is offering two sets of workshops—Mandatory Testing and Year 2000 Plan Overview – for NASD member firms to be held at various NASD Regulation District Offices.

### Mandatory Testing

January 20  
Dallas District Office                    9:00 a.m. & 1:00 p.m.

January 25  
Denver District Office                    9:00 a.m. & 1:00 p.m.

January 26  
Los Angeles District Office            9:00 a.m. & 1:00 p.m.

Issues to be covered:

- ◆ Testing requirements
- ◆ SIA-sponsored testing
- ◆ Testing with NASD

Registration required; call (888) 227-1330.

### Year 2000 Plan Overview

January 20  
Dallas District Office                    10:30 a.m. & 2:30 p.m.

January 25  
Denver District Office                    10:30 a.m. & 2:30 p.m.

January 26  
Los Angeles District Office            10:30 a.m. & 2:30 p.m.

Issues to be covered:

- ◆ Year 2000 Overview
- ◆ Industry Guidelines
- ◆ Contingency Planning
- ◆ Question and Answers

Registration required; call (888) 227-1330.

## NASD Year 2000 Event Calendar

Topic	Date	Time (if available)	Location
Legal Issues	January 12	11:00 a.m.	Virtual
Mandatory Testing	January 14	11:00 a.m.	Virtual
BD-Y2K (small firms)	January 20	11:00 a.m.	Virtual
Mandatory Testing	January 20	9:00 a.m. & 1:00 p.m.	Dallas District Office
Y2K Plan Overview	January 20	10:30 a.m. & 2:30 p.m.	Dallas District Office
Mandatory Testing	January 25	9:00 a.m. & 1:00 p.m.	Denver District Office
Y2K Plan Overview	January 25	10:30 a.m. & 2:30 p.m.	Denver District Office
Mandatory Testing	January 26	9:00 a.m. & 1:00 p.m.	Los Angeles District Office
Y2K Plan Overview	January 26	10:30 a.m. & 2:30 p.m.	Los Angeles District Office
Part III of BD-Y2K	January 27	11:00 a.m.	Virtual
Mandatory Testing	January 28	11:00 a.m.	Virtual
BD-Y2K (small firms)	February 16	11:00 a.m.	Virtual
Part III of BD-Y2K (large firms)	February 18	11:00 a.m.	Virtual
BD-Y2K (small firms)	February 23	11:00 a.m.	Virtual
Part III of BD-Y2K (large firms)	February 25	11:00 a.m.	Virtual

# NASD Notice to Members 99-01

Office Of Disciplinary  
Affairs To Authorize All  
Enforcement Actions

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

On December 30, 1998, the Securities and Exchange Commission (SEC) approved rule changes proposed by the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) that provide for the Office of Disciplinary Affairs (ODA) of NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) to authorize all disciplinary actions brought by the NASD.<sup>1</sup> These amendments will be effective on January 1, 1999.

Questions regarding this *Notice* should be directed to Eric Moss, Assistant General Counsel, NASD Regulation, at (202) 728-8982.

## Office Of Disciplinary Affairs As Case Authorizer

As of January 1, 1999, the ODA will authorize all disciplinary actions brought by the NASD. For the past year, the Case Authorization Unit (CAU), a division of the NASD Regulation Department of Enforcement, authorized all disciplinary actions brought by the NASD. The Office of Disciplinary Policy (ODP), which reported to the Office of the President of NASD Regulation, was the primary reviewer of cases developed in the Washington, D.C. office and those involving "quality-of-market" issues. The ODP also reviewed and commented on all cases involving policy issues.

To increase overall operating efficiency and to maintain the consistency and independence of the case authorization function, the NASD is placing the functions performed by the ODP and CAU in one office. Under the new rules, all cases will be authorized by the ODA, which will review the legal, policy, and consistency issues presented by each case.

The text of these rules that go into effect on January 1, 1999, is set forth in the remainder of this *Notice*.

## Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

### 9120. Definitions

**(a) - (d) No change**

**(e) "Department of Enforcement"**

The term "Department of Enforcement" means the Department of Enforcement or its delegatee, the Department of Market Regulation[, except that the term excludes the Department of Market Regulation with respect to the actions of:

- (1) authorizing a complaint under Rule 9211;
- (2) determining the terms of a letter of acceptance, waiver, and consent or the terms of a minor rule violation plan letter under Rule 9216;
- (3) determining whether to contest an offer of settlement under Rule 9270; and
- (4) authorizing the filing of an appeal under Rule 9311].

**(f) - (u) No change**

**(v) "Office of Disciplinary Affairs"**

The term "Office of Disciplinary Affairs" means the Office of Disciplinary Affairs for NASD Regulation.

**(w) [v] "Panelist"**

The term "Panelist," as used in the Rule 9200 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current member of the National Adjudicatory Council, a former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

**(x) [w] “Party”**

With respect to a particular proceeding, the term “Party” means:

(1) in the Rule 9200 Series and the Rule 9300 Series, the Department of Enforcement or a Respondent;

(2) in the Rule 9410 Series and the Rule 9520 Series, the Department of Member Regulation or

(A) a member that is the subject of a notice under Rule 9412;

(B) a member that is the subject of a notice or files an application under Rule 9522;

(3) in the Rule 9510 Series, the department or office designated under Rule 9514(b) or a member or person that is the subject of a notice under Rule 9512 or Rule 9513; or

(4) in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.

**(y) [x] “Primary District Committee”**

The term “Primary District Committee” means, in a disciplinary proceeding under the Rule 9200 Series, the District Committee designated by the Chief Hearing Officer pursuant to Rule 9232 to provide one or more of the Panelists to a Hearing Panel or, if applicable, to an Extended Hearing Panel, for such disciplinary proceeding.

**(z) [y] “Respondent”**

The term “Respondent” means, in a disciplinary proceeding governed by

the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, an NASD member or associated person against whom a complaint is issued.

**(aa) [z] “Review Subcommittee”**

The term “Review Subcommittee” means a body appointed by the National Adjudicatory Council pursuant to Article V of the NASD Regulation By-Laws.

**(bb) [aa] “Statutory Disqualification Committee”**

The term “Statutory Disqualification Committee” means a Subcommittee of the National Adjudicatory Council that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of the Association to the National Adjudicatory Council pursuant to the Rule 9520 Series.

**(cc) [bb] “Subcommittee”**

The term “Subcommittee” means an Adjudicator that is:

(1) constituted under Rule 9331(a) to participate in the National Adjudicatory Council’s consideration of an appeal or a review of a disciplinary proceeding pursuant to the Rule 9300 Series;

(2) constituted under the Rule 9410 Series or Rule 9630 to conduct a review proceeding.

**9200. DISCIPLINARY PROCEEDINGS**

**9210. Complaint and Answer**

**9211. Authorization of Complaint**

**(a) Complaint**

(1) If the Department of Enforcement believes that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce, the Department of Enforcement may request authorization from the Office of Disciplinary Affairs to issue [authorize] a complaint.

(2) The NASD Regulation Board and the NASD Board each shall have the authority to direct the Office of Disciplinary Affairs [Department of Enforcement] to authorize and the Department of Enforcement to issue a complaint when, on the basis of information and belief, either of such boards is of the opinion that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce.

**(b) No change**

**Endnote**

<sup>1</sup>Securities Exchange Act Rel. No. 34-40864 (December 30, 1998) (File No. SR-NASD-98-90).

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# NASD Notice to Members 99-02

## NASD Regulation Withdraws Risk Disclosure Proposal

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) is withdrawing the risk disclosure proposal discussed in *Notice to Members 97-29*. Questions concerning this *Notice* should be directed to Mary Revell, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8203.

would require all members that sell both Federal Deposit Insurance Corporation-insured bank products and uninsured securities products to provide disclosures similar to those required by NASD Rule 2350, the Bank Broker/Dealer Rule, which imposes obligations on member firms selling securities on the premises of depository institutions.

### Discussion

*Notice to Members 97-29*, issued in May 1997, reminded members of their disclosure obligations when marketing mutual funds and other securities. For example, members must disclose the material differences between the risks of uninsured securities products and insured depository products to a customer who is seeking to invest the proceeds of a guaranteed or insured product in an uninsured securities product, such as a mutual fund. Members also are required to disclose all material information to customers when recommending transactions in mutual funds.

The *Notice* also requested public comment on whether NASD Regulation should adopt a rule requiring members to disclose investment risks and the absence of guarantees or insurance related to investing in securities products (Risk Disclosure Rule). In order to ensure that customers are notified of the risks of purchasing uninsured securities products, the Risk Disclosure Rule

NASD Regulation is formally withdrawing the proposed Risk Disclosure Rule from consideration. Unlike the confusion that arises when a customer purchases a securities product from a broker/dealer operating on bank premises, which may lead the investor to conclude incorrectly that the securities product is insured, we believe there is little likelihood of customer confusion about the insured status of a securities product purchased from a broker/dealer that is not operating on bank premises. Thus, contrary to the situation that gave rise to the Bank Broker/Dealer Rule, there is little need for a Risk Disclosure Rule applicable to firms that are not located on the premises of financial institutions. We also believe that existing disclosure requirements, discussed in *Notice to Members 97-29*, adequately address any concerns raised by customer purchases of uninsured products.

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# NASD Notice to Members 99-03

SEC Approves Rule Amendments Requiring Review Of Incoming, Written Correspondence; Effective March 15, 1999

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

On November 30, 1998, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 3010, requiring firms to review incoming, written correspondence to identify customer complaints and funds and to ensure they are properly handled. The rule amendments will be effective on March 15, 1999. This amendment revises rule changes that became effective on April 7, 1998. The text of the amended Rule and the *Federal Register* version of the SEC release are attached. This *Notice to Members* is being issued to provide guidance on how to implement this rule.

Questions concerning this *Notice* should be directed to Lawrence Kosciulek, Assistant Director, Advertising/Investment Companies Regulation, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>), at (202) 728-8329; or Mary N. Revell, Associate General Counsel, Office of General Counsel, NASD Regulation at (202) 728-8203.

## Background

In December 1997, the SEC approved rule amendments that were designed to allow firms to develop flexible supervisory procedures for the review of correspondence with the public. The amendments were intended to recognize the growing use of correspondence sent and received in electronic format (*i.e.*, e-mail and facsimile) while still providing for effective supervision. *Notice to Members 98-11*, issued in January 1998, provided guidance to firms on how to implement these rules. Subsequent to SEC approval of the amendments, but before the amended rules went into effect, the SEC received 14 comment letters objecting to certain provisions in the new rules, primarily from members in the insurance industry. The commenters primarily

objected to a provision in *Notice to Members 98-11*, which states that firms will be required to review all incoming correspondence received in non-electronic format directed to registered representatives and related to a member's investment banking or securities business. NASD Regulation added this provision to *Notice to Members 98-11* to address two regulatory concerns raised by the SEC: (1) ensuring that firms capture all customer complaints; and (2) safeguarding customer funds.

The commenters stated that it will be very difficult or impossible for a registered principal to conduct a pre-distribution review of all incoming, non-electronic correspondence, particularly correspondence received by registered representatives in small, one- or two-person offices. In response to these concerns, the effective date of the requirement to review all incoming, non-electronic correspondence was delayed to allow NASD Regulation time to develop an alternative, workable procedure for the review of incoming, non-electronic correspondence that addresses the regulatory concerns about preventing misappropriation of customer funds and diversion of customer complaints. The rule amendments and all other provisions in the *Notice* became effective on April 7, 1998.

## Amended Rule

NASD Regulation has received SEC approval of amendments to Rule 3010 (see Securities Exchange Act Release No. 40723 (November 30, 1998), 63 FR 67496 (December 7, 1998), attached). Rule 3010(d)(2) requires each member to develop written policies and procedures for review of correspondence with the public relating to its investment banking or securities business tailored to its structure and the nature and size of its business and customers. The

rule has been amended to state that these procedures must also include the review of incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures.

The method used for conducting reviews of incoming, written correspondence to identify customer complaints and funds may vary depending on the firm's office structure. Where the office structure permits review of all correspondence, members should designate a registered representative or an associated person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the registered person whose correspondence is opened and reviewed. Unregistered persons who have received sufficient training to enable them to identify complaints and checks would be permitted to review correspondence.

It is the understanding and view of NASD Regulation that member firms possess the legal capacity to insist that mail addressed to their offices be deemed to be related to their business, even if marked to the attention of a particular associated person, if they advise associated persons that personal correspondence should not be received at the firm. Members are reminded that SEC Rule 17a-4(b)(4) requires that "originals of all communications received . . . by such member, broker or dealer, relating to its business as such . . ." must be preserved for not less than three years.

Where the office structure does not permit the review of correspondence prior to use or distribution, the firm

would have to employ alternative procedures reasonably designed to assure adequate handling of complaints and checks. Procedures that could be adopted include the following:

- forwarding opened incoming, written correspondence related to the firm's investment banking or securities business to an Office of Supervisory Jurisdiction or a branch manager for review on a weekly basis;
- maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch on a weekly basis;
- communication to clients that they can contact the broker/dealer directly for any matter, including the filing of a complaint, and provides them with an address and telephone number of a central office of the broker/dealer for this purpose; and
- branch examination verification that the procedures are being followed.

Regardless of the method used for initial review of incoming, written correspondence, as with other types of correspondence, Rule 3010(d)(1) would still require review by a registered principal of some of each registered representative's correspondence with the public relating to the member's investment banking or securities business.

### **Notice to Members 98-11**

As stated above, *Notice to Members 98-11* stated that firms would be required to review all incoming correspondence received in non-electronic format directed to registered representatives and related to a member's investment banking or securities business. That requirement is no longer applicable and has been superseded by the amendment

to Rule 3010(d)(2) and the guidance provided in this *Notice*.

## **Text Of Amendments**

(Note: New text is underlined; deletions are bracketed.)

### **Rule 3010. Supervision**

#### **(a) - (c) No change**

#### **(d) Review of Transactions and Correspondence**

##### **(1) No change**

(2) Review of correspondence. Each member shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (*i.e., non-electronic*) and electronic correspondence with the public relating to its investment banking or securities business, including procedures to review incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. Where such procedures for the review of correspondence do not require [pre-use] review of all correspondence prior to use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

##### **(3) No change**

#### **(e) - (g) No change**

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NRC/nucmat.html) approximately 4 weeks after the publication date of this notice.

Dated at Rockville, Maryland, this 30th day of November, 1998.

**For the Nuclear Regulatory Commission.**

**Donald A. Cool,**

*Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 98-32394 Filed 12-4-98; 8:45 am]

BILLING CODE 7590-01-P

**SECURITIES AND EXCHANGE COMMISSION**

**Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Unity Bancorp, Inc., Common Stock, No Par Value) File No. 1-12431**

December 1, 1998.

Unity Bancorp, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

On August 20, 1998, the Board of Directors of the Company unanimously approved a resolution to withdraw the Company's Security from trading on the Exchange and to list the Security on the Nasdaq. In making the decision to withdraw its Security from listing on the Exchange, the Company considered the direct and indirect costs and benefits involved and determined that trading on the Nasdaq better suited its needs. Trading in the Company's Security on the Nasdaq commenced at the opening of business on September 21, 1998.

The Company has complied with Rule 18 of the Amex by notifying Amex of its intention to withdraw its Security from listing on the Exchange by letter dated August 24, 1998, and by filing a copy of the resolution with the Exchange. The Exchange replied by letter dated August 26, 1998, advising that the Exchange would not interpose any objection to such action, nor require the Company to send common stockholders any statement with respect thereto.

The Company also originally intended to delist its Common Stock Purchase

Warrants ("Warrants") from Amex and to list the Warrants on Nasdaq. The Warrants, however, did not meet the Nasdaq's float requirement and the Company elected to keep the Warrants on the Amex. By letter dated September 14, 1998, the Amex consented to this procedure.

Any interested person may, on or before December 22, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-32380 Filed 12-4-98; 8:45 am]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-40723; File No. SR-NASD-98-52]**

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change Relating to Supervision of Correspondence**

November 30, 1998.

**I. Introduction**

On July 24, 1998, the National Association of Securities Dealers, Inc. ("NASD") or ("Association"), through its wholly-owned subsidiary, the NASD Regulation, Inc. ("NASDR"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend NASD Rule 3010 to state that firms must review incoming, written

correspondence to identify customer complaints and funds. On August 26, 1998, the NASDR submitted Amendment No. 1 to the proposed rule change.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on September 3, 1998.<sup>4</sup> Four comment letters were received on the proposal.<sup>5</sup> On November 12, 1998, the NASDR filed Amendment No. 2 to the proposed rule change.<sup>6</sup> The Commission solicits comments on Amendment No. 2 from interested persons. This order approves the proposed rule change and Amendment No. 1 thereto and approves Amendment No. 2 to the proposed rule change on an accelerated basis.

**II. Background and Description of the Proposal**

In December 1997, the SEC approved rule amendments and a Notice to Members that were designed to allow firms to develop flexible supervisory procedures for the review of correspondence with the public.<sup>7</sup> The amendments were intended to recognize the growing use of electronic communications such as "e-mail" while still providing for effective supervision. Notice to Members 98-11, issued by the

<sup>3</sup> See Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 24, 1998 ("Amendment No. 1"). In Amendment No. 1, NASDR proposes to replace the word "should" in the text of the proposed rule with the word "must."

<sup>4</sup> See Securities Exchange Act Release No. 40372 (August 27, 1998), 63 FR 47059.

<sup>5</sup> See Letters to Jonathan G. Katz, Secretary, Commission, from Michael L. Kerley, Vice President and Chief Legal Officer, MML Investors Services, Inc., dated September 18, 1998 ("MML Letter"); Theodore A. Mathas, President NYLIFE Securities, dated September 23, 1998 ("NYLSEC Letter"); Janet G. McCallen, Executive Director, International Association for Financial Planning, dated September 23, 1998 ("IAFP Letter"); and Joseph P. Savage, Assistant Counsel, Investment Company Institute, dated September 24, 1998 ("ICI Letter").

<sup>6</sup> See Letter from Mary N. Revell, Associate General Counsel, NASDR, to Katherine A. England, Assistant Director, Division, Commission, dated November 12, 1998 (Amendment No. 2). In Amendment No. 2, in addition to making several technical amendments, the NASDR addresses the issues raised in the comment letters. The NASDR proposes to revise its draft Notice to Members to clarify that: (1) registered representatives can forward opened mail; (2) maintenance of a log should be only for "securities" products; and (3) customers should be informed that they can contact a central office of the member firm for any reason, including to file a complaint. The NASDR also proposes to specifically state that member firms have a legal right to review incoming, written correspondence. Finally, the NASDR proposes to change the effective date of the new amendments to 60 days following publication of its Notice to Members.

<sup>7</sup> See Securities Exchange Act Release No. 39510 (December 31, 1997) 63 FR 1131 (January 8, 1998).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

NASD in January 1998, announced approval of the rule amendments, the effective date of the new rules, and provided guidance to firms on how to implement these rules. Subsequent to Commission approval of the amendments, but before the amended rules went into effect, the Commission received 14 comment letters, primarily from members in the insurance industry, objecting to certain provisions in the new rules.<sup>8</sup> The commenters primarily objected to a provision in Notice to Member 98-11 which states that firms will be required to review all incoming, written correspondence directed to registered representatives and related to a member's investment banking or securities business. The NASDR added this provision to Notice to Members 98-11 to address two regulatory concerns raised by the Commission: (1) ensuring that firms capture all customer complaints; and (2) preventing registered representatives from taking cash or checks out of customer letters.

The commenters stated that it would be very difficult or impossible for a registered principal to conduct a pre-distribution review of all incoming, written correspondence, particularly correspondence received by registered representatives in small, one- or two-person offices. In response to these concerns, the effective date of the requirement to review all incoming, written correspondence was delayed to allow the NASDR and member firms time to develop and implement alternative, workable procedures for the review of incoming, written correspondence that addresses the regulatory concerns about preventing misappropriation of customer funds and diversion of customer complaints.<sup>9</sup> The

<sup>8</sup> See Letters to Jonathan G. Katz, Secretary, Commission, from Carl B. Wilkerson, American Council of Life Insurance, dated January 9, 1998 and January 29, 1998; Beverly A. Byrne, BenefitsCorp Equities, Inc., dated January 26, 1998; Michael S. Martin, The Equitable Life Assurance Society of the United States, dated January 29, 1998; Janet G. McCallen, International Association for Financial Planning, dated February 13, 1998; W. Thomas Boulter, Jefferson Pilot Financial, dated January 28, 1998; Leonard M. Bakal, Metropolitan Life Insurance Company and MetLife Securities, Inc., dated January 28, 1998; Michael L. Kerley, MML Investors Services, Inc. dated January 26, 1998; Mark D. Johnson, The National Association of Life Underwriters, dated February 5, 1998; Theodore Mathas, NYLIFE Securities, dated January 16, 1998 and January 29, 1998; Beverly A. Byrne, One Orchard Equities, Inc., dated January 26, 1998; Dodie Kent, Pruco Securities Corporation, dated January 29, 1998; and James T. Bruce, Wiley, Rein & Fielding, on behalf of the Electronic Messaging Association, dated January 30, 1998.

<sup>9</sup> See Securities Exchange Act Release Nos. 39665 (February 13, 1998) 63 FR 9032 (February 23, 1998); 39866 (April 14, 1998) 63 FR 19778 (April 21,

rule amendments and all other provisions in the Notice became effective on April 7, 1998.<sup>10</sup>

NASDR Rule 3010(d)(2) currently requires each member to develop written policies and procedures for review of correspondence with the public relating to its investment banking or securities business tailored to its structure and the nature and size of its business and customers. The NASDR proposes to amend the rule to state that these procedures must include review of incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints, funds, and securities. This proposed amendment will clarify that firms must develop supervisory procedures that specifically address the regulatory concerns identified by the Commission.

The accompanying Notice to Members will provide guidance on how to implement the proposed rule change.<sup>11</sup> In particular, the Notice states that, in conducting reviews of incoming, written correspondence to identify customer complaints and funds, where the office structure permits review of all correspondence, members should designate a registered or associated person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the registered person whose correspondence is opened and reviewed. Unregistered persons who have received sufficient training to enable them to identify complaints and checks would be permitted to review correspondence.

Where the office structure does not permit the review of correspondence prior to use or distribution, the Notice states that the firm would have to employ alternative procedures reasonably designed to assure adequate handling of complaints and checks. Procedures that could be adopted include the following:

- After opening his or her own mail, the registered representative can forward incoming, written correspondence related to the firm's

1998); and 40178 (July 7, 1998) 63 FR 37911 (July 14, 1998).

<sup>10</sup> See Securities Exchange Act Release No. 39866, *supra* note 9.

<sup>11</sup> The Notice that will be issued when this proposed rule is approved will state that the requirement set forth in Notice to Members 98-11 is no longer applicable and has been superseded by the amendment to Rule 3010(d)(2) and the guidance provided in the Notice.

investment banking or securities business to an Office of Supervisory Jurisdiction (OSJ) or a branch manager for review on a weekly basis;

- Maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch on a weekly basis;
- Communication to clients that they can contact the broker/dealer directly for any matter, including the filing of a complaint and provides them with an address and phone number of a central office of the broker/dealer for this purpose; and
- Branch examination verification that the procedures are being followed.

The Notice also states that, regardless of the method used for initial review of incoming, written correspondence, as with other types of correspondence, Rule 3010(d)(1) would still require review by a registered principal of some of each registered representative's correspondence with the public relating to the member's investment banking or securities business.

### III. Summary of Comments

The Commission received four comment letters on the proposed rule change.<sup>12</sup> Two of the commenters generally opposed the proposal;<sup>13</sup> two of the commenters generally supported the proposal.<sup>14</sup> The commenters opposing the proposal believe that any possible benefits of the proposal are outweighed by the associated burdens.<sup>15</sup> Specifically, the proposal's opponents believe that even if a member firm's business structure permits the review of incoming, written correspondence prior to use or distribution, NASD Rule 3010 should not require such review.<sup>16</sup> Instead, member firms should be permitted the flexibility to design their own procedures to identify customer complaints and funds.<sup>17</sup> The NASDR has not modified its proposal in response to these comments.

One commenter also recommends that NASDR should eliminate the "requirements" to forward correspondence and logs to a reviewer on a weekly basis and instead, to permit review on a regular basis.<sup>18</sup> In response, the NASDR notes that its proposed Notice to Members does not establish "requirements" for those member firms with office structures that do not permit

<sup>12</sup> See note 5, *supra*.

<sup>13</sup> See NYLSEC Letter and ICI Letter, *supra* note 5.

<sup>14</sup> See MML Letter and IAIFP Letter, *supra* note 5.

<sup>15</sup> See NYLSEC Letter and ICI Letter, *supra* note 5.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See NYLSEC Letter, *supra* note 5.

review of all incoming correspondence.<sup>19</sup> Instead, the proposed Notice to Members provides several examples of alternative procedures that member firms might employ to assure adequate handling of customer complaints and funds.

One commenter requests that if the proposal is adopted, the effective date of the amendments should be postponed for six months to provide member firms with sufficient time to implement the additional requirements.<sup>20</sup> The NASDR declines to postpone the effective date of the amendments for six months, noting that member firms have been on notice since the issuance of NASD's Notice to Members 98-11 in January 1998 that some type of review of incoming, written correspondence would be required. To provide member firms with some time to implement the required changes, the NASDR proposes to change the effective date of the new amendments to 60 days following publication of the Notice to Members announcing Commission approval of the proposal.<sup>21</sup>

In addition, one commenter suggests that the rule specify that if a member firm doesn't normally receive written correspondence directed to registered representatives, the member should not have to develop procedures to address such correspondence.<sup>22</sup> The NASDR has not modified its proposal in response to this comment.

One commenter requests that the NASDR specifically state that member firms have a legal right to review incoming mail, to parallel a similar statement made by the New York Stock Exchange.<sup>23</sup> In response, the NASDR proposes to revise its draft Notice to Members to include such a statement.<sup>24</sup>

Another commenter recommends that the NASDR clarify in the examples provided in its Notice to Members that: (1) Registered representatives can forward opened mail; (2) maintenance of a log should be only for "securities" products; and (3) customers should be informed that they can contact a central office of the member firm for any reason, including to file a complaint.<sup>25</sup> The NASDR proposes to revise its draft Notice to Members to implement the commenter's recommendations.<sup>26</sup>

<sup>19</sup> See Amendment No. 2, *supra* note 6.

<sup>20</sup> See NYLSEC Letter, *supra* note 5.

<sup>21</sup> See Amendment No. 2, *supra* note 6.

<sup>22</sup> See ICI Letter, *supra* note 5.

<sup>23</sup> See MML Letter, *supra* note 5.

<sup>24</sup> See Amendment No. 2, *supra* note 6.

<sup>25</sup> See IAFP Letter, *supra* note 5.

<sup>26</sup> See Amendment No. 2, *supra* note 6.

#### IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.<sup>27</sup> Specifically, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) of the Act<sup>28</sup> in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The Commission believes that the proposal, which clarifies member firms' responsibilities with respect to the review of incoming, written correspondence, is designed to protect existing and prospective customers by ensuring that customer complaints and customer funds and securities are handled properly.

The NASDR proposes to amend NASD Rule 3010 to require that member firms' written procedures regarding the review of correspondence must include a review of incoming, written correspondence directed to registered representatives to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. In its draft Notice to Members, the NASDR explains that the method used in conducting such reviews will depend on the firm's particular office structure. Where the office structure permits review of all correspondence, the NASDR will require that member firms designate an individual to open and review such correspondence prior to use or distribution to identify customer complaints and funds. The Commission agrees that wherever practicable, prior review of incoming, written correspondence should be mandated, to protect customer interests and possibly, reduce member firms' potential liability.

The Commission recognizes, however, that there may be circumstances in which such prior review of incoming, written correspondence is not practical. In such cases, the Commission believes that the NASDR's proposal to require member firms to employ alternative procedures reasonable designed to assure adequate handling of customer complaints, funds, and securities is reasonable. The Commission believes that member firms that do not require prior review of all incoming, written correspondence should require, at a

minimum, some combination of those alternative procedures provided by the NASDR as an example, or similar procedures, rather than relying on only one alternative procedure. The Commission believes that employing more than one alternative procedure should serve to provide additional assurances that incoming, written correspondence is handled appropriately.

The Commission notes that the proposal requires the review by a registered principal of some of each registered representative's correspondence with the public relating to the member firm's investment banking or securities business, regardless of the method used for the initial review of incoming, written correspondence. The Commission believes that this requirement should ensure that appropriate persons within the firm will undertake to supervise the activities of the firm's registered representatives. The Commission expects that in the event that the firm learns of any suspect activities on the part of any of its registered representatives, the firm will commence a more thorough review of that representative's activities, including his/her correspondence with the public.

The Commission finds good cause for approving proposed Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In Amendment No. 2, the NASDR addresses the concerns raised in the four comment letters received by the Commission on this proposal. Amendment No. 2 modifies the original filing and the accompanying draft Notice to Members only slightly, in response to specific comments raised by interested parties. Specifically, Amendment No. 2 clarifies that member firms have the legal right to review incoming written correspondence and that the rules apply to the member firms' investment banking and securities business. As the modifications proposed in Amendment No. 2 are reasonable and do not significantly alter the original proposal, the Commission believes that Amendment No. 2 raises no issues of regulatory concern. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act<sup>29</sup> to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views and

<sup>27</sup> In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>28</sup> 15 U.S.C. 78o-3(b)(6).

<sup>29</sup> 15 U.S.C. 78o-3(b)(6).

arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of all such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-52 and should be submitted by December 28, 1998.

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>30</sup> that the proposed rule change (SR-NASD-98-52), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>31</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 98-32400 Filed 12-4-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40718; File No. SR-NASD-98-96]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Correcting Cross-References in Rules to NASD By-Laws

November 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 19, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-

owned regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to correct cross-references in the NASD Rules to the NASD By-Laws. The text of the proposed rule change is set forth below. Proposed new language is italicized; proposed deletions are in brackets.

#### Rule 0112. Effective Date

The Rules shall become effective as provided in Section 1 of Article [XII] XI of the By-Laws.

#### Rule 0120. Definitions

\* \* \* \* \*

##### (i) "Member"

The term "member" means any individual, partnership, corporation or other legal entity admitted to membership in the Association under the provisions of Articles [II and] III and IV of the By-Laws.

\* \* \* \* \*

#### Rule 1060. Persons Exempt from Registration

(a) No change.

(b) No change.

(1) the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in Article [II] III, Section 4 of the Association's By-Laws, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

\* \* \* \* \*

#### Rule 1100. Foreign Associates

(a) No change.

(b) No change.

(1) Such person is not subject to any of the prohibitions to registration with the Association contained in Article [II] III, Section 4 of the By-Laws of the Association.

\* \* \* \* \*

(c) In the event of the termination of the employment of a Foreign Associate, the member must notify the Association immediately by filing a notice of

termination as required by Article [IV] V, Section 3 of the By-Laws.

\* \* \* \* \*

#### IM-2110-4. Trading Ahead of Research Reports

\* \* \* \* \*

In accordance with Article VII, Section 1(a)[(2)](ii) of the NASD By-Laws, the Association's Board of Governors has approved the following interpretation of Rule 2110.

\* \* \* \* \*

#### IM-2210-4. Limitations on Use of Association's Name

##### (a) Use of Association Name

Members may indicate membership in the Association in conformity with Article [XVI] XV, Section 2 of the NASD By-Laws in one or more of the following ways:

\* \* \* \* \*

#### IM-2420-1. Transactions Between Members and Non-Members<sup>1</sup>

##### (a) Non-members of the Association.

\* \* \* \* \*

##### (4) Broker or Dealer Registration Revoked by SEC

Revocation by the Commission of an Association member's registration as a broker or dealer automatically terminates the membership of such broker or dealer in the Association as of the effective date of such order. Under Article [III] III, Section 4 of the By-Laws of the Corporation, a firm whose registration as a broker or dealer is revoked is thereby disqualified for membership in the Association, and from the effective date of such order, the membership of such broker or dealer in the Association is discontinued. Thereafter such broker or dealer is a non-member of the Association.

##### (5) Membership Resigned or Canceled

The membership of a broker or dealer in the Association is automatically terminated when the Association accepts the resignation of such member or cancels its membership in the Association under the provisions of Article [III] III, Section 3; Article [III] IV, Section 5; or Article [XIV] XIII, Section 1, of the By-Laws. After the date of acceptance by the Association of the resignation of such member or the date of cancellation of membership by the Association, such broker or dealer is a non-member of the Association.

\* \* \* \* \*

#### IM-2420-2. Continuing Commissions Policy

\* \* \* \* \*

<sup>1</sup> Text of note unchanged.

<sup>30</sup> 15 U.S.C. 78s(b)(2).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

# NASD Notice to Members 99-04

## Revised OATS Reporting Technical Specifications Released

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

A revised edition of the *OATS Reporting Technical Specifications (Technical Specifications)* was released November 30, 1998. Members that are required to submit data to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>), in accordance with National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rules 6950 through 6957, must use these specifications for all files and records submitted after January 18, 1999.

For more information, contact NASD Business and Technology Support Services at (800) 321-NASD.

### Discussion

The *Technical Specifications* was originally published March 9, 1998, for member firms and third parties developing systems to report to OATS. An updated edition was published June 30, 1998, to provide clarification regarding the requirements.

A revised edition of the *Technical Specifications*, dated November 30, 1998, contains significant changes from the previous editions. Member firms must ensure that these changes are incorporated into any files submitted to OATS. The changes include:

- The Reporting OSO field was added to the FORE header. This field allows a member firm to give a third party, such as a clearing firm, access to its data submitted to OATS. The addition of this field means that the party transmitting a file, the member firm that is subject to reporting, and a designated third party can view the status files, statistics, and record rejections associated with a file.
- The User ID and Password fields are no longer required in the FORE header for files submitted via file transfer protocol (FTP). (The User ID and Password are still mandatory

when submitting files as an attachment to e-mail.)

- The OSO ID field was removed from the FORE header. It will be derived from the User ID and Password used for FTP logon or contained in the header of a file submitted via e-mail.
  - The Reporting Firm MP ID field was removed from the New Order, Cancel/Replace, and Combined Order Execution Reports.
  - Any order event reported to OATS that does not link to a New Order Report that exists in OATS will be rejected. Thus, cancellations, modifications, executions, or routes of orders received before the date when OATS reporting begins should not be transmitted to OATS.
  - Certification is no longer a prerequisite for reporting production data to OATS; however, all firms that will be transmitting data to OATS should test their systems thoroughly before submitting data to the production system.
  - The definition of OATS Business Day has changed. For purposes of OATS reporting, a business day begins after the close of The Nasdaq Stock Market<sup>®</sup> on one market day (4:00:01 p.m. Eastern Time [ET]) and ends with the close of The Nasdaq Stock Market on the next market day (4:00:00 p.m. ET). Orders received during an OATS Business Day are required to be submitted to OATS by 4:00:00 a.m. ET the following calendar day or they will be considered late.
- This new edition of the *Technical Specifications* also includes a revised set of error messages in Appendix B and updated information about registration, testing, and implementation. NOTE: Only parties that are registered for OATS will be able to trans-

mit data to the NASD. In addition, only parties that are registered for OATS can obtain access to their file status, statistics, and record rejections via the OATS Web interface.

Also, the document highlights the fact that all types of Nasdaq® securities, including Nasdaq National Market® and SmallCap™ equity securities and convertible bonds, must be reported to OATS. Any order information for non-Nasdaq securities will be rejected by OATS.

All changes and clarifications made since the June 30, 1998 edition are marked in the document with revised lines, except the revisions to the error messages in Appendix B. A list of the major changes and clarifications appears in the cover letter for the document. There are additional minor formatting and grammar changes. (NOTE: The page numbering throughout the November 30 edition changed from the June 30 edition.)

The changes described in this edition take effect in the test environment as of January 19, 1999, and in the production environment on March 1, 1999. Information submitted to OATS before January 19 must comply with the June 30, 1998 edition of the *Technical Specifications*. Begin-

ning January 19, 1999, all information submitted to OATS must comply with these revised specifications.

A new edition of the companion document to the updated *Technical Specifications*, the *OATS Subscriber Manual*, will be released in January 1999, on the OATS Web pages. It will also be available from NASD Business and Technology Support Services. This new edition describes the procedures for sending and testing the capability to send order data to OATS beginning January 19, 1999, using the OATS Web interface to submit and repair record rejections, obtain feedback from OATS, and perform self-administration of user accounts and contact information.

The November 30 edition of the *Technical Specifications* is available on the OATS Web pages at [www.nasdr.com/3340.htm](http://www.nasdr.com/3340.htm). All updates to this and other documentation regarding OATS will be posted to the OATS Web pages available via the NASD Regulation™ Web Site at [www.nasdr.com](http://www.nasdr.com). These publications will not be distributed via mail, except upon specific request.

The *Technical Specifications* refers to the requirements for reporting data, as described in NASD Rules

6950 through 6957 (the OATS Rules), which were approved by the Securities and Exchange Commission in March 1998 and amended in July 1998. The effective dates and requirements for the OATS Rules vary according to the following schedule:

- Phase 1: By March 1, 1999, electronic orders received at the trading desk by Market Makers and Electronic Communication Networks must be reported.
- Phase 2: By August 1, 1999, all electronic orders must be reported.
- Phase 3: By July 31, 2000, all non-electronic, or manual, orders must be reported. (See *Notice to Members 98-33* for a complete description of the OATS Rules.)

Contact NASD Business and Technology Support Services via phone at (800) 321-NASD or via e-mail at [supportservices@nasd.com](mailto:supportservices@nasd.com) to obtain a paper copy of this document or to obtain additional information about OATS. Information about OATS is available on the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)).

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# NASD Notice to Members 99-05

## SEC Issues Guidance On Handling Customer Orders During Market- Wide Trading Halts

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

On September 9, 1998, the Securities and Exchange Commission's (SEC) Division of Market Regulation (the Division) issued Staff Legal Bulletin No. 8 setting forth the Division's views on the appropriate handling of customer orders when market-wide circuit breakers halt trading. In addition, the SEC again stressed that broker/dealers must have sufficient internal system capacity to operate properly during periods of market stress.<sup>1</sup>

Questions regarding this *Notice* should be directed to Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8401.

### Background And Summary

As part of its review of October 27-28, 1997 trading activity, the SEC determined a need to clarify broker/dealers' execution responsibilities for retail market orders pending or received during market-wide trading halts.<sup>2</sup> In response, the Division issued Staff Legal Bulletin No. 8 outlining a broker/dealer's obligations during periods of extreme volatility resulting in the imposition of market-wide trading halts. In summary, the SEC provided the following guidance concerning order handling:

1. During market-wide trading halts resulting from the triggering of circuit breakers, customer orders should be handled in the same manner as they would have been handled during other regulatory trading halts concerning only individual stocks.
2. During market-wide trading halts of durations that will allow trading to resume on that same trading day, pending and new customer orders should be forwarded to the appropriate market for execution upon the resumption of trading. This should be done unless the member receives

contrary instructions from the customer during the halt.

3. During market-wide trading halts with durations that will close the market for the remainder of the trading day, pending and new customer orders should be treated as follows:

- Absent customer instructions to the contrary, orders that are pending at the time of the halt, and new orders received after the halt has commenced, should be treated as "Good Til Cancelled" orders and be held by the member for execution at the reopening of the next trading session.
- "At-the-Close" orders (including "Market-at-Close" orders) pending at the time trading is halted **should be treated as cancelled orders**. Members should not accept, or forward to a market, any new orders related to closing prices received during a trading halt.<sup>3</sup>

Members may obtain a complete copy of Staff Legal Bulletin No. 8 (MR) from the SEC's Web site ([www.sec.gov](http://www.sec.gov)).

### Endnotes

<sup>1</sup>See SEC Staff Legal Bulletin No. 8 (MR) (Division of Market Regulation-September 9, 1998).

<sup>2</sup>See NASD IM-4120-3 Market Closing Policy (effective April 15, 1998).

<sup>3</sup>This guidance supersedes the instructions concerning the handling of Market-on-Close orders contained in Nasdaq's General News Bulletin "Information Regarding Circuit Breakers and Related Interpretative Issues" dated October 29, 1997.

# NASD Notice to Members 99-06

## 1998-1999 Renewal Rosters And Final Adjusted Invoices

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

The 1998-1999 renewal cycle for the National Association of Securities Dealers, Inc. (NASD®) broker/dealer and agent registration begins its second phase this month. The NASD is issuing this *Notice* to help members review, reconcile, and respond to the final adjusted invoice packages that will be mailed to all member firms in mid-January.

Questions regarding this *Notice* may be directed to the CRD/PD Gateway Call Center at (301) 869-6699.

### Final Adjusted Invoice Packages

On or about January 18, 1999, the NASD will begin to mail final adjusted invoices and renewal rosters to all NASD member firms. The final adjusted invoices will reflect the year-end 1998 total fees for NASD personnel assessments; NASD branch office assessments; NASD renewal processing fees; New York Stock Exchange (NYSE), American Stock Exchange® (Amex®), Chicago Board Options Exchange (CBOE), Pacific Exchange (PSE), and Philadelphia Stock Exchange (PHLX) maintenance fees; state agent renewal fees; and state broker/dealer renewal fees. The invoice will also reflect payment submitted by an NASD member in response to the initial renewal invoice mailed in November 1998.

The final adjusted invoice will include a renewal roster that lists each firm's NASD and, if applicable, NYSE-, Amex-, CBOE-, PSE-, and PHLX-registered personnel, as of year-end 1998. The roster will list all of the firm's personnel alphabetically whose registrations were renewed in states. Firms with registered branch offices that were active as of December 31, 1998, will also receive a branch office roster.

A member's final invoice will reflect an "amount due," a "credit due," or a "zero balance." If a firm's year-end

1998 total of NASD, NYSE, Amex, CBOE, PSE, PHLX and state renewal fees exceeded the firm's payment submitted in response to the initial renewal invoice, the NASD paid the jurisdictions the additional renewal fees due at year-end on behalf of the firm and will mail an "amount due" invoice to collect that sum from the member firm.

If the firm's invoice reflects an amount due, the NASD requests payment by wire transfer or company check. Wire transfer instructions will be included in the final invoice packet and may also be obtained by calling the NASD's Finance Department at (301) 590-6088. Firms should make the check payable to NASD Regulation, Inc., with the firm's Central Registration Depository (CRD™) number and the word "Renewal" written on the check, and mail it with the top portion of the invoice. Payments must be received by the NASD no later than **March 5, 1999**.

If the firm's payment submitted in response to the initial renewal invoice exceeds its year-end 1998 total of NASD, NYSE, Amex, CBOE, PSE, PHLX, and state renewal fees, a "credit due" invoice will be issued. If the firm's invoice reflects a credit due and the firm would like a refund check, it should sign the top portion of the invoice and send it to:

CRD Accounting - Renewal Refunds  
NASD Regulation, Inc.  
1390 Piccard Drive, 2nd Floor  
Rockville, MD 20850

This invoice stub must be signed by an officer or principal of the firm and should include the name and address of the firm's contact person to whom the check should be sent. Refund requests will be processed as soon as possible. The average turn-around time for receiving a refund check last year was approximately two weeks. Member firms

may also request to transfer the credit due to their CRD account. To initiate a transfer of funds, please contact the CRD/PD Gateway Call Center at (301) 869-6699. If the NASD does not receive a request for a refund check or request to transfer funds by March 5, 1999, CRD Accounting will begin to manually transfer the remaining credit balances to member firms' CRD accounts. This process is usually completed by April 1, 1999.

Final adjusted invoices that reflect zero balances require no further action by the member firm.

## Reviewing The Renewal Rosters

Member renewal rosters include all agent registrations renewed for 1999. Registrations that were pending approval or were deficient at year-end 1998 were not assessed renewal fees; therefore, they will not be reported on the renewal roster. Members should examine their roster carefully to ensure that all registration approvals and terminations are properly listed.

NASD discrepancies should be reported by calling the CRD/PD Gateway Call Center at (301) 869-

6699. Copies of supporting documentation, such as Notices of Approval/Termination, Forms U-4 or U-5, or Schedule E amendments should be readily available. All other discrepancies should be reported directly to the jurisdictions involved—NYSE, Amex, CBOE, PSE, PHLX, or the applicable state(s). All renewal roster discrepancies must be reported by **March 12, 1999**. The inside cover of the renewal roster contains detailed instructions to help members complete the renewal process.

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# NASD Notice to Members 99-07

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of November 23, 1998

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of November 23, 1998, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
AAC.GA	Arcadia Financial Ltd.	11.500	03/15/07
ABCR.GB	ABC Rail Products Corp.	9.125	01/15/04
ACHG.GA	Acme Intermediate Holdings Inc.	12.000	09/30/05
ADEI.GA	Adience Inc.	11.000	06/15/02
ADOC.GA	American Sign & Indicator Corp.	15.000	01/15/01
AEN.GD	AMC Entertainment Inc.	11.875	08/01/00
AES.GE	AES Corp.	10.25	07/15/06
AEWS.GA	Andrews Group Inc.	10.000	12/30/99
AILT.GA	Atlas Air Inc.	12.250	12/01/02
ALBK.GA	Albank Cap Trust I	9.270	06/06/27
ALCU.GA	Allnet Communication Svcs. Inc.	9.000	05/15/03
ALGX.GB	Allegiance Telecom Inc.	12.875	05/15/08
ALLY.GB	Alliance Gaming Corp.	12.875	06/30/03
AMMB.GD	Amresco Inc.	8.750	07/01/99
AMTR.GB	Amtran Inc.	9.625	12/15/05
ANCP.GC	Anacomp Inc.	10.875	04/01/04
ANCP.GD	Anacomp Inc.	10.875	04/01/04
APVU.GA	Apparel Ventures Inc.	12.250	12/31/00
ASCM.GA	Advanstar-Commuks Inc.	9.250	05/01/08
ASSR.GA	Associated Materials Inc.	9.250	03/01/08
ATEN.GA	At Entertainment Inc.	14.500	07/15/08
AUML.GA	Autospa Automalls Inc.	15.000	12/01/99
AVGH.GA	Avatar Holdings Inc.	8.000	10/01/00
AWRL.GA	America West Airlines	8.160	07/02/02
AWRL.GB	America West Airlines	10.500	01/02/04
AWRL.GC	America West Airlines	8.120	07/02/01
AXHM.GA	Axiohm Transaction Solutions Inc.	9.750	10/01/07
AZCH.GA	Arizona Charlie's Inc.	12.000	11/15/00
BALO.GA	Baltimore Bancorp	10.875	12/15/99
BARY.GA	Barry's Jewelers Inc.	11.000	12/22/00
BDI.GA	Bayard Drilling Tech	11.000	06/30/05
BDUS.GA	Burlington Industries Cap Inc.	16.875	07/01/04
BESP.GA	Bear Island LLC Co.	10.000	12/01/07
BEV.GC	Beverly Enterprises Inc.	8.750	07/01/08
BEV.GD	Beverly Enterprises Inc.	8.625	10/01/08
BFDG.GA	Big 5 Holdings Inc.	13.625	09/15/02
BFSU.GA	Big V Supermarkets Inc.	11.000	02/15/04
BFUG.GA	Blue Bell Funding Inc.	11.850	05/01/99
BGLI.GA	BGLS Inc.	15.750	01/31/01
BHW.GA	Bell & Howell Co.	11.500	03/15/05
BIYA.GA	Biscayne Holdings Inc.	13.000	12/15/99
BLFN.GA	Beal Financial Corp.	12.750	08/15/00
BLYD.GA	Bally's Grand Inc.	10.375	12/15/03
BLYP.GA	Bally's Park Place Funding Inc.	9.250	03/15/04
BNKF.GA	Bankatlantic Financial Corp.	10.000	07/01/09
BRPR.GA	Brooke Partners L.P.	15.501	06/01/08
BVLF.GB	Beaver Valley Funding Corp.	8.250	06/01/03
BVLF.GC	Beaver Valley Funding Corp.	9.000	06/01/17
BVPS.GA	BVPS II Funding Corp.	7.380	12/01/99
BVPS.GB	BVPS II Funding Corp.	8.330	12/01/07

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
BVPS.GC	BVPS II Funding Corp.	8.890	06/01/17
BVPS.GD	BVPS II Funding Corp.	7.670	12/01/00
BVPS.GE	BVPS II Funding Corp.	8.680	06/01/17
CBNT.GA	CenCom Cable Entertainment Inc.	15.000	02/25/00
CBSA.GA	Coastal Bancorp Inc.	10.000	06/30/02
CCIR.GA	CCI Corp.	12.750	12/15/98
CCIR.GB	CCI Corp.	13.875	07/15/00
CCSB.GB	Chevy Chase Savings Bank	9.250	12/01/05
CDRA.GA	CD Radio Inc.	15.000	12/01/07
CFTO.GA	Cafeteria Operators L.P.	12.000	12/31/01
CHK.GH	Chesapeake Energy Corp.	12.000	03/01/01
CIR.GC	Circus Circus Enterprise Inc.	9.250	12/01/05
CLDU.GA	Colt Industries Inc.	11.250	12/01/15
CLFR.GA	Cullen/Frost Cap Trust Inc.	8.420	02/01/27
CLUL.GA	Cellular Inc.	11.750	09/01/03
CMEY.GA	Continental Medical Systems Inc.	10.875	08/15/02
CMLS.GA	Cumulus Media Inc.	10.375	07/01/08
CNAN.GA	Continental Airlines Inc.	11.500	04/02/08
CNAN.GB	Continental Airlines Inc.	7.522	06/30/01
COBV.GA	Commemorative Brands Inc.	11.000	01/15/07
COGB.GA	Continental Global Group Inc.	11.000	04/01/07
COP.GB	Capital One Financial Corp.	7.250	12/01/03
COPT.GA	Colonial Capital II	8.920	01/15/27
COT.GD	Coltec Industries Inc.	10.250	04/01/02
COT.GE	Coltec Indus Inc.	7.500	04/15/08
CPRK.GA	Cap Rock Communications Corp.	12.000	07/15/08
CRHI.GA	Carter Holdings Inc.	12.000	10/01/08
CSGY.GA	CMS Energy X-tras	7.000	01/15/05
CUCN.GA	Coldwell Banker Inc.	10.250	06/30/03
CUFM.GA	Cumberland Farms Inc.	10.500	10/01/03
CUMH.GA	Columbia Healthcare Corp.	10.875	03/01/02
CUMH.GB	Columbia Healthcare Corp.	11.500	06/01/02
CYSS.GB	County Seat Stores Inc.	12.000	10/01/01
DEHA.GA	Degeorge Home Alliance Inc.	12.000	04/01/01
DELL.GA	Dell Computer Corp.	11.000	08/15/00
DLCA.GB	Dial Call Communication Inc.	12.250	04/15/04
DOC.GA	Decisionone Holdings Corp.	11.500	08/01/08
DOMT.GB	Dominion Textile Inc.	8.875	11/01/03
DRST.GA	Dr. Structured Finance Corp.	6.660	08/15/10
DRST.GB	Dr. Structured Finance Corp.	7.430	08/15/18
DRST.GC	Dr. Structured Finance Corp.	7.600	08/15/07
DRST.GD	Dr. Structured Finance Corp.	8.375	08/15/15
DRST.GE	Dr. Structured Finance Corp.	8.550	08/15/19
DRST.GF	Dr. Structured Finance Corp.	8.350	02/15/04
DRST.GG	Dr. Structured Finance Corp.	9.350	08/15/19
DWCR.GB	Dow Corning Corp.	8.150	10/15/29
EDYN.GD	Envirodyne Industries Inc.	0.000	06/15/00
EFCW.GA	Eagle Finance Corp.	10.750	06/01/05
EGDU.GA	Eagle Industries Inc.	10.500	07/15/03
EIPR.GA	EIP Ref Corp.	10.250	10/01/12
ELAY.GA	Electro-Audio Dynamics Inc.	12.875	02/01/99
ELND.GA	El Comandante	11.750	12/15/03
EMEN.GA	Empress Entmt Inc.	8.125	07/01/06

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
EMGP.GA	Emcor Group Inc.	11.000	12/15/01
ERLY.GA	Erly Industries Inc.	12.500	12/01/02
EVGI.GA	Evergreen International Aviation Inc.	13.500	08/15/02
EYTH.GA	Elyria Telephone Co.	8.100	12/15/03
FBOR.GA	FNB Corp.	9.500	05/15/02
FBWL.GA	Fair Lanes Inc.	9.500	07/15/01
FCSG.GA	Forecast Group LP	11.375	12/15/00
FDBC.GA	Fidelity Federal Bancorp	10.000	06/01/05
FFCL.GA	First Federal Financial Corp.	11.750	10/01/04
FIUM.GA	Fresenius Med Cap Trust II	7.875	02/01/08
FIUM.GB	Fresenius Med Cap Trust II	9.000	12/01/06
FLBM.GA	Filene's Basement Inc.	12.750	07/15/00
FLC.GA	R&B Falcon Corp.	6.500	04/15/03
FLC.GB	R&B Falcon Corp.	6.750	04/15/05
FLC.GC	R&B Falcon Corp.	6.950	04/15/08
FLC.GD	R&B Falcon Corp.	7.375	04/15/18
FLER.GB	Big Flower Press Inc.	10.750	08/01/03
FLTW.GA	Florist Transworld Delivery Inc.	14.000	12/15/01
FMAC.GB	First Merchants Accept Corp.	11.000	03/15/05
FMO.GE	Federal-Mogul Co.	8.800	04/15/07
FOHO.GB	Fort Howard Corp.	10.000	03/15/03
FOOD.GA	Fresh Foods Inc.	10.750	06/01/06
FRAG.GB	French Fragrance Inc.	10.375	05/15/07
FRC.GD	First Republic Bancorp Inc.	11.000	09/30/03
FRC.GE	First Republic Bancorp Inc.	8.000	01/15/09
FRCE.GA	Forest City Enterprises Inc.	8.500	03/15/08
FRDQ.GA	FRD Acquisition Co.	12.500	07/15/04
GBCH.GA	Global Crossing Hldg Ltd.	9.625	05/15/08
GCIL.GA	GCI Inc.	9.750	08/01/07
GCRP.GA	Graphic Controls Corp.	12.000	09/15/05
GDPT.GA	Golden State Petro Trans Corp.	8.040	02/01/19
GHLA.GA	Grove Hldgs LLC/Grove Hldgs Capin	11.625	05/01/09
GIHG.GA	G-I Holdings Inc.	10.000	02/15/06
GITC.GA	Glenoit Corp.	11.000	04/15/07
GKBC.GA	Great Lakes Bancorp	18.000	03/01/06
GOBC.GA	California Fed Bank	10.000	01/03/03
GPAD.GA	GPA Delaware Inc.	8.750	12/15/98
GRLC.GB	Great Lakes Carbon Corp.	10.250	05/15/08
GRLC.GC	Great Lakes Carbon Corp.	13.125	05/15/09
GSLN.GA	Guardian Saving & Loan Association	12.625	01/15/02
GTHC.GA	Gothic Production Corp.	11.125	05/01/05
GUMB.GA	Gulf Mobile & Ohio RR Co.	5.000	12/01/56
GVRH.GA	Goldriver Hotel & Casino Corp.	13.375	08/31/99
HAY.GE	Hayes Wheel Intl Inc.	9.250	11/15/02
HAYN.GB	Haynes International Inc.	13.500	08/15/99
HCCI.GB	HCC Industries Inc.	7.250	04/15/01
HEFR.GA	Heafner (JH) Inc.	10.000	05/15/08
HLSU.GA	Healthsouth Corp.	10.000	06/15/00
HMCQ.GA	HMC Acquisition Properties Inc.	9.000	12/15/07
HMHP.GE	HMH Properties Inc.	8.45	12/01/08
HRIS.GA	Homeland Stores Inc.	10.000	08/01/03
HSYA.GA	Hosiery Corp. of Amer Inc.	13.750	08/01/02
HURS.GA	Hudson RCI Inc.	9.125	04/15/08

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
HWG.GC	Hallwood Group Inc.	7.000	07/31/00
IAD.GA	Inland Steel Inc.	12.750	12/15/02
IBUI.GA	International Business Interiors Corp.	14.250	12/15/98
ICAB.GC	International Cabletel Inc.	12.750	04/15/05
ICII.GC	Imperial Credit Inds Inc.	9.750	01/15/04
INRK.GA	International Bank (WA)	15.750	08/01/00
IPSC.GA	Impsat Corp.	12.125	07/15/03
IVPR.GA	Intervest Corp.	0.000	04/01/00
JBLT.GA	Johnston Cola GP	11.375	09/15/01
JCOM.GC	Jacor Communications Co.	8.000	02/15/10
JDTL.GB	Jordan Telecom Products Inc.	9.875	08/01/07
JOSI.GA	Josephson Intl Inc.	12.500	05/15/03
JRYM.GA	J Ray McDermott SA	9.375	07/15/06
KCFP.GA	Key Communications Inc.	10.500	06/01/08
KDEI.GA	Kidde Inc.	9.750	12/01/03
KHKY.GA	Kash N Karry Food Stores Inc.	0.000	02/01/03
KM.GG	K Mart Corp.	6.000	01/01/08
KM.GH	K Mart Corp.	13.500	01/01/09
KMCP.GD	K Mart Corp.	8.540	01/02/15
KPLA.GB	Key Plastics Inc.	14.000	11/15/99
LCLZ.GA	Localizer Rent a Car	10.250	10/01/05
LEN.GA	Concord Camera Corp.	11.000	07/15/05
LEXP.GA	Lexington Precision Corp.	12.750	02/01/00
LIRP.GA	Leggett Group Inc.	11.500	02/01/99
LNOU.GA	Lanesborough Corp.	10.000	04/15/00
LRGY.GA	LaSalle Energy Corp.	11.750	07/01/99
LUBS.GA	Lundgren Bros. Construction Inc.	11.000	10/01/04
LWN.GD	Loewen Group Intl Inc.	8.250	04/15/03
LYLU.GA	Lyman Lumber Co.	10.000	06/30/03
MALR.GA	Malrite Commun Group Inc.	15.250	02/15/99
MAUM.GA	Mayfair Super Markets Inc.	11.750	03/30/03
MBCA.GB	Metropolitan Broadcasting Corp.	13.250	09/30/06
MCNC.GB	MCMS Inc.	0.000	03/01/08
MDQC.GA	Mediq Inc.	13.000	06/01/09
MED.GB	Mediq/Prn Life Support Svcs Inc.	11.000	06/01/08
MGL.GB	Magellan Health Svs Inc.	9.000	02/15/08
MHSH.GA	MHS Holdings Co.	16.875	09/22/04
MIL.GA	Millipore Corp.	7.200	04/01/02
MIL.GB	Millipore Corp.	7.500	04/01/07
MJDC.GA	MJD Communications Inc.	9.500	05/01/08
MJDC.GB	MJD Communications Inc.	0.000	05/01/08
MLWL.GA	Mail-Well Corp.	10.500	02/15/04
MNC.GA	MTS Inc.	9.375	05/01/05
MPBP.GA	MPB Corp.	14.500	10/15/99
MPKF.GA	Mountain Parks Financial Corp.	9.000	08/15/05
MRBH.GA	Merit Behavioral Corp.	11.500	11/15/05
MRNY.GA	Mariner Energy Inc.	10.500	08/01/06
MSKX.GA	Miss Kan Tex RR Co.	5.500	01/01/33
MUOP.GA	Muse Air Corp.	16.875	06/15/99
NEV.GA	Nuevo Energy Co.	9.500	04/15/06
NFKC.GA	North Fork Cap Trust I	8.700	12/15/26
NMK.GI	Niagara Mohawk Paver Corp.	8.770	01/01/18
NNS.GA	Newport News Shipbuilding Inc.	8.625	12/01/06

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
NNS.GB	Newport News Shipbuilding Inc.	9.250	12/01/06
NRCW.GA	Norcal Waste System Inc.	13.500	11/15/05
NRWA.GA	Northwest Airlines	10.150	01/02/05
NSGP.GA	NS Group Inc.	13.500	07/15/03
NU.GB	Northeast Utilities	8.380	03/01/05
NWRU.GA	NWA Trust	13.875	12/21/06
NXLK.GC	Nextlink Communications Inc.	9.450	04/15/08
NXTL.GG	Nextel Communications Inc.	11.500	09/01/03
OPLI.GA	Optel Inc.	13.000	02/15/05
OPLI.GB	Optel Inc.	11.500	07/01/08
OROC.GA	Orion Pictures	10.000	10/31/01
OSI.GC	Outdoor Systems Inc.	10.750	08/15/03
PAUH.GA	Paul Harris Stores Inc.	11.375	01/31/00
PDSF.GA	PDS Financial Corp.	10.000	07/01/04
PDVA.GA	PDV America Inc.	7.750	08/01/00
PDVA.GB	PDV America Inc.	7.875	08/01/03
PFID.GA	P&F Industries Inc.	13.750	01/01/17
PHGC.GA	People's Heritage Corp. Trust	9.060	02/01/27
PHP.GD	Petroleum Heat & Power Inc.	12.25	02/01/05
PIDM.GA	Piedmont Aviation Inc. Series A	9.700	01/15/99
PIDM.GB	Piedmont Aviation Inc. Series B	9.700	01/15/99
PIDM.GC	Piedmont Aviation Inc. Series C	9.700	01/15/99
PIDM.GD	Piedmont Aviation Inc. Series A	9.800	01/15/00
PIDM.GE	Piedmont Aviation Inc. Series B	9.800	01/15/00
PIDM.GF	Piedmont Aviation Inc. Series C	9.800	01/15/00
PIDM.GG	Piedmont Aviation Inc. Series A	9.900	01/15/01
PIDM.GH	Piedmont Aviation Inc. Series B	9.900	01/15/01
PIDM.GI	Piedmont Aviation Inc. Series C	9.900	01/15/01
PIDM.GJ	Piedmont Aviation Inc. Series A	10.000	01/15/02
PIDM.GK	Piedmont Aviation Inc. Series B	10.000	01/15/02
PIDM.GL	Piedmont Aviation Inc. Series C	10.000	01/15/02
PIDM.GM	Piedmont Aviation Inc. Series A	10.050	01/15/03
PIDM.GN	Piedmont Aviation Inc. Series B	10.050	01/15/03
PIDM.GO	Piedmont Aviation Inc. Series C	10.050	01/15/03
PIDM.GP	Piedmont Aviation Inc. Series A	10.150	01/15/04
PIDM.GQ	Piedmont Aviation Inc. Series B	10.150	01/15/04
PIDM.GR	Piedmont Aviation Inc. Series C	10.150	01/15/04
PIDM.GS	Piedmont Aviation Inc. Series A	10.200	01/15/05
PIDM.GT	Piedmont Aviation Inc. Series B	10.200	01/15/05
PIDM.GU	Piedmont Aviation Inc. Series C	10.200	01/15/05
PIDM.GV	Piedmont Aviation Inc. Series A	10.250	01/15/07
PIDM.GW	Piedmont Aviation Inc. Series B	10.250	01/15/07
PIDM.GX	Piedmont Aviation Inc. Series C	10.250	01/15/07
PIDM.GY	Piedmont Aviation Inc. Series A	10.300	01/15/08
PIDM.GZ	Piedmont Aviation Inc. Series B	10.300	01/15/08
PIDM.HA	Piedmont Aviation Inc. Series C	10.300	01/15/08
PIDM.HB	Piedmont Aviation Inc. Series A	10.300	07/15/08
PIDM.HC	Piedmont Aviation Inc. Series B	10.300	07/15/08
PIDM.HD	Piedmont Aviation Inc. Series C	10.300	07/15/08
PIDM.HE	Piedmont Aviation Inc. Series A	10.300	07/15/09
PIDM.HF	Piedmont Aviation Inc. Series B	10.300	07/15/09
PIDM.HG	Piedmont Aviation Inc. Series C	10.300	07/15/09
PIDM.HH	Piedmont Aviation Inc. Series A	10.300	07/15/10

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
PIDM.HI	Piedmont Aviation Inc. Series B	10.300	07/15/10
PIDM.HJ	Piedmont Aviation Inc. Series C	10.300	07/15/10
PIDM.HK	Piedmont Aviation Inc. Series D	10.000	03/28/99
PIDM.HL	Piedmont Aviation Inc. Series E	10.000	03/28/99
PIDM.HM	Piedmont Aviation Inc. Series F	10.000	03/28/99
PIDM.HN	Piedmont Aviation Inc. Series G	10.000	03/28/99
PIDM.HO	Piedmont Aviation Inc. Series D	10.100	03/28/00
PIDM.HP	Piedmont Aviation Inc. Series E	10.100	03/28/00
PIDM.HQ	Piedmont Aviation Inc. Series F	10.100	03/28/00
PIDM.HR	Piedmont Aviation Inc. Series G	10.100	03/28/00
PIDM.HS	Piedmont Aviation Inc. Series D	10.150	03/28/01
PIDM.HT	Piedmont Aviation Inc. Series E	10.150	03/28/01
PIDM.HU	Piedmont Aviation Inc. Series F	10.150	03/28/01
PIDM.HV	Piedmont Aviation Inc. Series G	10.150	03/28/01
PIDM.HW	Piedmont Aviation Inc. Series D	10.150	03/28/02
PIDM.HX	Piedmont Aviation Inc. Series E	10.150	03/28/02
PIDM.HY	Piedmont Aviation Inc. Series F	10.150	03/28/02
PIDM.HZ	Piedmont Aviation Inc. Series G	10.150	03/28/02
PIDM.IA	Piedmont Aviation Inc. Series D	10.150	03/28/03
PIDM.IB	Piedmont Aviation Inc. Series E	10.150	03/28/03
PIDM.IC	Piedmont Aviation Inc. Series F	10.150	03/28/03
PIDM.ID	Piedmont Aviation Inc. Series G	10.150	03/28/03
PIDM.IE	Piedmont Aviation Inc. Series D	10.250	03/28/04
PIDM.IF	Piedmont Aviation Inc. Series E	10.250	03/28/04
PIDM.IG	Piedmont Aviation Inc. Series F	10.250	03/28/04
PIDM.IH	Piedmont Aviation Inc. Series G	10.250	03/28/04
PIDM.II	Piedmont Aviation Inc. Series E	10.250	03/28/05
PIDM.IJ	Piedmont Aviation Inc. Series F	10.250	03/28/05
PIDM.IK	Piedmont Aviation Inc. Series G	10.250	03/28/05
PIDM.IL	Piedmont Aviation Inc. Series D	10.300	03/28/06
PIDM.IM	Piedmont Aviation Inc. Series E	10.300	03/28/06
PIDM.IN	Piedmont Aviation Inc. Series F	10.300	03/28/06
PIDM.IO	Piedmont Aviation Inc. Series G	10.300	03/28/06
PIDM.IP	Piedmont Aviation Inc. Series D	10.300	03/28/07
PIDM.IQ	Piedmont Aviation Inc. Series E	10.300	03/28/07
PIDM.IR	Piedmont Aviation Inc. Series F	10.300	03/28/07
PIDM.IS	Piedmont Aviation Inc. Series G	10.300	03/28/07
PIDM.IT	Piedmont Aviation Inc. Series D	10.350	03/28/09
PIDM.IU	Piedmont Aviation Inc. Series E	10.350	03/28/09
PIDM.IV	Piedmont Aviation Inc. Series F	10.350	03/28/09
PIDM.IW	Piedmont Aviation Inc. Series G	10.350	03/28/09
PIDM.IX	Piedmont Aviation Inc. Series D	10.350	03/28/10
PIDM.IY	Piedmont Aviation Inc. Series E	10.350	03/28/10
PIDM.IZ	Piedmont Aviation Inc. Series F	10.350	03/28/10
PIDM.JA	Piedmont Aviation Inc. Series G	10.350	03/28/10
PIDM.JB	Piedmont Aviation Inc. Series D	10.350	03/28/11
PIDM.JC	Piedmont Aviation Inc. Series E	10.350	03/28/11
PIDM.JD	Piedmont Aviation Inc. Series F	10.350	03/28/11
PIDM.JE	Piedmont Aviation Inc. Series G	10.350	03/28/11
PIDM.JF	Piedmont Aviation Inc. Series D	10.350	03/28/12
PIDM.JG	Piedmont Aviation Inc. Series E	10.350	03/28/12
PIDM.JH	Piedmont Aviation Inc. Series F	10.350	03/28/12
PIDM.JI	Piedmont Aviation Inc. Series G	10.350	03/28/12

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
PIDM.JJ	Piedmont Aviation Inc. Series H	9.650	05/08/99
PIDM.JK	Piedmont Aviation Inc. Series I	9.650	05/08/99
PIDM.JL	Piedmont Aviation Inc. Series H	9.700	05/08/00
PIDM.JM	Piedmont Aviation Inc. Series I	9.700	05/08/00
PIDM.JN	Piedmont Aviation Inc. Series H	9.750	05/08/01
PIDM.JO	Piedmont Aviation Inc. Series I	9.750	05/08/01
PIDM.JP	Piedmont Aviation Inc. Series H	9.750	05/08/02
PIDM.JQ	Piedmont Aviation Inc. Series I	9.750	05/08/02
PIDM.JR	Piedmont Aviation Inc. Series H	9.750	05/08/03
PIDM.JS	Piedmont Aviation Inc. Series I	9.750	05/08/03
PIDM.JT	Piedmont Aviation Inc. Series H	9.800	05/08/04
PIDM.JU	Piedmont Aviation Inc. Series I	9.800	05/08/04
PIDM.JV	Piedmont Aviation Inc. Series H	9.850	05/08/05
PIDM.JW	Piedmont Aviation Inc. Series I	9.850	05/08/05
PIDM.JX	Piedmont Aviation Inc. Series H	9.900	11/08/06
PIDM.JY	Piedmont Aviation Inc. Series I	9.900	11/08/06
PIDM.JZ	Piedmont Aviation Inc. Series H	9.950	11/08/08
PIDM.KA	Piedmont Aviation Inc. Series I	9.950	11/08/08
PIDM.KB	Piedmont Aviation Inc. Series H	9.950	11/08/09
PIHG.GA	Pi Holdings Inc.	18.500	03/01/04
PLCG.GA	P&L Coal Holdings Corp.	8.875	05/15/08
PLCG.GB	P&L Coal Holdings Corp.	9.625	05/15/08
PMOR.GA	Phar-Mor Inc.	11.720	09/11/02
PPFG.GA	PNPP II Funding Corp.	8.070	05/30/00
PPFG.GB	PNPP II Funding Corp.	8.510	11/30/06
PPFG.GC	PNPP II Funding Corp.	9.120	05/30/16
PPFG.GD	PNPP II Funding Corp.	8.830	05/30/16
PTHN.GA	Pathnet Inc.	12.250	04/15/08
REGL.GB	Regal Cinemas Inc.	9.500	06/01/08
RMY.GA	Delco Remy Intl Inc.	8.625	12/15/07
SCAN.GA	Alliance Imaging Inc.	9.625	12/15/05
SCAN.GB	Alliance Imaging Inc.	0.000	12/15/05
SHDL.GA	Steel Heddle Group Inc.	13.750	06/01/09
STEH.GA	Steel Heddle Mfg. Co.	10.625	06/01/08
STGC.GA	Startec Global Comm Corp.	12.000	05/15/08
SVSN.GA	Spectra Vision Inc.	11.650	12/01/02
TETC.GA	Telecomom Tech Co.	9.750	05/15/08
TPCS.GA	Triton PCS Inc.	11.000	05/01/08
UCBR.GA	UCBH Trust Co.	9.375	05/01/28
URI.GB	United Rentals Inc.	9.500	06/01/08
WPSN.GD	WestPoint Stevens Inc.	7.875	06/15/05
WSCD.GA	Wesco Distr Inc.	9.125	06/01/08

As of November 23, 1998, the following bonds were deleted from FIPS.

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
AK.GA	Ackerly Group Inc.	10.750	10/01/03
ALBK.GA	Albank Cap Trust I	9.270	06/06/27
BUBD.GA	Busse Broadcasting Corp.	11.625	10/15/00

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
CANC.GA	Calmar Inc.	11.500	08/15/05
CE.GA	California Energy Inc.	10.250	01/15/04
CGFG.GA	Cobblestone Golf Group Inc.	11.500	06/01/03
EYCA.GA	Eye Care Centers Amer Inc.	12.000	10/01/03
FIUM.GA	Fresenius Med Cap Trust II	7.875	02/01/08
FIUM.GB	Fresenius Med Cap Trust II	9.000	12/01/06
FLHG.GA	Falcon Holdings Group LP	11.000	09/15/03
FRP.GA	Freeport-McMoran Resources LP	8.750	02/15/04
GCR.GA	Gaylord Container Corp.	11.500	05/15/01
HCNA.GA	Harris Chem North Amer Inc.	10.250	07/15/01
HCNA.GB	Harris Chem North Amer Inc.	10.750	10/15/03
HEIA.GA	Heileman Acq Corp.	9.625	01/31/04
HORS.GB	Horsehead Inds Inc.	14.000	06/01/99
IAO.GB	Inland Steel Inds Inc.	12.000	12/01/98
ICAB.GA	International Cabletel Inc.	10.875	10/15/03
ICML.GA	Indspec Chemical Corp.	12.507	12/01/03
KATZ.GA	Katz Corp.	12.750	11/15/02
MPKF.GA	Mountain Park Financial Corp.	9.000	08/15/05
MRV.GA	Marvel Parent Holdings Inc.	0.000	04/15/98
NACO.GA	Nacolah Hldg Corp.	9.500	12/01/03
NL.GB	NL Industries Inc.	13.000	10/15/05
PION.GA	Pioneer Financial Corp.	13.500	12/01/98
SCIN.GA	SC Intl Services Inc.	13.000	10/01/05
SLNC.GA	Sabreliner Corp.	12.500	04/15/03
SMMC.GA	Simmons Co.	10.750	04/15/06
SPKL.GA	Speckels Inds Inc.	11.500	09/01/00
STO.GC	Stone Container Corp.	11.875	12/01/98
SVSN.GA	Spectravision Inc.	11.650	12/01/02
TAL.GA	Talley Inds Inc.	12.250	10/15/05
TOK.GA	Tokheim Corp.	11.500	08/01/06
TTRR.GD	Tracor Inc.	8.500	03/01/07
UMM.GA	United Merchants & Mfrs Inc.	3.500	07/01/09
USLT.GA	United States Leather Inc.	10.250	07/31/03
VICN.GD	Viacom Intl Inc.	7.000	07/01/03
VICN.GE	Viacom Intl Inc.	7.000	07/01/03
WRTE.GA	WRT Energy Corp.	13.875	03/01/02

As of November 23, 1998, 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>
CCAI.GA	CAWS.GA	CAI Wireless Systems Inc.	12.250	09/15/02

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation<sup>SM</sup>, at (301) 590-6451.

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 99-08

## Martin Luther King, Jr. Day and Presidents Day: Trade Date–Settlement Date Schedule

### Martin Luther King, Jr., Day: Trade Date–Settlement Date Schedule

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, January 18, 1999, in observance of Martin Luther King, Jr., 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>
Jan. 12	Jan. 15	Jan. 20
13	19	21
14	20	22
15	21	25
18	Markets Closed	—
19	22	26

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Presidents Day: Trade Date–Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, February 15, 1999, in observance of Presidents 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>
Feb. 9	Feb. 12	Feb. 17
10	16	18
11	17	19
12	18	22
15	Markets Closed	—
16	19	23

\*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."

# Disciplinary Actions

## Disciplinary Actions Reported For January

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, January 18, 1999. The information relating to matters contained in this *Notice* is current as of the end of December 21, 1998.

### Firms Fined, Individuals Sanctioned

**C.A. Atlantic Securities, Inc. (Boston, Massachusetts) and James Arthur Dixon (Registered Principal, Portsmouth, New Hampshire)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$50,000, jointly and severally. In addition, Dixon was suspended from association with any NASD member in any principal or managerial capacity for 30 days and required to requalify as a general securities principal by taking and successfully passing the general securities principal exam (Series 24). Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to report trades within 90 seconds of execution and without the ".SLD" modifier. The findings also stated that the firm entered trades into the Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) for the benefit of the firm's trading account, entered trades into SOES for the benefit of registered representatives or accounts they controlled, and entered trades into SOES as split orders. In addition, C.A. Atlantic, acting through Dixon, failed to prepare, maintain, and/or enforce adequate written supervisory

procedures and failed to carry out a supervisory system relative to market making, order room functions, and trade reporting.

**Graicap, Inc. (Detroit, Michigan), Fred L. Prime, III (Registered Principal, Southfield, Michigan), and Kern David Smith (Registered Principal, Detroit, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Prime was censured, fined \$7,500, and suspended from association with any NASD member in a supervisory and managerial capacity for 10 business days, and Smith was censured, fined \$10,000, and suspended from association with any NASD member in the capacity of a limited principal – financial and operations – for 30 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Prime and Smith, conducted a securities business while failing to maintain adequate net capital. The findings also stated that the firm, acting through Smith, failed to compute its net capital accurately, failed to maintain accurate books and records, submitted inaccurate FOCUS Part II reports, and failed to file its audited annual financial statements in a timely manner. In addition, the NASD found that the firm failed to submit an accurate quarterly Form G-37/38, and the firm, acting through Prime, failed to maintain a record of the date that the Forms G-37/38 were sent to the MSRB.

**Hattier, Sanford & Reynoir (New Orleans, Louisiana), Gus A. Reynoir (Registered Principal, New Orleans, Louisiana), and Vance G. Reynoir (Registered Principal, New Orleans, Louisiana)** were censured and fined \$60,000, jointly and severally. In addition, the

firm was required to engage an independent auditor within 90 days to review its books and records and supervisory procedures and to implement the auditor's recommendations in a manner satisfactory to the NASD. Gus Reynoir and Vance Reynoir were suspended from association with any NASD member in any capacity for 30 days, suspensions not to run concurrently. Gus Reynoir and Vance Reynoir were required to requalify as a general securities principal and as a municipal securities principal, respectively, within 180 days or be suspended until they requalify. The U.S. Court of Appeals for the Fifth Circuit affirmed the sanctions following appeal of a January 1998 Securities and Exchange Commission (SEC) decision. The sanctions were based on findings that the firm, acting through Gus Reynoir and Vance Reynoir, issued 453 confirmations that misrepresented the capacity in which trades were executed.

Gus Reynoir's suspension will commence on the opening of business January 18, 1999, and will conclude at the close of business February 16, 1999. Vance Reynoir's suspension will commence with the opening of business February 17, 1999, and will conclude at the close of business March 18, 1999.

**LCP Capital Corp. (New York, New York) and Charles Steven Stoffers (Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$37,500, jointly and severally, and Stoffers was required to requalify by taking the Series 24 exam prior to acting again as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the

firm, acting through Stoffers, failed to report timely and accurately to the NASD statistical summary information regarding customer complaints. The findings also stated that the firm, acting through Stoffers, failed to report timely disciplinary information to the NASD and failed to implement the Firm Element of its Continuing Education program.

### **Firm And Individual Fined**

**Capital West Investment Group, Inc. (Phoenix, Arizona) and Lawrence Lester Kohler (Registered Principal, Scottsdale, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$3,500, jointly and severally, with Kohler; fined \$6,500 jointly and severally with Kohler and another individual; and fined \$5,000, jointly and severally, with a third individual. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through an individual, conducted a securities business while failing to maintain its minimum required net capital, failed to prepare and maintain the required books, records, and reports called for as a result of "self-clearing" customer transactions, and failed to establish a "Special Reserve Account for the Exclusive Benefit of Customers" and perform the required customer reserve computation. The findings also stated that the firm, acting through Kohler, failed to designate a principal responsible for the Regulatory Element and Firm Element of the NASD's Continuing Education requirements, failed to address the Regulatory Element in its procedures, and failed to prepare a needs analysis and develop a written training program. Furthermore, the NASD determined that the firm, acting through Kohler and another individual, guaranteed a customer against loss in the customer's account.

### **Firms Fined**

**American Third Market Corporation (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 reported transactions to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce adequate written supervisory procedures with respect to SOES execution, best execution, limit orders, order handling, anti-competitive practices, and trading and market making functions.

**Huntington Capital Corp. (Columbus, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish and maintain an adequate enforcement system to ensure that individuals were properly registered to perform activities in which they were engaged. According to the findings, the firm permitted an individual to engage in activities requiring registration as a registered options principal without being registered in that capacity.

**Morgan Stanley & Co., Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$60,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to execute Select-Net<sup>SM</sup> orders and thereby, 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 and regulations concerning SEC and NASD firm quote rules.

**Securities America, Inc. (Omaha, Nebraska)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. In addition, the firm must retain an independent consultant to complete a review and needs assessment of the firm's current supervisory system. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to supervise the activities of an individual and to establish, maintain, and enforce written supervisory procedures to ensure that the individual refrained from engaging in unsuitable recommendations of discretionary purchases and sales in the securities account of a public customer, including excessive trading, excessive use of margin, and short position exposure. The findings also stated that the firm's supervisory procedures failed to include procedures for all the types of business in which the firm engaged, failed to designate the principal responsible for the supervision of registered representatives and principals in the firm's Offices of Supervisory Jurisdiction, and failed to identify the individual responsible for the updating of the written procedures. Moreover, the procedures failed to outline the methodology for supervision of account activity, concentration, and use of margin in connection with accounts located in single person Offices of Supervisory Jurisdiction and branch offices.

### **Individuals Barred Or Suspended**

**Salvatore Joseph Anzelone (Registered Representative, Amherst,**

**New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Anzelone failed to respond to NASD requests for information.

**Shaun Patrick Attwood (Registered Principal, Phoenix, Arizona) and Scott Dominic Davis (Registered Representative, Phoenix, Arizona).** Attwood was censured, fined \$68,016.90, and barred from association with any NASD member in any capacity. Davis was censured, fined \$11,164.80, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam before re-associating with any member firm. The sanctions were based on findings that Attwood and Davis engaged in excessive trading in a customer account. Attwood also failed to respond to NASD requests for information.

**Troy D. Bachis (Registered Representative, Albuquerque, New Mexico)** was censured, fined \$45,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bachis forged a public customer's signature on an application to purchase a variable annuity contract, without the customer's authorization and consent, and presented such documents as genuine. Bachis also failed to respond to NASD requests for information.

**Joseph Randolph Belew (Registered Principal, Jackson, Mississippi)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$4,957,000, barred from association with any NASD member in any capacity, and required to pay \$601,625.80 in restitution to the appropriate parties. Without admitting or denying the allegations, Belew consented to the described sanctions and to the entry of findings that he received funds totaling approximately \$971,425.80

from public customers for the purpose of investment, failed to make any investments on the customers' behalf, and either misused or converted the funds to his own use and benefit without the customers' knowledge or consent.

**Gregory James Best (Registered Representative, Mogadore, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Best consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in connection with customer complaints.

**Deidra J. Blake (Registered Representative, Plainfield, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Blake consented to the described sanctions and to the entry of findings that she participated in private securities transactions and failed to provide written notice to, or to receive written authorization from, her member firm to participate in such transactions.

**William Hinton Clark (Registered Principal, Staten Island, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam in all capacities prior to functioning again in any capacity that requires requalification. Without admitting or denying the allegations, Clark consented to the described allegations and to the entry of findings that he engaged in a securities business as a registered repre-

sentative and executed transactions on behalf of public customers during a one month bar imposed by the New York Stock Exchange.

**John D'Aversa (Registered Representative, Waterbury, Connecticut)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, D'Aversa consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Herbert Lewis Davis, Jr. (Registered Representative, Milwaukee, Wisconsin)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) affirmed the sanctions following appeal of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Davis signed a customer's name to a \$945.58 check without the customer's authorization, knowledge, or consent and used the proceeds for some purpose other than for the customer's benefit. Davis also failed to respond to NASD requests for information.

**David Dembinsky (Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$8,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dembinsky consented to the described sanctions and to the entry of findings that he changed the addresses of record of policyholders without the knowledge or authorization of the policyholders to post office boxes held in the name of a client and acquaintance of Dembinsky. Loans requested against each of the policies, without the knowledge or consent of the policyholders, resulted in

the issuance of checks totalling \$14,000 to the post office boxes. Dembinsky facilitated the transfer of the checks to a third party who negotiated the checks and agreed to remit to Dembinsky four percent of the proceeds of the negotiated checks for his assistance. The remaining proceeds were alleged to have been returned to another firm representative. Dembinsky also provided a false written statement to the NASD.

**Steven Laver Edelson (Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Edelson consented to the described sanctions and to the entry of findings that he failed to file in a timely manner quarterly statistical and summary information reports with the NASD regarding customer complaints received by his member firm.

**Edward Michael Freund (Registered Representative, Eastpointe, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Freund consented to the described sanctions and to the entry of findings that he signed and filed a Form U-4 that failed to disclose he had plead guilty to a misdemeanor in the state of Michigan involving larceny under \$100.

**Semos Gardner (Registered Representative, West Hollywood, California)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gardner failed to respond to NASD requests for information.

**Donald Ray Gates (Registered Representative, Cabot, Arkansas)** was censured, fined \$53,261.05, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam before acting in any capacity requiring registration. The NAC imposed the sanctions following appeal of a New Orleans DBCC decision. The sanctions were based on findings that Gates engaged in securities transactions while not registered with the NASD or with the state where the customer was domiciled.

Gates has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

**Robert Anthony Gatto (Associated Person, Brooklyn, New York)** was censured, fined \$45,469.20, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gatto forged the signatures of his member firm's officers on a \$1,093.84 compensation check and converted the proceeds of the check. Gatto also failed to respond to NASD requests for information.

**Jeff Vaughn Gordy (Registered Representative, Chicago, Illinois)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gordy consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and information.

**David Lee Griffin (Registered Representative, Chalkhill, Pennsylvania)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Griffin failed to respond to NASD requests for information.

**Philip David Growick (Registered Representative, West Hartford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to disgorge \$58,071.03 in commissions. Without admitting or denying the allegations, Growick consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, and receiving approval from, his member firm.

**George W. Guttman (Registered Principal, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Guttman consented to the described sanctions and to the entry of findings that he purchased shares of stock for the account of a public customer without having obtained prior written authorization from the customer and without prior written acceptance of the account as discretionary by his member firm. Guttman also agreed to reimburse the customer for the unauthorized transaction without the prior knowledge, authorization, or consent of his firm. The findings also stated that Guttman promised the customer that if he was unable to reimburse him, his member firm would assume full financial responsibility, without the prior knowledge or consent of the firm. Guttman also purchased for, or sold from, public customers' accounts securities without the customers' knowledge, consent, or authorization. The findings also stated that Guttman guaranteed a customer against loss.

**Jerry Michael Hall (Registered Representative, Mesa, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he

was censured, suspended from association with any NASD member in any capacity for 30 days which shall have been deemed served concurrent with the suspension imposed by the State of Arizona in its proceeding, and required to pay restitution to public customers in the amount of \$10,000. Without admitting or denying the allegations, Hall consented to the described sanctions and to the entry of findings that he participated in a private securities transaction without providing his member firm prior written notice of such participation.

Hall's suspension began January 14, 1998, and concluded February 14, 1998.

**Pamela Ann Hartsock (Registered Representative, Montoursville, Pennsylvania)** was censured, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam in any capacity in which she seeks to participate in the securities industry. The NAC imposed the sanctions following review of a Philadelphia DBCC decision. The sanctions were based on findings that Hartsock failed to remit customer funds and failed to inform her member firm of her omission.

**Blake Vincent High (Registered Representative, Plano, Texas)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that High failed to respond to an NASD request for information and to provide testimony.

**Fred Cordery Knight, Jr. (Registered Representative, Edmond, Oklahoma)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$175,000, barred from association with any NASD member in any capacity, and required to pay

\$75,432.45 in restitution to the appropriate parties. Without admitting or denying the allegations, Knight consented to the described sanctions and to the entry of findings that he engaged in acts, practices, and a course of business which operated as a fraud or deceit upon various persons, in connection with the purchase and sale of shares of common stock, by directly entering into transactions with stockholders that were executed at excessive and fraudulent prices. The findings also stated that Knight engaged in private securities transactions without prior written notice to and approval from his member firm.

**Timothy James Kopacka (Registered Representative, Grosse Point Shores, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$340,289, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kopacka consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice of his intention to engage in such activities to his member firms, and failed to receive written approval from the firms prior to engaging in such activities.

**Gerald Patrick Leffel (Registered Representative, Brook Park, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$51,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Leffel consented to the described sanctions and to the entry of findings that he accepted cash payments for traditional life insurance policy premiums totaling \$299 from a public customer and failed to forward the proceeds to the insurance company in payment of the premiums. Instead, the NASD found that Leffel used the proceeds for his own benefit

without the prior authorization or consent of the customer.

**Alfred Gertha Leonard (Associated Person, Queens, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Leonard consented to the described sanctions and to the entry of findings that he failed to complete his Form U-4 accurately. Leonard also failed to respond to NASD requests for information.

**John Li (Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,500, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Li consented to the described sanctions and to the entry of findings that he purchased or sold securities for the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization to exercise discretion in the customer's account.

**Thomas Dominic Loffredo (Registered Principal, New City, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to requalify as a general securities representative. If Loffredo fails to requalify within a 90-day mandated period, he will be suspended from association with any NASD member in any capacity until such examination is successfully completed. Without admitting or denying the allegations, Loffredo consented to the described sanctions and to the entry of findings that he engaged in private

securities transactions without providing written notice to, and receiving written approval from, his member firm.

**Kevin William Loomis (Registered Principal, East Northport, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by Series 7 exam prior to acting in that capacity. Without admitting or denying the allegations, Loomis consented to the described sanctions and to the entry of findings that he made baseless and improper price predictions for speculative securities to public customers and made unauthorized trades in the accounts of public customers by purchasing more than he was authorized to purchase. The findings also stated that Loomis required that customers purchase aftermarket shares as a condition of purchasing initial public offering units.

**James R. Mancuso (Registered Principal, Patchogue, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 30 days, required to requalify as a general securities representative, and required to demonstrate that prior to associating with a member firm, he has made restitution totalling \$55,613 to public customers. Without admitting or denying the allegations, Mancuso consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted material information in the offer and sale of securities. Mancuso also made fraudulent price predictions in the offer and sale of securities.

**David Eugene Manning (Registered Principal, Webster, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he

was censured, fined \$1,000, suspended from association with any NASD member in the capacity of registered options principal for two years, and required to requalify as a registered options principal. Without admitting or denying the allegations, Manning consented to the described sanctions and to the entry of findings that a member firm, acting by and through Manning, failed to properly establish and maintain an adequate supervisory system that was reasonably designed to achieve compliance with applicable securities laws and regulations, and with the rules of the NASD. Specifically, the firm failed to supervise the activities of each registered representative with respect to options trading since it failed to establish and maintain adequate written procedures to supervise trading in options.

**Tony Dale Moore (Registered Representative, Brandon, Mississippi)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$165,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Moore consented to the described sanctions and to the entry of findings that he received a check for \$2,989.25 from a public customer for the purpose of paying the premium on a fixed annuity policy; failed and neglected to remit the funds to his member firm; and, instead, endorsed the check and deposited it into his personal bank account thereby converting the \$2,989.25 to his own use and benefit, without the customer's knowledge or consent. In response to an NASD request for information, Moore provided false and misleading statements and documents, including falsified correspondence, bank statements, and cashiers' checks in an apparent attempt to mislead the staff during its investigation.

**Kirk Robert Nehdar (Registered Representative, West Hills, California)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Nehdar engaged in purchase and sale transactions in various securities for the joint account of public customers without having reasonable grounds for believing that the transactions were suitable for the customers in view of the size, frequency, and nature of the recommended transactions and the facts disclosed by the customers as to their financial situation, objectives, circumstances, and needs.

**Ronald Alvin Okum (Registered Representative, San Marino, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Okum consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm describing the proposed transactions and his proposed role therein.

**William Francis Palla (Registered Principal, Haverford, Pennsylvania)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Palla failed to respond to NASD requests for information.

**Charles Vaughn Pankey (Registered Principal, Denver, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for 10 days, suspended from association with any NASD member

as a general securities principal for six months, and required to requalify by taking the Series 24 exam prior to resuming general securities principal duties. Without admitting or denying the allegations, Pankey consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving his member firm prior written notice of his activities. The findings also stated that Pankey, as president of a member firm, failed to comply with all of the conditions outlined in the membership agreement for the firm.

**Peter Anthony Perez (Registered Representative, Parkland, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Perez consented to the described sanctions and to the entry of findings that he recommended and engaged in a course of trading in the account of a public customer that was unsuitable for the customer based upon her other securities holdings, and financial situation and needs. The findings also stated that Perez participated in private securities transactions without providing prior written notice to his member firm.

**John Louis Quaadman (Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Quaadman consented to the described sanctions and to the entry of findings that he affixed the signatures of public customers on Individual Retirement Account transfer and/or risk acknowledgement forms without the customers' knowledge or consent.

**Ralph Rufus Rush (Registered Representative, El Paso, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Rush consented to the described sanctions and to the entry of findings that he received payments of commissions in connection with the sale of variable annuity products, in the form of checks written by a registered representative associated with another member firm, without prior oral or written authorization from his member firm. Furthermore, the NASD determined that, at the time of these transactions and resultant payments, his member firm was not authorized to sell variable annuity products in the state where the sales took place.

**Elie M. Sakaran (Registered Representative, San Dimas, California)** submitted an Offer of Settlement pursuant to which he was censured, fined \$14,400, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sakaran consented to the described sanctions and to the entry of findings that he recommended, offered, and sold corporate securities to public customers when he was not registered to do so by the NASD. Sakaran used the account executive number of a registered representative who received the commission checks for the trades and signed the commission checks over to Sakaran.

**Robert Scalzi (Registered Representative, Scottsdale, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Scalzi consented to the described sanctions and to the entry

of findings that he engaged in private securities transactions without giving his member firm prior written notice of his activities. The findings also stated that Scalzi allowed an advertisement for an investment program to be placed in a newspaper identifying himself as the sales representative without having the advertisement approved by a principal of his member firm.

**Joshua S. Shainberg (Registered Principal, New York, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$35,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shainberg consented to the described sanctions and to the entry of findings that he arranged to have another individual complete the Series 27, Financial and Operations Principal Qualification Examination on his behalf. Shainberg also failed to respond to NASD requests to provide information and documentation.

**Louis Elvin Sharp (Registered Representative, Lafayette, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$1,405 in restitution to public customers. Without admitting or denying the allegations, Sharp consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing written notification to, and obtaining approval from, his member firm before participating in such transactions. The findings also stated that Sharp purchased units in a limited partnership and then sold such units to members of the public at prices that substantially exceeded the prices Sharp paid contemporaneously for the transactions, and at prices that were not reasonably related to the

market price for these securities at the time of the sales. Moreover, the NASD determined that Sharp failed to disclose to members of the public to whom he sold the securities that he had made the purchases at such prices. In addition, Sharp received purchase payments from public customers, deposited the funds into a bank account he controlled, and failed to request a transfer of the securities from his name to the customers' name until a later date.

**Mark E. Swett (Registered Representative, Omaha, Nebraska)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member firm in any capacity for three months. Without admitting or denying the allegations, Swett consented to the described sanctions and to the entry of findings that he purchased securities in his personal margin account at his member firm and utilized the proceeds from the sale of the same securities to pay for the purchases without otherwise paying for the trades or maintaining sufficient margin excess in the account.

**Gerald M. Trevor (Registered Representative, Metairie, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Trevor consented to the described sanctions and to the entry of findings that he received a check for \$5,000 from a public customer for the purpose of investment. Instead, Trevor erroneously deposited the funds into a bank account he controlled and failed to return the funds to the customer until a later date. The findings also stated that Trevor sent correspondence to the customer that incorrectly stated the customer had an account

balance of \$6,585 invested at his firm. In addition, Trevor failed to respond timely to NASD requests for information.

**Dennis Nick VanAuken (Registered Representative, Buffalo, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$75,000, and barred from association with any member firm in any capacity. Without admitting or denying the allegations, VanAuken consented to the described sanctions and to the entry of findings that in connection with the solicitation and sale of shares of stock to public customers, he, intentionally or recklessly, made untrue statements of material facts and/or omitted to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading. The findings also stated that VanAuken intentionally or recklessly made projections of future prices without a reasonable basis for predicting such price increases.

**Wayne Beckley Vaughan (Registered Representative, Cumming, Georgia)** was censured, suspended from association with any NASD member in any capacity for 30 business days, and required to requalify by exam in any capacity in which he seeks to do business. The NAC imposed the sanctions upon appeal and review of an Atlanta DBCC decision. The sanctions were based on findings that Vaughan engaged in unsuitable trading for a public customer's account.

**Chris John Votsis (Registered Representative, Brooklyn, New York)** was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to disgorge all net commissions received from 1995 through 1996 inclusive. The sanctions were based on findings that Votsis arranged to

have an impostor take the Series 7 qualification exam on his behalf.

**Jon Jerard Ward (Registered Representative, Verona, Pennsylvania)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ward failed to respond to NASD requests for information.

**Michael David Wooden (Registered Representative, Perry, Kansas)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wooden consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request to provide an on-the-record statement and documentation.

**Steven David Wyman (Registered Principal, Boynton Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. Without admitting or denying the allegations, Wyman consented to the described sanctions and to the entry of findings that he failed to reasonably supervise registered representatives' handling of public customers' accounts in order to prevent and/or detect unsuitable trading in the accounts.

**David Hirsch Zinn (Registered Representative, Oldbridge, New Jersey)** was censured, fined \$5,000, suspended from associating with any NASD member in any capacity until such time as he fully complies with an arbitration award, but no less than 30 business days. The sanctions were based on findings that Zinn failed to pay a Chicago Board Options

Exchange arbitration award of \$13,072.16 plus interest.

### **Individuals Fined**

**Joseph Edward Haick (Registered Principal, Spring Lake, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Haick consented to the described sanctions and to the entry of findings that he directed a trader to send mixed-lot SelectNet orders to a competing Market Maker in a security in retaliation for the manner in which the firm was quoting and trading the stock, in violation of the NASD's Anti-Intimidation/Coordination Interpretation.

**Roger David McClammer (Registered Representative, Greenfield, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$25,000. Without admitting or denying the allegations, McClammer consented to the described sanctions and to the entry of findings that he received a check in the amount of \$8,030.16 from a public customer for the purpose of establishing a money market mutual fund. The NASD found that contrary to the customer's instructions, McClammer failed to open the fund until a later date at which time he signed the customer's name to the fund account application without the customer's knowledge or consent.

**Beth Kohlhofer Raskovich (Registered Representative, Bloomington, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured and fined \$12,509. Without admitting or denying the allegations, Raskovich consented to the described sanctions and to the entry of findings that she opened a securities account

at a member firm and did not provide written notice to the firm that she had become registered as an investment company and variable contracts representative. In addition, Raskovich failed to provide written notice to her employing member firm that she had a beneficial interest in this securities account at the time she opened the account. Raskovich also purchased shares or units of public offerings which traded at a premium when the secondary market commenced for each security.

**Eric John Wiegandt (Registered Principal, Hilliard, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Wiegandt consented to the described sanctions and to the entry of findings that he engaged in activities requiring registration as a registered options principal without being registered in that capacity.

### **Decisions Issued**

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of December 21, 1998. 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*.

**Sandy Charles Giglio (Registered Representative, Palm Coast, Florida)** was censured, fined \$20,000, suspended from association with any NASD member in any capacity for five days, and required to requalify as a general securities representative by taking and passing the Series 7 exam. The sanctions were based on findings that Giglio forged the signatures of public customers on "change of

Broker Dealer/Representative" forms to move their accounts from other member firms to his current member firm.

Giglio has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

**Ansula Pet Hwa Liu (Registered Representative, Brooklyn Park, Minnesota)** was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$50,000, plus interest, in restitution. The sanctions were based on findings that Liu engaged in private securities transactions without providing prior written notification to her member firm. Liu also failed to respond to NASD requests for information.

Liu has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

**Kellie Anne Will (Registered Representative, Derby, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Will failed to respond to NASD requests for information.

Will has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

## 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 unad-

judicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

**James Hugh Brennan, III (Registered Representative, Chattanooga, Tennessee)** was named as a respondent in an NASD complaint alleging that he executed unauthorized securities transactions in the accounts of a public customer without the customer's knowledge or consent. The complaint alleges that Brennan recommended and engaged in such purchase transactions and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer on the basis of investment objectives and needs. The complaint also alleges that in connection with unauthorized purchase transactions, Brennan verbally misrepresented to a public customer that the subject transactions had been effected in error, and made material misrepresentations to the customer by overstating the value of the account by approximately \$146,000. The complaint also alleges that Brennan guaranteed a public customer against loss in that he stated that he would be responsible for making up any shortfall in the value of securities that occurred in a specified time period.

**John Steven DeSane (Registered Principal, Mt. Sinai, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omissions in connection with his solicitation of public customers to purchase securities. The complaint also alleges that DeSane made fraudulent price predictions in connection with his solicitation of public customers. The complaint alleges that DeSane effected transactions in a public customer's account without the prior authorization of the cus-

tomer. The complaint also alleges that DeSane failed to execute a sale of securities as ordered by a public customer.

**Edward Michael Gabbert (Registered Representative, Wilmington, Delaware)** was named as a respondent in an NASD complaint alleging that he caused \$20,795.71 in funds – to which he was not entitled – to be transferred from accounts in which he did not have an ownership interest to an account in which he did have an ownership interest. The complaint also alleges that Gabbert failed to respond to NASD requests for information.

**Kenneth Edward Grant (Registered Representative, Oxford, Michigan)** was named as a respondent in an NASD complaint alleging that he obtained checks totaling \$2,622 made payable to public customers which included repayments for insurance policies, as well as a mistaken overpayment for the insurance policies, and endorsed the checks by writing the customers' names on the checks, without the customers' knowledge or consent. The complaint alleges that Grant then cashed the checks and used \$2,185 for some purpose other than the benefit of the insurance company or the customers, then later paid the funds to the insurance company.

**Michael Lee Eng King (Registered Principal, Portland, Oregon)** was named as a respondent in an NASD complaint alleging that he exercised effective control over the account of a public customer and recommended to such customer the purchase and sale of securities, without having reasonable grounds for believing that such recommendations were suitable for the customer, in view of the frequency and nature of the recommended transactions (short sales) and the customer's financial situation, circumstances, and needs.

**Robert Albert Skulman (Registered Representative, Ft. Smith, Arkansas)** was named as a respondent in an NASD complaint alleging that he recommended and engaged in securities transactions in the accounts of public customers without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situations, investment objectives, and needs. The complaint also alleges that Skulman provided an inaccurate annual income figure on a new account form for one public customer and inflated annual income and net worth figures on a new account form for another public customer. The complaint also alleges that Skulman executed unauthorized securities transactions in the account of a public customer without the customer's knowledge or consent.

**Thomas F. White & Co., Inc. (San Francisco, California), Raymond M. C. Lui (Registered Principal, Alameda, California), Robert Thomson Angle (Registered Principal, San Francisco, California) and Peter William Shea (Registered Principal, Alameda, California)** were named as respondents in an NASD complaint alleging that Lui exercised discretion in the accounts of public customers without having received written authorization from the customers and acceptance of the accounts as discretionary by his firm. The complaint alleges that Lui exercised effective control over the accounts of public customers and recommended purchases and sales of securities without having reasonable grounds for believing that the recommendations were suitable for the customers in light of their size and frequency and based upon the facts disclosed by the customers as to their other security holdings and their financial situations and needs. The complaint also alleges that Lui

failed to respond to NASD requests for documents. The complaint alleges that the firm, acting through Angle and Shea, failed to establish and implement written supervisory procedures adequate to detect and prevent the violations alleged against Lui and to otherwise adequately supervise Lui's activities in connection with customer accounts. The complaint also alleges that the firm, acting through Angle, entered into settlement agreements with public customers which contained confidentiality clauses that prohibited or discouraged the customers from discussing the settlements with or disclosing the underlying facts to NASD and other regulators.

### **Firms Suspended/Canceled**

The following firms were suspended/canceled 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 suspensions/cancellations 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.

**Advanta OTC Securities**, Philadelphia, Pennsylvania (December 10, 1998)

**Alden Capital Markets, Inc.**, New York, New York (December 4, 1998)

**American Freedom Securities, Inc.**, Rochester, New York (December 4, 1998)

**Ash Financial Corp.**, New York, New York (December 4, 1998)

**Cassidy & Co., Inc.**, Blue Bell, Pennsylvania (December 4, 1998)

**Clark Melvin Securities**, Hato Rey, Puerto Rico (December 10, 1998)

**Elswick, Banks and Associates, Inc.**, Atlanta, Georgia (December 4, 1998)

**Fisher Hill Securities Corporation**, San Francisco, California (December 4, 1998)

**Fundamental Service Corporation**, New York, New York (December 4, 1998)

**Great American Securities**, Phoenix, Arizona (December 21, 1998)

**J. Robbins Securities, LLC**, New York, New York (December 4, 1998)

**Kenerson Financial Advisors, LLC**, Boston, Massachusetts (December 4, 1998)

**McCormick-O'Mara Securities Co.**, New York, New York (December 21, 1998)

**Northbridge Financial Services**, Farmington Hills, Michigan (December 4, 1998)

**Firms Expelled For Failing To Pay Fines, Costs, And/Or Provide Proof Of Restitution**  
**KBC Securities, Inc.**, Cincinnati, Ohio (December 17, 1998)

**Paul Morigi & Company, Inc.**, Old Greenwich, Connecticut (December 9, 1998)

**Portfolio Management, Inc.**, Little Rock, Arkansas (December 17, 1998)

### **Suspensions Lifted**

The NASD has lifted the suspension from membership on the dates shown for the following firms because they have complied with formal written requests to submit financial information.

<b>First International Capital Ltd.</b> , Hamilton, Bermuda (December 17, 1998)	<b>Violations</b> <b>Bassin, Ira Warren</b> , Plainview, New York (November 19, 1998)	<b>Arbitration Awards</b> <b>Borden, Dianne A.</b> , Westfield, New Jersey (December 2, 1998)
<b>Hampton Securities, Inc.</b> , Los Angeles, California (November 16, 1998)	<b>Bowman, Samuel L., III</b> , Little Rock, Arkansas (December 17, 1998)	<b>Buchter, Ronald Leonard</b> , New York, New York (November 27, 1998 - December 2, 1998)
<b>Firms Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Award</b>	<b>Elliott, Jeffrey L.</b> , Jacksonville, Florida (December 9, 1998)	<b>Burmann, John Edward</b> , Missouri City, Texas (December 1, 1998)
<b>Dunhill Equities, Inc.</b> , Garden City, New York (December 11, 1998)	<b>Fischer, Stephen J.</b> , Manhattan Beach, California (December 17, 1998)	<b>Clarke, Leauwandeau</b> , Sherman Oaks, California (December 9, 1998)
<b>Investors Associates, Inc.</b> , Hackensack, New Jersey (December 17, 1998)	<b>Friedland, Adam C.</b> , Woodbury, New York (November 19, 1998)	<b>Duffy, Frank Gerard, III</b> , Amityville, New York (December 7, 1998)
<b>Island Securities, Inc.</b> , Garden City, New York (December 16, 1998)	<b>Gray, John R.</b> , Kemah, Texas (December 17, 1998)	<b>Elgindy, Amr Ibrahim</b> , Colleyville, Texas (December 16, 1998)
<b>J.S. Securities n/k/a First National Equity Corp.</b> , Point Pleasant, New Jersey (November 6, 1998)	<b>Jann, Christopher E.</b> , Middle Island, New York (December 17, 1998)	<b>Forman, Scott Brian</b> , Brooklyn, New York (November 30, 1998)
<b>L.C. Wegard &amp; Co.</b> , New York, New York (December 11, 1998)	<b>Kideys, Ian T.</b> , Los Angeles, California (December 17, 1998)	<b>Friedland, Adam Craig</b> , Woodbury, New York (November 30, 1998)
<b>LT Lawrence &amp; Co., Inc.</b> , New York, New York (November 27, 1998)	<b>Maier, Donald C.</b> , Monte Sereno, California (December 17, 1998)	<b>Greer, Leonard B.</b> , Rye, New York (December 11, 1998)
<b>Monitor Investment Group</b> , New York, New York (December 10, 1998)	<b>Martin, David R.</b> , Thousand Oaks, California (December 17, 1998)	<b>Hagans, David Lebron</b> , New York, New York (December 10, 1998)
<b>Quantum Group, Ltd. a/k/a J.P. Milligan, Inc.</b> , Sloatsburg, New York (December 2, 1998)	<b>McLaurin, David C.</b> , Birmingham, Alabama (December 17, 1998)	<b>Jones, Shelley</b> , La Mesa, California (December 4, 1998)
<b>Sterling Foster &amp; Co., Inc.</b> , Uniondale, New York (December 2, 1998)	<b>Pellone, Glenn</b> , Denver, Colorado (November 19, 1998)	<b>Jones, William E.</b> , Marietta, Georgia (November 23, 1998)
<b>Suppes Securities, Inc.</b> , New York, New York (December 3, 1998)	<b>Sauceda, Benito, III</b> , Denver, Colorado (November 19, 1998)	<b>Kauffman, Brian Charles</b> , Trevose, Pennsylvania (December 11, 1998)
<b>Waldron &amp; Co., Inc.</b> , Irvine, California (December 2, 1998)	<b>Sclafani, Michael A.</b> , Brooklyn, New York (December 17, 1998)	<b>Kiperman, Neil Lewis</b> , New York, New York (November 24, 1998)
<b>Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs And/Or Provide Proof Of Restitution In Connection With</b>	<b>Stevens, Robert L.</b> , Denver, Colorado (November 19, 1998)	<b>Lemaich, Christopher D.</b> , Boca Raton, Florida (December 16, 1998)
	<b>Van der Put, Christiaan P.</b> , Pittsburgh, Pennsylvania (December 17, 1998)	<b>Lieberman, Adam R.</b> , Roslyn Heights, New York (December 7, 1998)
	<b>Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay</b>	<b>Monroe, Lamarde A.</b> , Miami, Florida (December 11, 1998 - December 21, 1998)

**Monroig, Frank J.**, Nissequogue, New York (December 7, 1998)

**Perle, Cery Bradley**, Corona Del Mar, California (December 2, 1998)

**Porush, Daniel Mark**, Oyster Bay Cove, New York (November 30, 1998)

**Rich, Jason Allen**, Jericho, New York (November 24, 1998)

**Ruggiero, Salvatore F.**, Brooklyn, New York (December 10, 1998)

**Sperling, Peter**, Sugarland, Texas (December 3, 1998)

**Trocchio, Michael S.**, Staten Island, New York (December 10, 1998)

**Vink, Lawrence Jack**, Poway, California (December 1, 1998)

**Zimmerman, Sheldon G.**, San Diego, California (December 2, 1998)

### **NASD Regulation Sanctions And Fines VTR Capital, Inc. And Former President For Market Manipulation And Illegal Profits; Additional \$300,000 Restitution Ordered**

NASD Regulation announced that it has censured and fined VTR Capital, Inc., currently known as Fairchild Financial Group, Inc., and Edward J.

McCune, owner and former President of VTR Capital, \$100,000. Fairchild Financial Group has agreed to pay \$300,000 in restitution and interest to nearly 150 VTR Capital customers in 30 states including Colorado, Florida, Illinois, New York, Ohio, and Pennsylvania. McCune, currently CEO of Fairchild Financial, has been suspended from the securities industry for eight months.

While neither admitting nor denying NASD Regulation's allegations, VTR Capital and McCune settled charges that the firm and McCune had participated in an illegal distribution and fraudulent manipulation of Interiors, Inc. Class A common stock.

In April 1995, VTR Capital and McCune acquired a block of 300,000 shares of Interiors common stock, representing approximately 28 percent of the outstanding shares. Specifically, VTR Capital and McCune arranged to purchase 300,000 shares of Interiors common stock from five short-term investors, including the firm's attorney, at prices ranging from \$.95 to \$.98 per share. VTR Capital and McCune then arbitrarily increased the market price of the stock to over \$2 per share while selling the block to the firm's customers. Because of a regulatory restriction, the firm was prevented from directly selling the shares to its customers from its own account. To circumvent this limitation, the shares

were actually sold by traders at two other firms who, in turn, obtained the shares from VTR almost immediately thereafter. This circular trading scheme artificially inflated the reported trading volume by 42 percent and created the deceptive appearance of an active market in the stock. The case is continuing against the two accommodating traders, Howard R. Perles of Fairchild Financial Group (formerly associated with I. A. Rabinowitz) and Laurence M. Geller of Wien Securities Corp.

While continuing to make a market in the Interiors stock and in the process of selling the shares, the firm paid additional compensation to the firm's brokers and used high-pressure sales tactics in violation of the federal securities laws. In addition, VTR Capital and McCune neglected to disclose to customers that they had received unfair and excessive compensation from underwriting the distribution of these shares. Interiors was not named in the complaint and is not alleged to have engaged in any wrongdoing.

At the time of the violations, VTR, based in New York City, was a full-service brokerage firm and employed about 70 brokers.

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# For Your Information

## Wire Transfer Of Corporate Financing Fees

The Corporate Financing Department of NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) will now accept the payment of the Corporate Financing filing fee by wire transfer. (The Department will continue to accept checks or money orders, too.) To obtain the necessary information for wire transfers, please contact the Compliance Unit of the Corporate Financing Department at (202) 974-2700.

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# Notices to Members

# YEAR 2000 UPDATE

February 1999

## Year 2000 Legal Update

As we rapidly approach the Year 2000, there are some legal issues that all member firms should consider. Following is important information on disclosure requirements.

The Securities and Exchange Commission (SEC) Staff Legal Bulletin No. 5 requires disclosure of Year 2000 information in the financial statements of all public companies. Amendments to SEC Rule 17a-5(e)(5)(ii)(A) under the Exchange Act of 1934 mandate that brokers and dealers with capital requirements of \$5,000 and greater disclose their Year 2000 compliance status in the two Form BD-Y2K Reports. The first Form BD-Y2K Report filed by members, which was due on August 31, 1998, provided the SEC and the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) with member compliance status as of July 15, 1998. This information will be updated through a second Form BD-Y2K Report that all NASD members must file by April 30, 1999. (Instructions and forms will be sent to all NASD members.) All completed 1998 Form BD-Y2K Report information is in the public domain and will be available on the SEC Web Site by late February. Reports submitted to the designated examining authority (DEA) must be preserved in your files in accordance with SEC Rules 17a-3 and 17a-4 for a period of three years.

Recent legislation, the "Year 2000 Information and Readiness Disclosure Act" (S. 2392), provides a "safe harbor" for firms' public disclosure of Year 2000 information. Be sure to check the guidelines of this disclosure. They are available at [www.y2k.gov/java/y2kinfo.html](http://www.y2k.gov/java/y2kinfo.html).

Firms should also be aware that the NASD has compiled summary information on the responses for the NASD DEA firms. This information will help firms review their reported progress against the progress reported by other similar types of firms. This information is available on the NASDR Web Site at [www.nasdr.com](http://www.nasdr.com).

## Where Should Your Firm Be?

At this stage in firms' Year 2000 programs, firms should be concentrating on testing their connections with correspondent firms and third parties upon which the firms rely for mission-critical systems or software. In addition, NASD member firms should determine the readiness of internal systems (e.g., personal computers and software) and facilities equipment (e.g., facsimile machines) and remediate any problems. All software and equipment using a date-related field and not certified by the manufacturer as Year 2000 compliant should be tested. Further, when possible, firms should test certified hardware or software that is mission critical, even if they have been certified as compliant.

For more information on conducting these tests, please refer to the July and August 1998 issues of *NASD Notices to Members* or call (888) 227-1330, select option 3, and a member of the NASD Year 2000 Testing Team will assist you.

## Personal Computer (PC) And Desk-Top Readiness

In addition to checking Year 2000 compliance of computer hardware and related equipment, members should examine possible desk-top applications that are used to assist with business practices. This could range from a PC financial system to a customer tracking system. These can often be purchased packages or developed by the user in common products like Excel or Access. Further, members should confirm with the appropriate vendors or manufacturers that all mission-critical software using date-sensitive fields is Year 2000 compliant. Moreover, any software that is customized by employees or vendors or that includes "macros" or scripts in spreadsheets or databases should be tested. If not compliant, these programs may cause incorrect output, erroneous computations, data corruption, general protection faults, or abnormal program terminations.



# Year 2000 Education And Events

## Virtual Workshops

As published in previous *Notices to Members*, the NASD Year 2000 Program Office is holding Virtual Workshops—workshops in which NASD members may hear about important Year 2000 issues via conference call-in sessions. During the call-in sessions, members will hear a presentation, followed by a question and answer period. The following sessions will provide an opportunity for members to share ideas and learn from other firms' experiences. Following is a description of each of the workshops, and on the next page is a listing of times and other vital information.

### **BD-Y2K 1999 Frequently Asked Questions and Answers**

#### *Issues to be covered:*

- ◆ Frequently asked questions about the Form BD-Y2K 1999 in comparison to the Form BD-Y2K 1998
- ◆ Helpful hints in the completion of Part 2 and how your DEA will review your SOP

### **BD-Y2K for Large Firms**

#### *Issues to be covered:*

- ◆ Completing the Form BD-Y2K and how the SOP corresponds to your disclosure
- ◆ What does the SOP cover

### **BD-Y2K for Small Firms**

#### *Issues to be covered:*

- ◆ Completing the upcoming BD-Y2K Report: A small firm approach
- ◆ Report 1999 vs. Report 1998

### **Contingency Planning for Introducing Firms**

#### *Issues to be covered:*

- ◆ Why you need a contingency plan
- ◆ What should be covered in the plan (business impact analysis)
- ◆ Triggers initiating the plan and preparing for its use, if needed (testing)

### **Legal Issues & the Year 2000**

#### *Issues to be covered:*

- ◆ Due diligence efforts for brokers/dealers
- ◆ Litigation helpful hints
- ◆ Recent developments in disclosure

### **Mandatory Testing**

#### *Issues to be covered:*

- ◆ Internal testing
- ◆ SIA-sponsored industry-wide testing
- ◆ Testing with the NASD

### **Year 2000 Overview/Business Continuity Strategies**

#### *Issues to be covered:*

- ◆ Developing or updating a disaster and contingency plan
- ◆ Documenting plans
- ◆ Business impact analysis
- ◆ Recovering mission-critical systems
- ◆ Validating firms' business continuity strategies

## **Mandatory Testing Reminder**

See *NASD Special Notice to Members 99-13* for time-sensitive information regarding Mandatory Testing. The NASD adopted a rule requiring selected NASD member firms to conduct Year 2000 testing on certain applications and systems. If your firm was selected to test, the Year 2000 contact at your firm should have received a copy of the *Special Notice* and a cover letter with further information. To see the list of firms mandated to test, visit the Securities Industry Association (SIA) Year 2000 Web Pages at [www.siay2k.com](http://www.siay2k.com).

## **More Information/Questions**

### **NASD Year 2000 Program Office**

e-mail: [y2k@nasd.com](mailto:y2k@nasd.com)  
phone: (888) 227-1330

# Year 2000 Education And Events

To participate in the Virtual Workshops, the NASD strongly encourages registration, but it is not required. To register, call (888) 567-0578, listen to the greeting, and provide the following information when prompted: firm name, Broker/Dealer #, and workshop date. On the day of the session, call the phone number listed below with the associated workshop, and indicate the password, conference leader, and confirmation number provided for the specific workshop (see below for a list of these specifics organized by date of session).

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## February 11 – Mandatory Testing

*Leader: Donna Nichols*

Password: Mandatory Testing

Conf #: 2922888

Call-in phone number:

(800) 857-7323

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## February 16 – BD-Y2K (small firms)

*Leader: Brooks Johnson*

Password: BD-Y2K

Conf #: 3818571

Call-in phone number:

(888) 455-5419

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## February 18 – BD-Y2K (large firms)

*Leader: Brooks Johnson*

Password: SOP

Conf #: 3818625

Call-in phone number:

(888) 455-5419

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## February 25 – Legal Issues & the Year 2000

*Leader: Angela Lacroix*

Password: Legal

Conf #: 3818652

Call-in phone number:

(888) 455-5419

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## March 11 – Contingency Planning for Introducing Firms

*Leader: Angela L. Brade*

Password: Contingency

Conf #: 2920001

Call-in phone number:

(800) 857-7323

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## March 17 – BD-Y2K 1999 Frequently Asked Questions and Answers

*Leader: Brooks Johnson*

Password: Questions

Conf #: 2920202

Call-in phone number:

(800) 857-7323

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## March 23 – Year 2000 Overview/Business Continuity Strategies

*Leader: Angela L. Brade*

Password: Strategies

Conf #: 2920237

Call-in phone number:

(800) 857-7323

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## New York Workshops

In addition to the Virtual Workshops, the NASD Year 2000 Program Office will also host two workshops in New York City on "Form BD-Y2K Submission Guidelines and Frequently Asked Questions" and "Contingency Planning." Please note that **registration is required**. To register, call (888) 227-1330.

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## Form BD-Y2K Submission Guidelines and Frequently Asked Questions

Marriott World Trade Center  
New York City

*March 3, 1999*

Sessions will be conducted from  
9:00 a.m. - 11:00 a.m. **and**  
1:00 p.m. - 4:00 p.m.

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## Contingency Planning

Marriott World Trade Center  
New York City

*April 5, 1999*

Sessions will be conducted from  
9:00 a.m. - 11:00 a.m. **and**  
1:00 p.m. - 4:00 p.m.

All sessions will be held at:

Marriott World Trade Center  
3 World Trade Center  
New York, NY

# **Year 2000 Education And Events**

## **1999 NASD Regulation Spring Securities Conference**

Year 2000 issues will be featured as part of the 1999 NASD Regulation annual Spring Securities Conference to be held in New Orleans on May 20-21. There will be a main conference workshop focusing on contingency planning issues, and there will also be two Year 2000 "Q&A" sessions where attendees can walk in and get their Year 2000 questions answered. A conference brochure will soon be mailed to NASD members and will also be available on the NASD Regulation Web Site at [www.nasdr.com](http://www.nasdr.com).

## **NASD Year 2000 Event Calendar**

<b>Topic</b>	<b>Location</b>	<b>Date</b>	<b>Time</b>
Mandatory Testing	Virtual	February 11	11:00 a.m., ET
BD-Y2K (small firms)	Virtual	February 16	11:00 a.m., ET
BD-Y2K (large firms)	Virtual	February 18	11:00 a.m., ET
Legal Issues and Y2K	Virtual	February 25	11:00 a.m., ET
Form BD-Y2K Submission Guidelines and Frequently Asked Questions	New York	March 3	9:00 a.m. - 11:00 a.m.
Form BD-Y2K Submission Guidelines and Frequently Asked Questions	New York	March 3	1:00 p.m. - 4:00 p.m.
Contingency Planning for Introducing Firms	Virtual	March 11	11:00 a.m., ET
BD-Y2K 1999 Frequently Asked Questions and Answers	Virtual	March 17	11:00 a.m., ET
Y2K Overview/Business Continuity Strategies	Virtual	March 23	11:00 a.m., ET
Contingency Planning	New York	April 5	9:00 a.m. - 11:00 a.m.
Contingency Planning	New York	April 5	1:00 p.m. - 4:00 p.m.
NASD Regulation Spring Securities Conference	New Orleans	May 20-21	

# NASD Notice to Members 99-09

NASD Regulation Imposes Moratorium On Arbitrator-Ordered Expungements Of Information From The Central Registration Depository

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) is imposing a moratorium on expungement of certain information from the Central Registration Depository (CRD<sup>SM</sup>) that is ordered by arbitrators. Effective **January 19, 1999**, NASD Regulation will not expunge information from the CRD system based on a directive contained in an arbitration award rendered in a dispute between a public customer and a firm or an associated person, unless the award has been confirmed by a court of competent jurisdiction. Therefore, arbitration awards rendered in such disputes that contain expungement directives that are not final (*i.e.*, those awards that have not been signed by a majority of the arbitrators) on or before **January 19, 1999**, must be confirmed by a court of competent jurisdiction before NASD Regulation will execute the expungement directive. During this moratorium, NASD Regulation will continue to execute court-ordered expungements, including expungement orders contained in an arbitration award that is confirmed by a court of competent jurisdiction. In addition, NASD Regulation will continue to expunge information from the CRD system based on expungement directives in arbitration awards rendered in disputes between firms and current or former associated persons, where arbitrators have awarded such relief based on the defamatory nature of the information.

NASD Regulation is imposing this moratorium after discussions with the North American Securities Administrators Association (NASAA), an association whose members include state and other securities regulators in the United States, as well as other securities regulators in North America. NASD Regulation operates the CRD system pursuant to an agreement with NASAA.

Although the agreement governing the operation of the CRD system expressly addresses court-ordered expungements, it does not specifically address arbitrator-ordered expungements. NASD Regulation has taken the position that expungement of information from the CRD system that is ordered by an arbitrator and contained in an award should be afforded the same treatment as a court-ordered expungement. NASAA disagrees with this position and has informed NASD Regulation that it does not believe that arbitrator-ordered expungements should be afforded the same treatment as court-ordered expungements. NASAA has informed NASD Regulation that, in its opinion, according to various state laws, information submitted to the CRD system is deemed to have been filed with each state in which that person or entity seeks to be registered. Therefore, according to NASAA, information in the CRD system that may be the subject of an arbitrator-ordered expungement is in many cases a state record, and state laws do not currently recognize the authority of an arbitrator to expunge a state record or do not otherwise currently permit such expungements because of state recordkeeping requirements. Pending further discussions with NASAA and the states, NASD Regulation is imposing a moratorium on expunging information from the CRD system based on a directive contained in an arbitration award rendered in a dispute between a public customer and a firm or associated person, unless the award has been confirmed by a court of competent jurisdiction. The moratorium is effective **January 19, 1999**.

Questions concerning this *Notice* may be directed to Ann E. Bushey, Assistant Director, CRD/Public Disclosure, NASD Regulation, at (301) 590-6389; Mary M. Dunbar,

Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252; or Richard E. Pullano, Associate Director and Counsel, CRD/Public Disclosure, NASD Regulation, at (301) 212-3789.

## Background And Discussion

The CRD system is an electronic registration and licensing system that contains information used by the Securities and Exchange Commission (SEC), National Association of Securities Dealers, Inc. (NASD®), other self-regulatory organizations (SROs), and state securities regulators to make licensing and registration decisions, among other things. The information on the CRD system includes criminal information (e.g., indictments and convictions for certain criminal offenses), disciplinary information (e.g., sanctions imposed by regulators, customer complaints that meet specified criteria, and certain categories of employment terminations), and other information. The information on the CRD system is submitted by regulatory authorities (e.g., state securities regulators and SROs) and by registered broker/dealers. NASD Regulation is responsible for processing registration-related filings and entering information into the CRD system.

NASD Regulation maintains and operates the CRD system pursuant to NASD rules and an agreement between NASD Regulation and NASAA, an association whose members include state and other securities regulators in the United

States, as well as other securities regulators in North America. NASD Regulation expunges information from the CRD system when ordered to do so by a court of competent jurisdiction. NASD Regulation, recognizing arbitrators' broad authority to grant equitable relief and a party's ability to have an award confirmed in court, also has honored such expungement directives provided they were contained in an arbitrator's award. NASD Regulation provides NASAA with copies of arbitration awards containing expungement directives before expunging any information from the CRD system.

NASAA has informed NASD Regulation that, in its opinion, under the laws of certain states, information filed with the CRD system is deemed to have been filed with those states, and, according to NASAA, is therefore a state record subject to all of the regulations and protocols that apply to state records. NASAA has further informed NASD Regulation that, in its opinion, state laws do not currently recognize the authority of an arbitrator to expunge a state record or do not otherwise currently permit such expungements because of state recordkeeping requirements. NASD Regulation has determined to impose a moratorium on expungement of information from the CRD system that is awarded by arbitrators in disputes involving public customers and firms or associated persons, but not confirmed by a court of competent jurisdiction, while it discusses with NASAA and the states certain legal and policy issues implicated by these

expungements. Therefore, effective **January 19, 1999**, NASD Regulation will not expunge information from the CRD system based on a directive contained in an arbitration award rendered in a dispute involving a public customer and a firm or associated person, unless the award has been confirmed by a court of competent jurisdiction. Awards rendered in such disputes that contain expungement directives that are not final (i.e., those awards that have not been signed by a majority of the arbitrators) on or before **January 19, 1999**, must be confirmed by a court of competent jurisdiction before NASD Regulation will execute the expungement directive. Notwithstanding this moratorium, NASD Regulation will continue to expunge information from the CRD system based on expungement directives contained in arbitration awards rendered in disputes between firms and current or former associated persons, where arbitrators have awarded such relief based on the defamatory nature of the information. In addition, NASD Regulation will continue to execute court-ordered expungements, including expungement directives contained in arbitration awards rendered in disputes between public customers and firms or associated persons, provided those awards are confirmed by a court of competent jurisdiction.

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# NASD Notice to Members 99-10

NASD Guidelines For  
Compliance With New  
Requirements For Non-  
California Attorneys  
Representing Parties In  
NASD Arbitrations In  
California

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

Effective January 1, 1999, the NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) Office of Dispute Resolution (ODR) adopted the following Guidelines and Certification Form to govern the practice of non-California attorneys in all arbitration proceedings in California. These Guidelines are in response to a change in California state law, effective January 1, 1999, that requires non-California attorneys participating in California arbitration proceedings to associate with California counsel and to file a Certification Form with the arbitration forum and the State Bar of California in each case in which they participate. Non-California attorneys who fail to comply with the state statute may be engaged in the unauthorized practice of law in California.

Superior Court, 17 Cal. 4th 119 (1998) (Birbrower), which holds that under certain circumstances, non-California attorneys who appear in California arbitration proceedings are engaged in the unauthorized practice of law in violation of Cal. Bus. & Prof. Code Section 6125.

ODR has formulated the following Guidelines, effective January 1, 1999, to comply with Section 1282.4, as amended.

Please note that the statutory amendments address **only** arbitration, **not** mediation proceedings.

## Guidelines

### *Attorneys Who Are Admitted to Practice in California*

- Attorneys who are admitted to practice in California must include their California bar number on the initial correspondence and the initial pleading submitted to ODR.

### *Attorneys Who Are Not Admitted to Practice in California*

- An attorney who is licensed in a state other than California may not appear in the ODR arbitration forum in California in a representative capacity unless he or she associates with a California attorney who will be attorney of record, and provides ODR with a Non-California Attorney Certification Form, which contains the information required by Section 1282.4. These obligations are created when ODR notifies the parties that an arbitration proceeding will be located in California.

- The Form (attached to this *Notice*) requests all of the information required by Section 1282.4. The Form must be filed with the San Francisco or Los Angeles Regional Office of the ODR (depending on which office is administering the pro-

## Guidelines For Appearance By Attorneys In ODR Arbitration Forum In California

### Introduction

These Guidelines apply to all parties and their counsel whose arbitration cases have been or will be heard by NASD Regulation's ODR forum anywhere in the state of California. On August 31, 1998, the California legislature amended the California Civil Procedure Code Section 1282.4 to require non-California attorneys to meet certain obligations before they may represent parties in private arbitration proceedings in California. The amendments, which become effective on January 1, 1999, were enacted in response to the California Supreme Court's decision in Birbrower, Montalbano, Condon & Frank v.

ceeding), the State Bar of California, and served upon all parties and counsel whose addresses are known to the non-California attorney at the time the Form is filed. Upon associating with a California attorney and providing the information required under Section 1282.4, a non-California attorney may participate fully in the arbitration, provided that the California attorney has entered an appearance as counsel of record.

- The State Bar of California may require a filing fee for registration of attorneys who are not admitted to practice in California. Please contact the Office of Certification at State Bar of California (see the address below) regarding any fees that may be required. The Office of Dispute Resolution cannot accept filing fees on behalf of the State Bar of California.

Office of Certification  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639  
Phone: (415) 538-2115  
Fax: (415) 538-2180

#### *Determination of Location of NASD Regulation Proceedings*

- These Guidelines apply only to ODR arbitration proceedings taking place in California.
- The location of arbitration proceedings is governed by the Uniform Submission Agreement and the Code of Arbitration Procedure Rule 10315, which provide that the Director of Arbitration shall set the initial hearing location, and that the arbitrators may set the location thereafter.

#### **Question And Answers: How Guidelines Affect ODR Administration Of Arbitration Proceedings**

**Question:** When must California counsel enter an appearance?

**Answer:** Within 45 calendar days of service of the statement of claim (the same time the answer is due). This applies to all parties.

Upon receipt of a statement of claim, ODR will serve the claim (providing that all other requirements are met) and notify the parties of the probable hearing location. When the hearing location is set in California, parties choosing to be represented by non-California counsel also must enter the appearance of California counsel, before or at the time the respondent's answer is due, which is 45 calendar days after service of the statement of claim. The time for parties to obtain California counsel will not be extended, even if the time for filing an answer is extended.

**Question:** What happens if a party fails to obtain California counsel?

**Answer:** If California counsel does not enter an appearance within 45 calendar days after service of the statement of claim, ODR will advise the parties that the non-California attorney may not appear in a representative capacity in the ODR forum, and that the party without California counsel is considered to represent him or herself until California counsel enters an appearance.

**Question:** How do the Guidelines affect open arbitration cases?

**Answer:** All parties in open arbitration cases must comply with these Guidelines within 30 calendar days of the statute's January 1, 1999 effective date. This means that

California attorneys must provide the ODR with their bar numbers, and non-California attorneys must provide the San Francisco or Los Angeles Regional Office of ODR (whichever Office is administering the particular proceeding) with a completed Form, and have an associated California attorney file an appearance in the case. Parties who fail to have appearances entered by California attorneys by February 1, 1999, will be considered to represent themselves until a California attorney enters an appearance on their behalf. Non-California attorneys who fail to associate with California attorneys by the deadline may not file any documents with ODR, or appear in prehearing conferences or hearings. This prohibition applies whether or not the events require the non-California attorney to be physically present in California.

These Guidelines also apply to cases that were originally located outside of California but are subsequently transferred to California. In these cases, non-California counsel must comply with these Guidelines within 30 calendar days of the date the parties are notified the case is being transferred to California, or before the parties' first appearance in a prehearing conference after the case has been transferred to California, whichever is first.

These Guidelines also apply to California cases in which a non-California attorney is retained to represent a party after the answer has been filed. In these cases, the non-California attorney must submit the Certification Form within fifteen (15) calendar days of being retained, or before the next scheduled hearing (including prehearing conferences), whichever is sooner.

**Question:** Do the Guidelines apply to mediation cases?

**Answer:** No. The statute and these Guidelines apply only to arbitration cases in the NASD Regulation forum. NASD Regulation takes no position on the applicability of the statute or Birbrower with respect to

mediation cases. Counsel or other representatives participating in mediations should take whatever actions they deem necessary to comply with applicable California law, including but not limited to legal

research and consulting with counsel and/or the California State Bar.

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**NASD REGULATION, INC.'S OFFICE OF DISPUTE RESOLUTION  
NON-CALIFORNIA ATTORNEY CERTIFICATION FORM  
PURSUANT TO CAL. CIV. PRO. CODE SECTION 1282.4**

**INSTRUCTIONS:** This Certification Form must be completed by attorneys not admitted to practice in California who seek to represent a party in an NASD Regulation, Inc. arbitration proceeding in California. This Form shall constitute the certificate required under Cal. Code of Civil Procedure Section 1282.4(c), as amended. The Form must be filed with the NASD Regulation, Inc.'s Office of Dispute Resolution regional office administering your arbitration (check office and address below):

**San Francisco Office**

NASD Regulation, Inc.  
Office of Dispute Resolution  
525 Market Street, Suite 300  
San Francisco, CA 94105

**Los Angeles Office**

NASD Regulation, Inc.  
Office of Dispute Resolution  
300 S. Grand Avenue, Suite 1620  
Los Angeles, CA 90071

The Form also must be filed with the Office of Certification, State Bar of California, 180 Howard Street, San Francisco, California, 94105-1639, and must be served upon all other parties and counsel in the arbitration whose addresses are known to the attorney.

**Section I. Case Information**

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

Case Number: \_\_\_\_\_

**Section II. Non-California Attorney Information**

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

Office: \_\_\_\_\_

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

City/state/zip: \_\_\_\_\_

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

Office Fax: \_\_\_\_\_

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

Home Fax: \_\_\_\_\_

**Section II continued:** Court(s) where attorney is admitted to practice and date(s) of admission (separate sheet may be attached if necessary):

In the two years preceding the date of this form, have you filed an application to appear as counsel pro hac vice in the State of California, or have you filed a Certification Form pursuant to Cal Civ. Proc. Code Section 1282.4? If the answer is "yes," please identify the title of the court or other forum and the case in which you filed such an application or certificate, and whether or not it was granted.

### **Section III. California Counsel Information**

The following attorney is admitted to practice of law in California, and will serve as the attorney of record in this arbitration.

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

California Bar #: \_\_\_\_\_

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

City/state/zip: \_\_\_\_\_

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

Office Fax: \_\_\_\_\_

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

Home Fax: \_\_\_\_\_

#### **Section IV. Certifications**

I hereby certify that:

- (a) I am currently a member in good standing of and eligible to practice law before each of the courts listed in Section II above; and
- (b) I am not currently on suspension or disbarred from the practice of law of any court; and
- (c) I am not a resident of the State of California; and
- (d) I am not regularly employed in the State of California; and
- (e) I am not regularly engaged in substantial business, professional or other activities in the State of California; and
- (f) I agree to be subject to the jurisdiction of the courts of the State of California with respect to the law of the State of California governing the conduct of attorneys to the same extent as a member of the State Bar of California; and
- (g) I am aware that filing a certificate containing false information or otherwise failing to comply with the standards of professional conduct required of members of the State Bar of California will subject me to the disciplinary jurisdiction of the State Bar of California with respect to any of my acts occurring during the course of the arbitration.
- (h) The foregoing information is true.

Date: \_\_\_\_\_

Non-California  
Attorney Signature: \_\_\_\_\_

Please type or  
print name here : \_\_\_\_\_

# NASD Notice to Members 99-11

## NASD Regulation Issues Guidance Regarding Stock Volatility

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

In recent months, there has been a sharp increase in price volatility and volume in many stocks, particularly of companies that sell products or services via the Internet (Internet issuers). NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) is issuing this *Notice to Members* to suggest disclosures that firms can make to retail customers to educate them about the risks of price and volume volatility. This *Notice* also describes steps taken by some on-line brokers to respond to volatility. A companion *Notice to Members* issued today, *Notice to Members* 99-12, provides members with guidance concerning the operation of their order execution systems and procedures during extreme market conditions.

Questions or comments concerning this *Notice* may be directed to Mary Revell, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8203.

### Discussion

Recently, there has been a marked increase in the price volatility of many stocks, particularly those of Internet issuers. This volatility has been coupled with record trading volume in many of these stocks. Customers eager to trade Internet stocks have flooded their brokers with large numbers of orders, leading to large order imbalances, systems queues, and backlogs. During these extreme market conditions, many firms implemented procedures that are designed to preserve the continuous execution of customers' orders while also lessening the exposure of the firm to extraordinary market risk. For example, some Market Maker firms temporarily discontinued normal automatic order executions and handled orders manually. Firms also reduced their size guarantees on individual stocks or groups of stocks (*i.e.*, stocks of Internet issuers) on a going-forward basis. Delays in order

executions and executions at prices significantly away from the market price quoted at the time the order was entered then occurred, which in turn led to market losses caused by executions at prices higher or lower than customers expected, especially with respect to orders placed over the Internet.

First and foremost, NASD Regulation reminds member firms of their obligations under Securities and Exchange Commission (SEC) Staff Legal Bulletin No. 8 to ensure that they have adequate systems capacity to handle high volume or high volatility trading days.<sup>1</sup> In this connection, we note that the SEC staff's position relates to all firms handling orders and is premised on a legal obligation to treat customers fairly.<sup>2</sup> Second, firms should provide adequate, clear disclosure to customers about the risks arising out of evolving volatility and volume concerns and any related constraints on firms' ability to process orders in a timely and orderly manner. This *Notice* describes the types of disclosure we deem appropriate.

We also have spoken to several order entry firms that provide on-line trading services about the steps they are taking to respond to volatility. This *Notice* provides members with information about these steps.<sup>3</sup>

### Disclosure

Recent events show that the way some stocks are traded is changing dramatically, and the change in trading methods may affect price volatility and cause increased trading volume. This price volatility and increased volume present new hazards to investors, regardless of whether trading occurs on-line or otherwise. Firms are reminded that their procedures for handling customer orders must be fair, consistent, and reasonable during volatile market conditions and otherwise. To ensure that cus-

tomers are knowledgeable about these procedures, we suggest that all firms, both order entry firms (*i.e.*, firms with a retail business that route orders to other firms for execution) and integrated firms (*i.e.*, firms with a large retail business that also engage in market making and other activities), whether they offer on-line trading services or not, consider making the following types of disclosures to educate retail customers about their procedures for handling the execution of a securities transaction, particularly during volatile market conditions, along with any additional disclosures they deem appropriate. NASD Regulation notes, however, that disclosure of procedures that are unfair, inconsistent, or unreasonable would not correct deficiencies with these procedures.

#### *Delays*

Firms should consider disclosing that high volumes of trading at the market opening or intra-day may cause delays in execution and executions at prices significantly away from the market price quoted or displayed at the time the order was entered. Firms should consider explaining to customers how order executions are handled by Market Makers, and explain that Market Makers may execute orders manually or reduce their size guarantees during periods of volatility, resulting in possible delays in order execution and losses. This disclosure is particularly important with respect to on-line investors, who have come to expect quick executions at prices at or near the quotes displayed on their computer screens.

#### *Types Of Orders*

Firms should consider explaining in detail the difference between market and limit orders and the benefits and risks of each. In particular, firms should consider disclosing that they are required to execute a market order fully and promptly without

regard to price and that, while a customer may receive a prompt execution of a market order, the execution may be at a price significantly different from the current quoted price of that security. Firms should tell customers that limit orders will be executed only at a specified price or better and that, while the customer receives price protection, there is the possibility that the order will not be executed.

As a related matter, firms should consider additional disclosure for customers who place market orders for initial public offering (IPO) securities trading in the secondary market, particularly those that trade at a much higher price than their offering price, or in "hot stocks" (those that have recently traded for a period of time under what is known as "fast market conditions," in which the price of the security changes so quickly that quotes for a stock do not keep pace with the trading price of the stock). Firms may disclose that in such cases customers' risk of receiving an execution substantially away from the market price at the time they place the order may be significantly reduced if they also include a cap (or floor) with the order above (or below) which the order is not to be executed, by placing a limit order.

#### *Access*

Firms should consider alerting customers that they may suffer market losses during periods of volatility in the price and volume of a particular stock when systems problems result in inability to place buy or sell orders. Customers trading on-line may have difficulty accessing their accounts due to high Internet traffic or because of systems capacity limitations. Customers trading through brokers at full-service or discount brokerage firms or through representatives of on-line firms when on-line trading has been disabled or is not available because of systems limita-

tions may have difficulty reaching account representatives on the telephone during periods of high volume. Firms should explain their procedures for responding to these access problems.

#### *Communications With The Public*

Firms may use advertisements or sales literature to make claims about the speed and reliability of their trading services. These communications with the public must not exaggerate the members' capabilities or omit material information about the risks of trading and the possibilities of delayed executions. Moreover, members should have the systems capacity to support any claims they make about their trading services. Misrepresentations or omissions of material facts in public communications violate National Association of Securities Dealers, Inc. (NASD®) Rule 2210 as well as Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade.

#### **Current Practices**

As stated above, on-line firms have described to us steps they have taken to respond to volatility. These procedures are detailed below. While NASD Regulation believes that these actions, when clearly disclosed to customers, may be appropriate responses to trading in securities experiencing extraordinary volatility, they may not be sufficient or appropriate responses in all circumstances. Each action provides protection to the firm and obviously also impacts a firm's customers wishing to trade those securities.

#### *Hot IPOs And Hot Stocks*

There recently has been significant volatility during the period of time when certain IPOs have opened for secondary market trading,

particularly the IPOs of Internet issuers. When some of these IPOs started trading on an exchange or on The Nasdaq Stock Market, Inc., after going public, they initially have traded at a much higher price than their IPO offering price. The prices of some of these "hot" IPOs have doubled or more in initial trading (one increased more than tenfold in price), only to fall sharply in subsequent trading. This price volatility has been accompanied by significant trading volume. Certain non-IPO stocks of Internet issuers also recently have traded for a period of time under fast market conditions.

The extraordinary volume of orders and cancellations entered on-line and otherwise during those periods caused queues and backlogs for many order entry and Market Maker firms. As a result of the level of market volatility and volume of orders, a number of Market Makers discontinued their normal automatic execution of orders and began handling orders manually. Firms also reduced their size guarantees on individual stocks or groups of stocks. This in turn led to delays in order executions, executions at prices significantly away from the market quoted at the time the order was entered, and delays in execution confirmations and cancellation reports.

Order entry firms responded to this price volatility and to changes in Market Maker order handling procedures in several ways. One firm has halted on-line trading of hot IPOs and stocks, requiring customers to purchase these securities through a registered representative, either in person or via the telephone. When contacted, representatives can explain, for example, the difference between market and limit orders and the benefits and risks of each, and encourage customers whose primary

goal is to achieve a target price and protect against sudden price moves, and who understand that there is a possibility that the order will not be executed, to enter limit orders. When used, this halt has been implemented only for a short period of time, typically one day.

Other firms do not accept market orders for hot IPOs, requiring customers who wish to buy these stocks to enter a limit order specifying the highest price they would pay for these issues. Still other firms do not accept any orders for certain IPOs that are forecast to be hot until the IPO begins trading in the secondary market. Finally, some firms call clients back who have placed orders on IPOs that look to be volatile. The firms alert customers to restrictions they impose by placing a notice on their Web sites.

#### *Margin*

All firms, whether on-line or otherwise, may raise margin requirements for volatile stocks. Some firms that permit on-line trading have raised the amount of equity that must be maintained in margin accounts (maintenance margin) for long positions in certain volatile stocks to between 40 percent and 100 percent.<sup>4</sup> The rationale for raising maintenance margin is to help ensure that the equity in a customer's margin account is sufficient to cover large changes in the price of a stock. Increasing maintenance margin requirements protects both the firm and customers by ensuring that investors have more equity in their margin accounts as protection in case of a large change in the value of a stock, which reduces the likelihood that the firm will have to liquidate assets in the customer's account to meet a margin call. Firms evaluate stocks for more stringent maintenance margin requirements by examining price

fluctuations, market capitalization, and volatility.

On-line firms also have responded to recent volatility by prohibiting the use of margin to purchase certain securities. Some securities have been designated as "not marginable," requiring customers to purchase the securities with 100 percent initial margin, allowing payment to be made within three days of settlement. Firms also have designated certain securities as "cash on hand," requiring customers to have 100 percent of the purchase price of the security in the account before the transaction can be executed.

#### *Investor Education*

Many firms provide some kind of investor education on issues related to market volatility on their Web sites. This education may be found in a part of the Web site devoted generally to investor education and in firm newsletters. It may include definitions of market and limit orders, an explanation of the difference between the two types of orders, and the risks and benefits of each. Some firms encourage customers to use limit orders when they are more concerned about achieving a desired target price for a trade than an immediate execution. Investor education also can be found in some firms' account-opening documents and cash- and margin-account opening documents. Finally, many firms have customer help desks and support agents, both of which provide answers to customer questions.

#### *Pop-up Or Splash Screens*

Certain firms have added a page that a customer must view when entering the customer account pages of their Web sites indicating, for example, that maintenance margin has been

raised for certain listed securities; trade reports may be delayed; only limit orders will be accepted for certain securities; and the latest "real-time" quotes viewed on the site may not be reflective of the current trading price of a stock.

Some firms use these pages to discuss what happens when customers attempt to cancel market orders and enter replacement orders. Because of delays in receiving trade reports on volatile trading days, some customers, fearing that their orders have not been executed, have attempted to cancel their initial market orders and enter new orders. Because market orders must be executed as promptly as possible, firms explain that it may not be feasible to cancel a market order, since it may already have been executed, even if a customer has not yet received a trade report confirming the execution. Customers are told that entering a cancel order and a separate replacement order may result in the customer being responsible for the execution of

duplicate orders, if the cancellation order cannot be processed in a timely fashion. Firms advise customers instead to place limit orders to reduce the risk of placing a duplicate order and ensure that the price received is within acceptable limits. One firm has created another category of order called "cancel and replace": the firm will execute the second or "replace order" only if it can confirm that the initial order was in fact canceled.

Member firms are exploring the feasibility of creating more of these screens on a stock-specific or trade-specific basis. This could include, for example, a "pop-up" screen explaining that a particular stock is trading in a fast market condition when a customer seeks to place an order in the stock.

### **Endnotes**

<sup>1</sup>Staff Legal Bulletin No. 8 (MR), published on September 8, 1998, states the views of the SEC's Division of Market Regulation about the need for broker/dealers to maintain enough internal systems capacity to

operate properly when trading volume is high. This Bulletin is available on the SEC's Web site at:

<http://www.sec.gov/rules/othern/slbmr8.htm>

<sup>2</sup>The Legal Bulletin cites an SEC Release in support of its position. See note 8, citing Securities Exchange Act Release No. 8363 (July 29, 1968), 33 FR 11150 (August 7, 1968).

<sup>3</sup>This Notice addresses possible responses to recent stock price volatility, particularly in stocks traded through on-line brokerage firms. While it does not address firms' suitability obligations in connection with recommended transactions or their know-your-customer obligations, firms are reminded that the existence of these obligations does not depend upon whether a trade is executed on-line or otherwise.

<sup>4</sup>This increase is from the 25 percent maintenance margin required by NASD and stock exchange rules or the 30 percent to 35 percent maintenance margin required by many firms.

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# NASD Notice to Members 99-12

## NASD Regulation Issues Guidance Concerning The Operation Of Automated Order Execution Systems During Turbulent Market Conditions

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

In light of the recent dramatic intraday volatility and significant surges in trading volume with respect to certain issues traded on The Nasdaq Stock Market, Inc. (Nasdaq®), particularly Internet-based issues, NASD Regulation, Inc. (NASD Regulation™) is issuing this *Notice to Members* to provide members guidance concerning the operation of their order execution systems and procedures during extreme market conditions. In sum, while National Association of Securities Dealers, Inc. (NASD®) and Securities and Exchange Commission (SEC) rules and regulations do not specify or mandate a particular order execution algorithm or procedure for the execution of customer orders (aside from requirements imposed by the NASD's limit order protection interpretation), NASD Regulation believes that members' best execution obligations require that such algorithms and procedures treat customer orders in a fair, consistent, and reasonable manner. In addition, to the extent that members (particularly wholesale firms) deviate from or alter their execution algorithms or procedures during turbulent market conditions, NASD Regulation believes that firms should consider disclosing such altered procedures and the basis for activating such altered procedures to their customers and firms sending them order flow.<sup>1</sup>

Questions or comments concerning this *Notice* may be directed to the Legal Section of NASD Regulation's Market Regulation Department, at (301) 590-6410.

### Discussion

The recent extraordinary volatility and volume in particular stocks, particularly Internet-based stocks, has led to questions as to whether customer orders in these stocks are han-

dled properly, and requests for guidance on best execution under these circumstances. In a companion *Notice to Members* issued today, *Notice to Members 99-11*, NASD Regulation is providing guidance to firms that deal directly with customers with respect to disclosure firms should consider making to inform investors of the increased risks associated with trading during turbulent market conditions. *Notice to Members 99-11* also lists some of the steps on-line firms have taken to respond to volatility. With this *Notice*, NASD Regulation is providing guidance as to the factors Market Makers should consider in evaluating whether modifications to their order execution algorithms or procedures during turbulent market conditions are consistent with the best execution of customer orders.

Given the high trade volume and share volume of the Nasdaq market, as well as competitive pressures to provide swift executions, wholesale firms (*i.e.*, those firms that principally execute orders routed to them from other firms) and integrated firms (*i.e.*, firms with a large retail business that also engage in market making and other activities) have developed their own automated order execution systems for smaller customer orders, generally 3,000 shares or less. During non-turbulent market conditions, these systems, which are by no means uniform, typically execute orders on a first-in-first-out basis and afford priced orders priority on a price/time basis, in addition to complying with applicable SEC and NASD rules, such as the SEC's limit order display rule and the NASD's limit order protection rule. As a general matter, these systems should be designed to process and execute orders during non-turbulent market conditions in a fair, consistent, and reasonable manner and have a capacity that is adequate to handle reasonably anticipated trading volume in an efficient manner.

During extreme market conditions, where there are large order imbalances and/or significant price volatility, however, many firms implement procedures that are designed to preserve the continuous execution of customers' orders while also lessening the exposure of the firm to extraordinary market risk. For example, some firms switch from an automated order execution mode to a manual execution mode in which orders are generally routed through SelectNet<sup>SM</sup> to execute against another Market Maker, passing on those prices to the customer. Other firms provide partial executions up to a certain size and, if applicable, place the remainder of the order in a queue that is then processed on a first-in-first-out basis.<sup>2</sup> These are but two examples of the procedures firms have adopted during extreme market conditions and are not intended to reflect preferred procedures.

Some firms have asked NASD Regulation whether their procedures during extreme market conditions are consistent with the best execution of customer orders. Accordingly, NASD Regulation is issuing this *Notice* to provide guidance in this area. Specifically, NASD Regulation believes firms should consider the following guidelines when evaluating whether their order execution algorithms or procedures are appropriate during turbulent market conditions. Nothing in the following guidelines is intended to suggest that firms are restricted from revising their execution algorithms for business reasons unrelated to market turbulence.

1. The treatment of customer orders under any order execution algorithm or procedure must remain fair, consistent, and reasonable.

2. To the extent that a firm's order execution algorithm or procedures are different during turbulent market conditions, the firm should disclose to its order entry firms (and customers if applicable) the differences in the procedures from normal market conditions and the circumstances in which the firm may generally activate these procedures. In this connection, however, NASD Regulation notes that the disclosure of alternative order handling procedures that are unfair or otherwise inconsistent with the firm's best execution obligations would neither correct the deficiencies with such procedures nor absolve the firm of potential best execution violations.

3. Modifications to order execution algorithms or procedures designed to respond to turbulent market conditions may be implemented only when warranted by market conditions. Excessive activation of modified procedures on the grounds of turbulent market conditions could raise best execution concerns. Accordingly, firms should document the basis for activation of their modified procedures.

4. As noted above, and as the SEC has stated, "[b]roker-dealers therefore need to take steps to prevent their operational systems from being overwhelmed by periodic spikes in systems message traffic due to high volume. In particular, broker-dealers should not merely have sufficient systems capacity to handle average-to-heavy loads."<sup>3</sup> Frequent activation of modified order execution algorithms or procedures because a firm has failed to maintain adequate system capacity to

handle exceptional loads may raise best execution concerns.

5. To the extent firms execute orders manually during extreme market conditions, NASD Regulation reminds firms that NASD Rule 2320(d) provides that "[f]ailure to maintain or adequately staff an over-the-counter order room or other department assigned to execute customers' orders cannot be considered justification for executing away from the best available market . . . ."

Ultimately, it necessarily involves a facts and circumstances analysis to determine whether actions taken by a firm during turbulent market conditions are consistent with the duty of best execution. Accordingly, NASD Regulation cannot provide specific guidance that a particular order execution algorithm or order handling procedure during turbulent market conditions is always consistent with best execution. Nevertheless, NASD Regulation believes the guidelines set forth above provide useful direction for firms.

## Endnotes

<sup>1</sup>Firms that direct order flow likewise have a best execution obligation to conduct regular and rigorous review of the quality of executions of orders sent to correspondent Market Makers.

<sup>2</sup>Firms also have reduced their size guarantee on individual stocks or groups of stocks (i.e., Internet stocks) on a going-forward basis, irrespective of market conditions at any given time.

<sup>3</sup>See SEC Staff Legal Bulletin No. 8 (September 9, 1998).

**This Special Notice was mailed to Notices to Members subscribers on January 29, 1999.**

# Special NASD Notice to Members 99-13

## NASD Alerts Members To Year 2000 Mandatory Testing Activities

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

On December 3, 1998, the Securities and Exchange Commission (SEC) approved NASD Rule 3410 (Rule or Year 2000 Mandatory Testing Rule), which "establish[es] the NASD's specific authority to require certain members to participate in Year 2000 tests and to require reporting on the tests."

The National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) is mandating Year 2000 testing to ensure that all NASD member firms have completed appropriate levels of testing in the interests of investor protection and market integrity. The Year 2000 Mandatory Testing Program is designed to mitigate the risk of disruptions on and after January 1, 2000.

The purpose of this *Notice* is to alert NASD member firms about the mandatory testing requirements, to help members locate further information about specific testing requirements, and to answer some frequently asked questions about Year 2000 testing. A list of frequently asked questions is included at the end of this *Notice*.

Questions concerning this *Notice* may be directed to the NASD Year 2000 Program Office at (888) 227-1330.

### Background

The NASD Year 2000 Mandatory Testing Rule requires NASD members that are clearing firms, Market Makers, and government securities firms to "conduct or participate in such testing of computer systems as the Association may prescribe." Pursuant to this Rule, selected broker/dealers must test mission-critical systems that have electronic interfaces with the NASD, exchanges, clearing corporations, or service providers. More specifically, the NASD is mandating four different

kinds of testing: (1) Securities Industry Association (SIA) Industry Cycle Testing, (2) Critical Service Bureau interface testing, (3) Nasdaq Stock Market interface testing, and (4) NASD Regulation application interface testing (Central Registration Depository – CRD<sup>SM</sup> – system). Each one of these categories is described in more detail below.

### Mandated Firm Information

Each NASD member that is required to conduct Year 2000 tests pursuant to NASD Rule 3410 will be listed on the SIA Web Site ([www.siay2k.com](http://www.siay2k.com)). This Site allows member firms to see all testing mandates from the NASD and any other self-regulatory organization (SRO). As you will see on the SIA Web Site, each SRO is mandating some form of Year 2000 testing; therefore, some NASD members (*i.e.*, those NASD members that are also members of other SROs) will be subject to more than one SRO's mandatory testing rule. It is incumbent upon the NASD members selected to test to review the information available at this Site since the NASD Year 2000 Mandatory Testing Rule may mandate different tests than are required by other SROs. This information will be updated if testing mandates are revised during the testing periods. The SIA will keep this information current. If you have any questions regarding your firm's specific testing obligations, you should contact each SRO in which your firm is a member.

**SIA Industry Cycle Testing.** The SIA Industry Cycle Test is a coordinated, four-date test that simulates a trading cycle (*i.e.*, the executing, clearing, and settlement processes) crossing over the Year 2000 date change. The Industry Cycle Test is scheduled to occur over a four-weekend period (3/6/99, 3/13/99, 3/27/99, and 4/10/99) and will test predetermined Year 2000 critical dates (12/29/99, 12/30/99, 12/31/99, and

1/3/00). There is an additional weekend testing date for both mutual funds and options dealers. Mutual funds must also test on 4/17/99 (with a system date of 1/4/00) and options dealers must test on 4/24/99 (with a system date of 1/22/00). The Industry Cycle Test allows firms to test systems' functionality by executing, clearing, and settling trades with the participating exchanges and clearing corporations. Mandated firms should already have registered for Industry Cycle Tests and performed all prerequisite point-to-point testing—meaning testing between two parties. To schedule participation in the Industry Cycle Test, contact the SIA at (888) Y2K-4SIA (888-925-4742).

*Mandate Summary: Mandated to test are NASD firms that are participants of the National Securities Clearing Corporation (NSCC), either directly or through service bureaus. The clearing firms mandated to participate in this testing all clear at least an average of 30 trades per day based on 1998 fourth quarter statistics.*

**Critical Service Bureau Interface Testing.** Many broker/dealers use service providers for some critical functions (*i.e.*, clearing, trade data, and news). Testing with any critical third-party service provider is generally considered an "appropriate business practice."

*Mandate Summary:*

- *Service Bureaus: All NASD clearing firms, Market Makers, and government securities firms are mandated to test their connections with critical service bureaus.*
- *Member firms that clear for others: All NASD firms that clear for others are mandated to test with any firm for which they provide this service if that firm wishes to execute such testing in order to*

*satisfy its efforts to prepare its business for the Year 2000 transition. Proxy testing may apply at the discretion of both parties.*

#### **Nasdaq Stock Market Interface**

**Testing.** Testing with The Nasdaq Stock Market® is considered point-to-point testing. Point-to-point tests are date tests in a Year 2000 environment (*e.g.*, 1/3/2000). These tests are used to verify that firms can communicate with a particular exchange or clearing corporation, or between firms using communication lines (*e.g.*, production or test lines, as mandated by the particular exchange or clearing corporation). These tests must be coordinated and scheduled between the testing parties (*e.g.*, between Nasdaq and a clearing firm).

*Mandate Summary:*

- *Computer-To-Computer Interface (CTCI): Testing is mandated for all NASD clearing firms and Market Makers that utilize this interface.*
- *Application Programming Interface (API): Testing is mandated for all NASD clearing firms and Market Makers that utilize this interface.*
- *Nasdaq Workstation II (NWII): Testing is mandated, but proxy testing is acceptable for all clearing firms and Market Makers.*

**NASD Regulation Interface Testing—CRD.** Testing with NASD Regulation™ applications is also considered point-to-point testing. The test will involve only certain aspects of the CRD system. Other NASD Regulation applications (such as FOCUS, Reg T., Blue Sheets, Shorts, OATS™, Customer Complaints) will be available for voluntary testing from February through September 1999. While these applications are not mandatory, firms are urged to include applicable compliance applications in their testing pro-

grams. The NASD will schedule testing for these applications on a first-come, first-serve basis. NASD Regulation has published a "Product and Service" flyer, which is available on the NASDR Web Site ([www.nasdr.com](http://www.nasdr.com)), that outlines testing availability for all compliance applications. To schedule a test, obtain test procedures, or to learn more about voluntary testing, call the Year 2000 Program Office at (888) 227-1330.

*Mandate Summary:*

- *CRD: Testing is mandated for all batch users of this system. Batch users are required to test all batch functions and the Firm Access Query System (FAQS) that is part of the CRD application. The CRD system will be available beginning in May 1999.*

**Proxy Testing.** See frequently asked question #7 on page 64.

**Industry Coordination.** The NASD is participating in an industry-wide effort led by the SEC to coordinate all Year 2000 mandatory testing. The NASD will exchange testing reports with other SROs and use this information to monitor firm participation in any mandated tests. Firms designated to participate in mandatory testing that fail to test will be subject to NASD disciplinary actions.

**Exemptions From Mandate.**

Requests for exemptions from the NASD testing mandate should be made in writing and forwarded to the NASD Year 2000 Program Office at 15201 Diamondback Drive, Rockville, MD 20850 by **February 21, 1999**. The request must be signed by an officer of the organization. The NASD Year 2000 Program Office will review all requests and reply to each firm in writing.

## Mandatory Testing Education

The SIA will hold a two-day conference in New York City at the Marriott Marquis on February 2 and 3 to pro-

vide further information on the Industry Cycle Testing. We encourage that firms mandated to test attend this SIA conference. The SIA registration

information is available from the SIA at (888) Y2K-4SIA (888-925-4742), or on its Web Site.

### Who To Call

#### Available Tests

Industry Cycle Test  
Nasdaq  
NASD Regulation  
Amex®

#### Contact

SIA Call Center  
Nasdaq Test Scheduling  
NASD Regulation Test Scheduling  
Ed Cook

#### Phone

(888) Y2K-4SIA  
(203) 385-4610  
(888) 227-1330, Option 3  
(212) 306-1748

For more test scheduling contacts, check the SIA *How to Test Guide* at [www.sia.com](http://www.sia.com).

For general information on the NASD Year 2000 Program or to sign up for NASD-sponsored workshops on Mandatory Testing, call (888) 227-1330 and select Option 1.

# Frequently Asked Questions

### 1. What is Point-to-Point Testing?

Connectivity/point-to-point tests are one-date tests in a Year 2000 environment (e.g., 1/3/2000). These tests are used to verify that firms can communicate with a particular exchange or clearing corporation, or between firms using communication lines (e.g., production or test lines, as mandated by the particular exchange or clearing corporation). These tests must be coordinated and scheduled between the testing parties.

### 2. What are Industry Cycle Tests?

The SIA Industry Cycle Test is a coordinated, four-date test that simulates a trading cycle (*i.e.*, the executing, clearing, and settlement processes) crossing over the Year 2000 date change. The Industry Cycle Test is scheduled to occur over a four-weekend period (3/6/99, 3/13/99, 3/27/99, and 4/10/99), and will test predetermined Year 2000 critical dates (12/29/99, 12/30/99, 12/31/99, and 1/3/00). The Industry Cycle Test allows firms to execute, clear, and settle trades with the

participating exchanges and clearing corporations to test systems' functionality. Participants must complete prerequisite testing prior to participation in the Industry Cycle Test. There is an additional weekend testing date for both mutual funds and options dealers. Mutual funds must also test on 4/17/99 (with a system date of 1/4/00) and options dealers must test on 4/24/99 (with a system date of 1/22/00).

### 3. If I have no external electronic interfaces, am I exempt from testing?

If a firm has no external electronic interfaces, it would not be able to participate in point-to-point or industry tests. However, as part of best business practices, firms still need to test their internal electronic systems. Member firms are reminded that testing of critical environmental systems, including security systems, HVAC, elevators, etc., also should be included in their overall Year 2000 project plan. If your firm is selected for testing and does not have any external

electronic interfaces, you must notify NASD Year 2000 Membership Support Services and request to be exempted from the mandate. The NASD will review all requests and determine whether it is appropriate to start the request.

### 4. How do I register for industry testing?

If you do not have an SIA *How to Test Guide*, you may register for SIA-sponsored tests by visiting the SIA Year 2000 Web Site at [www.siay2k.com](http://www.siay2k.com) or call the SIA at (888) Y2K-4SIA (888-925-4742).

### 5. Whom do I contact to test NASD Regulation/Nasdaq applications?

For NASD Regulation applications, contact the NASD Testing Center Help Line at (888) 227-1330, Option 3. For Nasdaq application testing, the Nasdaq Testing Center may be contacted at (800) 288-3783. You will be able to schedule tests and receive testing specifications through these numbers.

## **6. Whom should I test with?**

Member firms should conduct testing with any entity that has an external, electronic interface to the firm. For example, firms would want to test connections with correspondent clearing firms, banks, exchanges, and any other mission-critical service provider, if applicable. While the NASD Rule does not mandate testing with every organization that a firm might have an electronic connection to, as part of a firm's risk assessment, the firm should evaluate any potential risk that not testing an interface or connection might have to its business operation. Contingency plans should be developed for all tested and non-tested interfaces or connections.

## **7. What is the policy regarding proxy testing for firms that rely on service providers or software vendors for mission-critical products and services?**

To the extent possible, firms should test their systems in their own environment. However, it is not always feasible for firms that rely on service providers (serviced firms) or software purchased from vendors (turnkey firms) to test in their own environment. For this reason, firms may rely on proxy tests conducted by service providers, as specified in the NASD Mandatory Testing requirements listed on the Internet ([www.siay2k.com](http://www.siay2k.com)). Proxy testing is a term used to refer to testing that is conducted on like systems and with like interfaces for the purpose of not having to repeat identical tests that would provide the identical results. Firms utilizing the proxy should ensure that the proxy testing was conducted with a firm of similar complexity and size as their firm, using similar operating systems and software. Since the objective of every member is to conduct any testing and preparations necessary

to transition its business, each member should evaluate and determine when and where proxy testing is appropriate for its organization and risk profile. Listed below are a few helpful hints that firms should consider when evaluating the applicability of proxy testing of mission-critical systems.

- Proxy tests are conducted using the same version of Year 2000-ready software that is used to service the firm.
- Proxy tests are conducted using the same hardware and operating systems that are used by the firm. Where there are differences, the firm should verify and document how the differences would affect processing.
- For any customized software or services used, a firm should test relevant date-dependent functions. A firm also should test systems and interfaces under its direct control and those functions not covered in the proxy testing. These include items unique to the firm, as well as those for which there are an insufficient number of common users to develop acceptable proxy tests.

## **8. Should firms hire outside auditors or consultants to verify their testing processes?**

Member firm management may use qualified independent internal parties or external parties to verify the testing process. If the firm lacks internal expertise, management should use other qualified professionals, such as management consultants or CPA firms, to provide an independent review. Verification of the testing process should involve the project manager, the owner or user of the system tested, and an objective independent party such as an auditor, consultant, or other qualified individual. This objective verification should ensure that the

testing process is effective, that key dates are checked, and that any changes result in reliable information processing.

## **9. May a firm test its remediated mission-critical applications at a hot-site location (a disaster recovery site equipped with an appropriate computer and associated equipment)?**

If a firm determines that the hardware and operating systems used at the hot site are the same as the hardware and operating systems (type and version) used in-house, then the firm may test at a hot site. If the hardware and operating systems are not the same as those used in-house, hot sites may be used if the firm can demonstrate that the differences will not cause future processing problems. The hardware and software (including interfaces) running at the hot site should be Year 2000-ready.

## **10. Can testing be eliminated if the software uses an eight-digit date field?**

An eight-digit date field does not relieve firms, service providers, or software vendors from the need to test systems and applications or otherwise ensure that the firm's technical environment, including communications systems, software and hardware, are Year 2000-ready. The number of digits in a date field is not necessarily determinative of whether a system or application is Year 2000-ready. For example, data received from internal or external sources may not have an eight-digit date field, and, therefore, might not be compatible. The differences from incompatible date routines may not become apparent until testing is performed. Also, an eight-digit date field does not ensure accurate leap year processing. Another purpose of testing is to ensure that all date fields

and date routines have been made Year 2000-ready. In addition, sometimes what appears to be an eight-digit date field is not. Users may be required to enter eight digits, but the software may be dropping the century indicators and processing using only the remaining six digits.

***11. If a firm tested a particular software product in 1998 and receives an update to the product in 1999, does it need to test the updated version?***

The following factors should be considered when determining whether an update, new release, or patch to a mission-critical software application or operating system should be re-tested thoroughly, partially, or not at all:

- The firm should consult with its service provider or software vendor to identify the types of changes made, and the extent to which the service provider or software vendor has conducted internal testing before releasing the updated product or service.
- If the changes do not affect date fields or date-related calculations, the firm may not have to test, other than to perform acceptance testing that would accompany the introduction of any software update, release, or patch; or new or updated operating system; and,
- If the changes affect date fields or date-related calculations, the firm

should ensure the new release, update, or patch is appropriately tested, and that the service provider or software vendor has adequately documented and warranted the specific testing performed to ensure continued Year 2000 readiness.

As the Year 2000 approaches, firms should carefully evaluate the benefits and risks of installing new software, software upgrades, or operating system upgrades given the potential Year 2000 complications. For example, the SEC published and is imposing a moratorium on any new systems that had not been previously planned for by the SROs.

***12. What testing documentation should firms retain?***

Firms should retain appropriate documentation associated with Year 2000 efforts. Among others, regulators or self-regulators may request production of such documents to satisfy their review or examinations of data provided in any Form BD-Y2K filing or other Year 2000 disclosure document. Specifically, firms must be able to present sufficient documentation to enable examiners to perform comprehensive Year 2000 examinations. The documentation retained should enable regulatory staff to understand which tests were performed, which applications, systems, or hardware were tested, the results, and how the results were validated. Testing documentation may also assist firms in resolving

issues that may occur after the century date change. The following list includes some of the testing documentation items that firms might consider retaining:

- The organization's overall Year 2000 plan and its Year 2000 testing plan.
- The types of tests performed (e.g., baseline, unit, regression) and a summary of the results.
- The reason the firm chose the tests and how extensive those tests were.
- The criteria used to determine whether an application or system is Year 2000-ready.
- Plans for remediating and re-testing any computers, systems, or applications that failed Year 2000 tests.
- The names of persons responsible for authorizing the testing plan and accepting testing results.
- Communications with service providers and software vendors, including assurances regarding their service or product.
- Any other documentation the firm believes supports its decisions and conclusions, as well as its due diligence effort.

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# NASD Notice to Members 99-14

NASD Grants Exemptive Relief Under MSRB Rule G-37(i)

## Executive Summary

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) recently considered and granted three requests for exemptive relief under Municipal Securities Rulemaking Board (MSRB) Rule G-37(i). The staff decisions are published on the following pages in redacted form.

Questions regarding this *Notice* should be directed to Malcolm Northam, NASD Regulation, at (202) 728-8085; or Sharon Zackula,

Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8985.

Two of the exemption requests resulted from circumstances involving political contributions made prior to a merger of member firms. One exemption request resulted from unique circumstances surrounding the application of MSRB Rule G-37 to member firms that distribute Internal Revenue Code Section 529 tuition savings plans.

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Recent Decisions Regarding MSRB Rule G-37(i) Exemptive Relief

### Letter 1: Exemptive Relief Granted

**Firm A**  
**Address**

Re: **Firm A** MSRB Rule G-37 Exemption Request

Dear Mr.

This is in response to your letters dated **Date**, and **Date** and our telephone communication of **Date** requesting an exemption for **Firm A** from the prohibition of engaging in municipal securities business contained in Municipal Securities Rulemaking Board (MSRB) Rule G-37 (Rule).

Based on your letters, as well as our telephone conversation on **Date**, we understand that this request arises out of **Firm A's** **Date** purchase of certain assets of **Firm B**, a municipal securities dealer located in **City**. You represent that although **Firm B** was a municipal bond dealer, its retail municipal bond business accounted for less than 2% of its annual revenue, and any such business merely accommodated clients who wished to purchase or sell municipal bonds. **Firm B** was not involved in municipal negotiated underwriting activities, private placement activities, remarketing services, or financial advisory or consultant services. You also represent that **Firm B's** municipal business did not play a role in **Firm A's** decision to purchase certain of its assets.

**Name** was the President and Chief Executive Officer of **Firm B** and on its executive committee. By virtue of his position on the executive committee, **Name** falls within the Rule's definition of a municipal finance professional (MFP). However, you represent that he was the only individual in **Firm B** that was an MFP as defined in G-37(g)(iv). Accordingly, pursuant to G-37 (g)(iv)(E), any political contributions made by **Name** while employed at **Firm B** were neither recordable nor reportable and would not have triggered a two-year business ban for **Firm B**.

In connection with the **Date** asset purchase, both **Firm A** and **Name** envisioned that **Name** would play an integral role at **Firm A**. Prior to the closing of the purchase, **Name** disclosed that within the past two years while employed at **Firm B**, **Name** had made a political contribution to an issuer official for whom he was not eligible to vote. Specifically, **Name** made a \$1,000 personal contribution to City Mayor **Name** on **Date**. You represent that **Name** contribution was not intended to influence, obtain or retain municipal securities business for **Firm B** or any other firm. Because **Name** was not deemed an MFP under Rule G-37, his contribution did not trigger any business ban for **Firm B**.

**Firm A**, as a registered municipal securities dealer, is subject to Rule G-37. You represent that, to date, **Name** is not deemed an MFP at **Firm A**. **Name** has been appointed an Executive Vice President - Capital Markets. He does not operate in any municipal securities representative capacity at **Firm A** and does not obtain or retain any municipal securities business for **Firm A**. You represent that **Name's** current position as an associated person in charge of a principal business unit classifies him as a "non-municipal finance professional executive officer" under the Rule, and does not subject **Firm A** to a two-year prohibition due to his 1997 contribution to Mayor **Name**.

If the request for an exemption from the prohibition of engaging in municipal securities is granted, **Firm A** will appoint **Name** to its Executive and Management Committee, making him a MFP within the definition of the Rule. You indicate that **Name's** extensive and considerable experience in corporate finance and management will provide essential advice and guidance to the direction of **Firm A's** overall business as it cultivates clients and develops new products and markets.

You indicate that **Firm A's** purchase of **Firm B's** assets was not an attempt to circumvent the letter or spirit of MSRB Rule G-37. You assert that if **Firm A's** request for an exemption is not granted, **Firm A** would be penalized based

solely for a political contribution made by **Name** prior to **Firm A's** acquisition that was not subject to the Rule when it was made. You believe this is inconsistent with the intent of Rule G-37 and interpretive guidance.

As you know, the Rule makes provision for a *de minimis* political contribution in instances when the political contribution is made to a person for whom the contributor is entitled to vote. However, there is no *de minimis* exemption when a political contribution is made to a person for whom the contributor is not entitled to vote. The MSRB has published several interpretations to Rule G-37. In a published interpretation dated May 24, 1994 (Q&A number 15), the MSRB indicates, in part, that in the event political contributions were made prior to becoming a MFP, the dealer's prohibition on business would begin when the MFP becomes associated with the dealer. However, in June, 1998, the MSRB provided interpretive guidance that Rule G-37 was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the letter or spirit of Rule G-37.

Based on the representations contained in your letters, including that **Firm B** was deemed not to have any MFPs, that **Name** does not currently meet the Rule's definition of an MFP, and that **Name** will become an MFP solely by his appointment (if the exemption request is granted) to **Firm A's** Executive and Management Committees, we consent to exemption relief to **Firm A** by removing the ban on the MSRB's Rule G-37(b) business activities effective as of the date of this letter. Please be aware that our consent is based strictly on our understanding of the material facts as you have represented them and that our decision in this matter could be different if the facts are not as represented or if other material facts have not been disclosed to us.

## **Letter 2: Exemptive Relief Granted**

**Firm A**  
**Address**

Dear Mr.

This is in response to your letters dated **Date**, and **Date** and subsequent telephone conversations requesting an exemption for **Firm A** from the prohibition of engaging in municipal securities business contained in Municipal Securities Rulemaking Board (MSRB) Rule G-37 (Rule).

The request for an exemption is the result of the merger of **Firm B** into **Firm A**, and arises because of political contributions to issuer officials made by three employees who were designated as municipal finance professionals at **Firm A**.<sup>1</sup>

In support of your request for an exemption, you make a number of representations in your letters, including:

- the applicable contributions were made by three associated persons of **Firm C** [a firm which previously merged into **Firm A**] and two of these individuals are no longer associated with **Firm A**;
- the designation by **Firm C** of these three individuals as municipal finance professionals was a conservative measure taken by virtue of their membership on the **Firm C** Executive Committee and had no bearing on the business of **Firm C** because the firm did not engage in negotiated underwritings, financial advisory services, or placement or remarketing agent services with issuers of municipal securities;
- the contributions were not intended to influence the award of municipal securities business within the meaning of the Rule because **Firm C** did not engage in municipal securities business, as defined in the Rule, prior to its acquisition, and **Firm A** has not been involved in such business in **State** since such date;
- both **Firm C** and **Firm A** had developed and instituted procedures reasonably designed to ensure compliance with MSRB Rule G-37 when the contributions were made and the contributions were duly reported on MSRB Form G-37/G-38 in accordance with Rule G-37; and
- the merger of the two member firms was incidental to, and effected subsequent to, the merger of the bank holding companies **Name** and **Name**.

We consent to an exemption of the two year prohibition from municipal securities business with an issuer as defined by Rule G-37. Our consent is based on all of the representations made in your letters; in consideration of the MSRB's recent published interpretation of Rule G-37<sup>2</sup>; and in consideration of the fact that instead of combining the activities of their affiliated securities firms, the parent holding company could have exercised its ability to simply avoid the prohibition contained in the Rule by maintaining separate securities affiliates, and **Firm B** could have continued to engage in municipal securities business throughout **State** free from any Rule G-37 prohibition.

Please be aware that our consent is based strictly on our understanding of the material facts as you have represented them and that our decision in this matter could be different if the facts are not as represented or if other material facts have not been disclosed to us.

<sup>1</sup> Recipient Office: <b>issuer</b> <b>Name</b> Office: <b>issuer</b> <b>Name</b> <b>Name</b>	Amount	Date	Contributor
	\$1,000	<b>Date</b>	<b>Name</b>
	\$1,000	<b>Date</b>	<b>Name</b>
	\$ 500	<b>Date</b>	<b>Name</b>

<sup>2</sup>In recent interpretive guidance concerning the applicability of Rule G-37 in connection with mergers in the municipal securities business, the MSRB stated:

[Rule G-37] was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the [Rule's] letter or spirit.....(emphasis added). See MSRB Notice of Interpretation, Q&A No. 1, Securities Exchange Act Release No. 34-40167 (July 2, 1998), 63 FR 37434.

### **Letter 3: Exemptive Relief Granted**

**Firm A**  
**Address**

Dear Mr.

This is in response to your letter dated **Date** requesting a one-time exemption for **Firm A** from the prohibition of engaging in municipal securities business contained in Municipal Securities Rulemaking Board (MSRB) Rule G-37 (Rule).

Based on your letter, we understand that this request arises because of **Firm A's** desire to act as distribution agent in a tuition savings plan<sup>3</sup> being developed by the **Issuer**. As indicated by your letter, you believe that certain Section 529 tuition savings plans might be deemed to be municipal securities. Accordingly, by virtue of being the distribution agent for such securities, **Firm A** might be responsible for complying with MSRB rules pertaining to the municipal securities underwriting business.<sup>2</sup> If so, **Firm A** would be precluded from performing the functions described in your letter with respect to **Issuer's** proposed Section 529 tuition savings plan program.

According to your letter, **Firm A** is not in the municipal securities underwriting or finance business, and has not engaged in, and does not intend to engage in, municipal securities business as defined in Rule G-37 other than in connection with Section 529 tuition savings plans. **Name** is the President of **Firm A** and is eligible to vote in the **State** gubernatorial election. On **Date**, he made two \$500 contributions to each of two candidates for Governor of **State**. Two months after the contributions were made, **Firm A** was advised by outside counsel that its participation in Section 529 tuition savings plans might be deemed to involve the underwriting of municipal securities. **Name** subsequently sought and received the return of \$250 of each of his contributions, thus bringing the contributions within the "*de minimis*" exception to Rule G-37(b). In order both to assist **Issuer** in implementing its Section 529 tuition savings plan and to participate in the distribution of interests in the Section 529 tuition savings plan, **Firm A** has undertaken to comply with all of the applicable MSRB rules, including Rule G-37.

The following additional representations and arguments are made in support of your request:

- In its letter to Alden Adkins dated **Date**, **Issuer** has represented that unless the exemption request is granted, the citizens of **State** will be deprived of access to an important state-sponsored college savings program until **Date**, and that this will have a significant negative effect on the ability of the **State** to offer an effective and secure savings program.
- The Section 529 tuition savings plan seemingly has little in common with investments that are classified as municipal securities, and **Firm A** reasonably did not assume that its role in distributing interests in the tuition savings plan on an agency basis would constitute municipal securities business.
- In **Date**, when **Firm A** discovered that **Name** might become a municipal finance professional because of the proposed Section 529 tuition savings plan business, his contributions already had been identified and reported to the MSRB because of his association with, and designation as a non-MFP executive officer of, a different **Firm A** broker-dealer, **Firm B**.

We hereby grant an exemption to **Firm A** from the prohibition of MSRB Rule G-37(b) effective **Date**. This position is based on all the representations contained in your letter, supporting attachments, and telephone communications. In granting this exemption we note in particular: that the contributions by **Name** are the only contributions by a person who may be deemed a **Firm A** municipal finance professional that, absent an exemption, would prohibit **Firm A** from engaging in municipal securities business with **State**; that all contributions by **Name** previously have been properly recorded and reported; that **Firm A** has not engaged in municipal securities business as defined in Rule G-37 other than in connection with Section 529 tuition savings plans; that **Firm A** does not intend to engage in municipal securities business as defined in Rule G-37 during the remainder of the two-year period since **Name** contributions; and the unique characteristics of the tuition savings plans. Please be aware that our consent is based strictly on our understanding of the material facts as you have represented them and that our decision in this matter could be different if the facts are not as represented or if other material facts have not been disclosed to us.

<sup>3</sup>In 1996, the Internal Revenue Code was amended through the addition of Section 529 to encourage "qualified state tuition programs" pursuant to which states can establish and maintain tax-deferred savings programs under which participants may make contributions to accounts established for the purpose of meeting the qualified higher education expenses of designated beneficiaries. To qualify, the program must be "established and maintained" by a state, a state agency, or a state municipality (Section 529 tuition savings plan).

<sup>2</sup>For purpose of this request we assume that participant interests in **Issuer's** Section 529 tuition savings plan constitute "municipal securities," and that **Firm A's** activities in connection with the plan constitute municipal securities business within the meaning of Rule G-37. Any questions concerning the legal interpretation of terms used in the letter should be addressed to the MSRB.

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# NASD Notice to Members 99-15

## SEC Approves Rule Amendments Limiting Quotations On OTC Bulletin Board To Reporting Securities

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

On January 4, 1999, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rules 6530 and 6540 to limit quotations on the OTC Bulletin Board<sup>®</sup> (OTCBB) to the securities of companies that report their current financial information to the SEC, banking, or insurance regulators. The text of the amended rules and the *Federal Register* version of the SEC release are attached.

Questions regarding this *Notice* should be directed to Liz Heese, Product Manager, Trading and Market Services, The Nasdaq Stock Market, Inc. at (202) 728-8191; Sara Nelson Bloom, Associate General Counsel, Office of General Counsel, The Nasdaq Stock Market<sup>®</sup>, at (202) 728-8478; or Arnold Golub, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, at (202) 728-6938.

### Background

The OTCBB is a quotation service that displays real-time quotes, last-sale prices, and volume information in domestic and certain foreign securities. Eligible securities include national, regional, and foreign equity issues; and warrants, units, and American Depository Receipts (ADRs) not listed on any other U.S. national securities market or exchange. Although the OTCBB is operated by the NASD, it is unlike Nasdaq<sup>®</sup> or other listed markets where individual companies apply for listing and must meet and maintain strict listing standards; instead, individual brokerage firms or Market Makers initiate quotations for specific securities on the OTCBB. Currently, approximately 6,500 securities are quoted on the OTCBB.

In *Notice to Members* 98-14, the NASD requested comment on a proposed rule to amend Rule 6530 to

limit quotations on the OTCBB to the securities of issuers that are current in their reports filed with the SEC or other regulatory authority, and on a proposed rule that would amend Rule 6540 to prohibit a member from quoting a security on the OTCBB unless the issuer has made current filings. On July 20, 1998, after considering the comments received in response to *Notice to Members* 98-14 and making changes to address these comments, the NASD filed a proposed rule change with the SEC to implement these proposals. On January 4, 1999, the SEC approved the proposed rule change.

### Amendments To NASD Rule 6530: Eligibility Rule

Prior to the present amendments, there was no requirement for an issuer quoted on the OTCBB to make current, publicly available reports with the SEC or other regulator. Over half the companies currently quoted on the OTCBB do not file any public reports.

The amendments to Rule 6530 provide that in order for a domestic issuer to continue being quoted on the OTCBB, the issuer must be required to make periodic filings with the SEC, or with banking or insurance regulators and be current with those filings. The NASD will affix a modifier on the security's symbol if the NASD has not received information that the report was timely filed. The addition of the modifier to the symbol, as well as any changes to the symbol necessary to accommodate the modifier, will be publicly reported on the OTCBB Daily List, which is available to Market Makers and investors through the OTCBB Web Site at [www.otcbb.com](http://www.otcbb.com). Once an issuer is delinquent in filing a required report, a security of the issuer may continue to be quoted on the OTCBB for a 30- or 60-calendar day grace period from

the due date of the report, depending on the type of issuer. Issuers who file with the SEC will be granted a 30-day grace period before they can no longer be quoted on the OTCBB; issuers who file with other regulators will be granted a 60-day grace period. After the grace period, quotations in the security of the delinquent issuer will not be permitted on the OTCBB.

### **Amendment To Rule 6540: Impermissible Quotation Entries**

The amendments to Rule 6540 prohibit member firms from quoting an issuer's security if the issuer does not comply with the eligibility requirements described above. Furthermore, with respect to those issuers that do not file with the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, the amendments require a member to alert the NASD to the issuer's reporting schedule and to provide the periodic reports to the NASD, or to ensure that the required information is provided.

### **Effective Date**

The new requirements are effective immediately for securities not quoted on the OTCBB on January 4, 1999. Securities quoted on the OTCBB as of that date will be phased in to comply with the new Eligibility Requirement based upon the schedule below.<sup>1</sup> The delayed effectiveness of the rule is designed to enable Market Makers, investors, and issuers to take appropriate action.

<b>Schedule</b>	<b>Issue Symbol</b>	
July 1999	A - AD	(1) the security is not listed on The Nasdaq Stock Market ("Nasdaq") or a registered national securities exchange in the U.S., except that an equity security [securities that are] shall be considered eligible if it:
August 1999	AE - AM	(A) listed on one or more regional stock exchanges, and
September 1999	AN - BG	(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.
October 1999	BH - CM	(2) after March 31, 1998,] the security is registered with the Commission pursuant to Section 12 of the [Securi-
November 1999	CN - EM	

December 1999	EN - HH	(B[2]) [do] does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape [shall be considered eligible.]; and
January 2000	HI - LH	
February 2000	LI - NR	
March 2000	NS - RE	(2) the issuer of the security is required to file reports pursuant to Section 13 or 15(d) of the Act or the security is described in Section 12(g)(2)(B) of the Act, and, subject to a thirty calendar day grace period, the issuer of the security is current in its reporting obligations, or
April 2000	RF - TH	
May 2000	TI - Z	
June 2000	All Banks & Insurance Companies	

A list of all OTCBB securities and their eligibility status according to Nasdaq's records will be available on [www.otcbb.com](http://www.otcbb.com). If you believe the status of a security is incorrect, please e-mail the correct eligibility status, and the CIK code if the issuer is an EDGAR filer, to [otcbbfeedback@nasd.com](mailto:otcbbfeedback@nasd.com), using "OTCBB Eligibility status correction" as the subject line of the email.

### **Text Of Amendments**

*(Note: New text is underlined; deletions are bracketed.)*

### **Rule 6530. OTCBB Eligible Securities**

A member shall be permitted to quote the [The] following categories of securities [shall be eligible for quotation] in the Service:

(a) any domestic equity security that satisfies the requirements of subparagraph (1) and either subparagraph (2) or (3) or (4) below:

(3) the security is described in Section 12(g)(2)(G) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current in its reporting obligations, or

(4) the issuer of the security is a bank or savings association that is not required to file reports with the Commission pursuant to Section 13 or 15(d) of the Act and, subject to a sixty calendar day grace period, the issuer of the security is current with all required filings with its appropriate Federal banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).

(b) any foreign equity security or American Depository Receipt (ADR) that meets all of the following criteria:

(1) [prior to April 1, 1998, is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall be considered eligible if it is:

(A) listed on one or more regional stock exchanges, and

(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

(2) after March 31, 1998,] the security is registered with the Commission pursuant to Section 12 of the [Securi-

ties Exchange]Act [of 1934] and the issuer of the security is current in its reporting obligations; or the security satisfies the requirements of paragraph (a)(2) or (3) or (4) above; and

(2) the security is not listed on Nasdaq or a registered national securities exchange in the U.S., except that a foreign equity security or ADR shall [be considered eligible] meet this subparagraph (2) if it is:

(A) listed on one or more regional stock exchanges, and

(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

(c) any equity security that [is] meets the following criteria:

(1) the security is undergoing delisting from either the New York Stock Exchange, Inc. (NYSE) or the American Stock Exchange, Inc. (AMEX) for non-compliance with maintenance-of-listing standards; and

(2) the security is subject to a trading suspension imposed by the NYSE or AMEX preceding the actual delisting; and

(3) the security satisfies the requirements of paragraph (a)(2) or (3) or (4) above.

(d) any Direct [District] Participation Program as defined in Rule 6910 that is not listed on Nasdaq or a registered national securities exchange in the U.S. and that satisfies the requirements of paragraph (a)(2) or (3) or (4) above.

(e) Paragraphs (a)(2) and (3) and (4) above will not apply with respect to any domestic equity security quoted in the Service on the effective date of this rule change until six months after that date.

To be inserted in the historical section : amended by SR-NASD-98-51 effective Jan. 4, 1999 for newly quoted issues; effective July 4, 1999 for issues quoted on January 4, 1999.

(ii) provides to the Association the issuer's periodic reports required pursuant to the Act, or the issuer's financial reports required by regulatory authority, prior to the expiration of the grace period described in Rule 6530(a)(3), or ensures that the required periodic reports are provided to the Association within that time period.

(3) [(2)] Voluntary Termination of Registration  
no change

(4) [(3)] More Than One Trading Location  
no change

(5) [(4)] Clearance and Settlement  
no change

(c) Compliance with Market Maker Requirements

Failure of a member or a person associated with a member to comply with this Rule may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

To be inserted in the historical section : amended by SR-NASD-98-51 effective Jan. 4, 1999.

## **Endnote**

<sup>1</sup>This schedule is subject to change at the discretion of the NASD. The NASD will use the issue symbol as it appeared in the OTCBB quotation system on January 4, 1999, to determine where a particular issue falls in the schedule. Subsequent symbol changes will not be considered in determining an issuer's phase-in date.

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parties have agreed to arbitrate the claim after it has arisen. This amendment excludes from Exchange arbitration statutory employment discrimination claims of non-registered employees (or other persons that may not be deemed to be an associated person) pursuant to pre-dispute arbitration agreements.

The EEOC and several members of Congress have endorsed arbitration as an effective means of resolving discrimination claims, provided the parties agree to arbitrate after the claim has arisen. The Exchange's proposed amendment provides a forum for those employees who choose post-dispute to resolve their statutory employment discrimination claims through arbitration.

Some employment disputes may contain both contract or tort claims as well as statutory employment discrimination claims. Under amended Rule 23 (and Rule 24 for non-registered employees who have executed pre-dispute arbitration agreements) these cases may be bifurcated. The employment discrimination claims will be heard in a forum other than the exchange, such as court, while any claims subject to arbitration may continue to be heard at the Exchange.<sup>12</sup> The parties may avoid bifurcation by agreeing to proceed with all claims in a single forum. Given a choice, after a dispute has arisen, employees in many instances believe that arbitration is preferable to protracted and expensive litigation and will willingly make that choice.<sup>13</sup>

The proposed rule change is consistent with Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

<sup>12</sup> The bifurcation of securities industry claims is not unprecedented. Before the Supreme Court's decision in *Shearson v. McMahon*, 482 U.S. 220 (1987) (holding that claims under the Securities Exchange Act of 1934 could be compelled to arbitration), the Supreme Court decided *Dean Witter Reynolds, Inc. v. Byrd*, 105 S. Ct. 1238 (1985). In *Byrd*, the dispute involved allegations of federal securities laws violations and pendent state law claims. The Court compelled the state law claims to arbitration and held that the federal securities laws claims could be heard in court.

<sup>13</sup> See *Duffield v. Robertson Stephens & Company*, 144 F.3d 1182 (9th Cir. 1998), cert. denied, (U.S. Nov. 9, 1998) (No. 98-237).

#### (B) *Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

#### (C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. Further, the Exchange is requesting accelerated approval of the proposed rule change pursuant to section 19(b)(2) so that it may become effective on or shortly after January 1, 1999, on which date the NYSE proposal discussed above becomes effective. The Commission notes that the proposal is virtually identical to an NYSE proposal the Commission has already approved, one that was subject to the full comment period.<sup>14</sup> It is expected that in the near future other self-regulatory organizations ("SROs") will adopt similar rules or issue interpretive releases to provide uniformity throughout the securities industry. To prevent forum shopping among SROs and to prevent prospective plaintiffs from being disadvantaged by any inconsistency in the effective dates of SROs' rule changes or interpretative releases, the Commission finds good cause for approving the proposal prior to the 30th day after the date of publication of notice of the filing in the *Federal Register*.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-98-29 and should be submitted by January 29, 1999.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>15</sup> that the proposal, SR-CHX-98-29, and amendment No. 1 thereto be and hereby is approved.<sup>16</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 99-412 Filed 1-7-99; 8:45 am]  
BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40878; File No. SR-NASD-98-51]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 To Be Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Microcap Initiatives—Amendments to NASD Rules 6530 and 6540

January 4, 1999.

#### I. Introduction

On October 7, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed amendments to NASD Rules

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>14</sup> See footnote 8 above.

6530 and 6540 to limit quotations on the OTC Bulletin Board® ("OTCBB") to the securities of issuers that are current in their reports filed with the SEC or other regulatory authority, and to prohibit a member from quoting a security on the OTCBB unless the issuer has made current filings, respectively.

The proposed rule change, including Amendment No. 1, appeared in the **Federal Register** on November 4, 1998.<sup>3</sup> The Commission received three comments concerning the proposed rule change.<sup>4</sup> This order approves the proposed rule change, as amended.

## II. Description of Proposal

The NASD has actively studied the OTC market in an effort to address abuses in the trading and sales of thinly traded, thinly capitalized (microcap) securities. These securities are not listed on Nasdaq or any exchange and trade on the OTCBB, in the "pink sheets" published by the National Quotation Bureau, Inc. ("Pink Sheets"), and in other quotation media where there are no listing requirements. With respect to its examination of the OTCBB in particular, the NASD noted the lack of reliable and current financial information about the issuers, and the perception by the public that the OTCBB is similar to a highly regulated market, such as the registered exchanges or Nasdaq.<sup>5</sup>

The OTCBB provides a real-time quotation medium that NASD member firms can use to enter, update, and retrieve quotation information (including unpriced indications of interest) for equity securities traded over-the-counter that are neither listed on Nasdaq nor on a primary national securities exchange. Eligible securities include national, regional, and foreign equity issues, warrants, units, Direct Participation Programs ("DPPs")<sup>6</sup> and

American Depository Receipts ("ADRs")<sup>7</sup> not listed on any other U.S. national securities market or exchange. Unlike Nasdaq or registered exchanges where individual companies apply for listing on the market—and must meet and maintain strict listing standards—there are no listing standards for the OTCBB, and there currently is no requirement that issuers of securities on the OTCBB make current, publicly-available reports with the SEC or other regulator. In fact, over half of the companies that are currently quoted on the OTCBB are not subject to any public reporting requirements.

The proposed rule change was developed in an effort to balance the benefits that the transparency of the OTCBB provides with the public need for information about the issuers being quoted. The NASD is concerned that where there is no public information available regarding a security, the broad-based automated display of quotations in that security creates an unjustified perception of reliability. While the NASD realizes that the new rule may result in the lack of real-time quotations for those securities that become ineligible for the OTCBB, it believes that this loss is outweighed by the benefit to investors who would, under the proposed rule, have access to information about the companies in which they may invest. In addition, transactions in securities ineligible for the OTCBB would still be subject to real-time last sale trade reporting. These reports are publicly disseminated through market data vendors on a real-time basis.

### *Amendment to Rule 6530*

This proposed amendment to Rule 6530 would limit quotations on the OTCBB to the securities of issuers that make current filings pursuant to Sections 13<sup>8</sup> and 15(d) of the Act,<sup>9</sup> securities of depository institutions that are not required to make filings under the Act, but file publicly-available reports with the appropriate regulatory agencies, registered closed-end investment companies, and insurance companies that are exempt from registration under Section 12(g)(2)(G) of the Act.<sup>10</sup>

To remain eligible for quotation on the OTCBB, an issuer must remain

Thus, gains and losses are taxed to the investor not the issuer of the security.

<sup>7</sup> ADRs are receipts for shares of foreign corporations that are held by U.S. banks and bought and sold in the U.S. by investors, without utilizing overseas markets.

<sup>8</sup> 15 U.S.C. 78m.

<sup>9</sup> 15 U.S.C. 78o-(d).

<sup>10</sup> 15 U.S.C. 78l(g)(2)(G).

current in its filings with the SEC or applicable regulatory authority. A member would be required to inform the NASD of the issuer's reporting schedule. Based upon that schedule, the NASD will affix a modifier on the security's symbol if the NASD has not received information that the report was timely filed.<sup>11</sup> The addition of the modifier to the symbol, as well as any changes to the symbol necessary to accommodate the modifier, will be publicly reported on the OTCBB Daily List, which is available to market makers and investors through the OTCBB web site at <http://www.otcbb.com>. Once an issuer is delinquent in filing a required report (e.g., Form 10-K, Form 10-Q, Form 20-F, Insurance Company Annual Statement, or call report), a security of the issuer may continue to be quoted on the OTCBB for a 30 or 60 calendar day grace period from the due date of the report, depending on the type of issuer. After the grace period, quotations in the security of the delinquent issuer would not be permitted on the OTCBB.

Filings for most OTCBB issuers are available through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.<sup>12</sup> Foreign issuers are generally permitted to file in paper format and copies of these filings are available from the Commission. Exchange Act filings of banks and thrifts are available upon filing from the financial institution's primary bank regulatory agency. The grace period for these issuers is 30 days. In the case of banks and thrifts that are not required to make Exchange Act filings, members can obtain call report information from the National Information Center of Banking Information website (<http://www.ffiec.gov/nic>) or the Federal Deposit Insurance Corporation's website (<http://www.fdic.gov>). Call reports are filed 30 days after the end of each calendar quarter and are available to the public within 15 days of filing. Insurance companies file annual statements with the National Association of Insurance Commissioners ("NAIC") by March 1 of each year. This information is released to the public by NAIC by April 1. Because of the delay in the availability of call reports and insurance company annual statements, the proposed rule permits a 60 calendar day grace period for the quotation of securities of these companies after the

<sup>3</sup> Securities Exchange Act Rel. No. 40606 (October 27, 1998), 63 FR 59610.

<sup>4</sup> Electronic comment letters from Edward Zorek, Tai Jim, and R. Jeffrey Bacon were received by the Commission at rule-comments@sec.gov on November 11, 1998, November 28, 1998, and November 29, 1998, respectively. The substance of the comments received is discussed in Section III. *Summary of Comments.*

<sup>5</sup> In addition, the NASD has filed a proposed rule change through its subsidiary, NASD Regulation, to require a member to review current financial statements and other business information about the issuer of a security that is not listed on Nasdaq or a national securities exchange before that member could recommend a transaction to a customer in the security and to provide certain disclosure information on the trade confirmation for all customer transactions (solicited and unsolicited) in such securities. See SR-NASD-98-50.

<sup>6</sup> DPPs are securities offerings that permit investors to directly participate in the cash flow and tax consequences of the underlying investments. DPPs provide for the "flow through" of tax results.

<sup>11</sup> It is contemplated that the modifier will be affixed one to two days after the report is due.

<sup>12</sup> EDGAR is the SEC's system for the receipt, acceptance, and review of documents submitted in electronic format.

deadline for the issuer to submit a report to the appropriate regulator.

#### *Amendment to Rule 6540*

This proposed amendment to Rule 6540 would prohibit member firms from quoting an issuer's security if the issuer has not made current reports with the SEC or the appropriate regulatory authority. Members must also provide such reports to the NASD, although the reports may be provided by any market maker in the security. The NASD is exploring ways to reduce the burden of this requirement for members, particularly with respect to issuers who are EDGAR filers. As discussed above, the NASD will affix a modifier to the security's symbol if the NASD has not received information that the report was timely filed. This indication will provide members with notice that the NASD has not received information that the issuer's report was timely filed. Once the NASD provides this notice, the member will have the opportunity to acquire the necessary report and provide it to the NASD before the end of the grace period.

#### *Phase-In*

The new requirements will be immediately effective upon approval of the rule for securities not previously quoted on the OTCBB. Securities quoted on the OTCBB on the date the rule becomes effective will be afforded at least six months to comply with the new requirements. Specifically, and in order to accommodate the resource demands that may be placed upon the SEC when certain issuers elect to file current public reports, the new requirements will be applied in a month-by-month staggered manner for a period from six to eighteen months from the date the rule is approved. The NASD will apply the new rule to approximately the same number of issuers for each month during that period in order to evenly distribute the SEC's anticipated work load. The delayed effectiveness of the rule should also enable market makers, investors, and issuers to take appropriate action. It should be noted that for issuers who file a Form 10 or Form 10SB with the SEC to register under Section 12(g) of the Act,<sup>13</sup> all SEC comments, if any, must be cleared with the SEC before securities can be quoted on the OTCBB.

#### **III. Summary of Comments**

The Commission received three comments on the proposed amendments.<sup>14</sup> All three commenters

supported the proposal; noting that the proposed amendments should help to reduce fraud in OTCBB traded securities.

#### **IV. Discussion**

The Commission believes that the proposal is consistent with Section 15A of the Act<sup>15</sup> as it will protect investors and the public interest by requiring issuers listed on the OTCBB to file reports containing current financial information with the Commission or appropriate regulatory agency. Specifically, the Commission believes the proposal is consistent with the requirements of Section 15A(b)(6) and (11) of the Act.<sup>16</sup> Section 15A(b)(6) requires, among other things, that the association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>17</sup> Section 15A(b)(11) requires that the rules of the association be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.<sup>18</sup>

Under proposed Rule 6530, market makers will not be permitted to quote OTCBB traded securities unless the issuer has made current filings with the appropriate regulatory agency. The filing requirement ensures that companies trading on the OTCBB market will have current, public information that investors can access, from the appropriate regulatory agency, when considering whether to invest in an OTCBB traded security. Proposed Rule 6530 should provide investors in OTCBB securities with more information on which to base investment decisions. The Commission also believes that limiting quotations on the OTCBB to the securities of issuers that report to the SEC or applicable regulatory authority may help to reduce fraud and manipulation. As a result of the reporting requirement, financial data on issuers will be available and issuers that provide false or misleading information in their required filings may be subject to liability for making those statements.<sup>19</sup> The Commission finds

that proposed Rule 6530 is consistent with the Act because it will protect investors and the public interest.<sup>20</sup>

Proposed Rule 6530 provides that domestic securities that were previously trading on the OTCBB will not be subject to the proposal until six months after the approval date. Neither foreign issuers nor issuers of securities not currently trading on the OTCBB will be able to take advantage of the phase-in provision; these issuers will be obligated to immediately comply with Rule 6530, as amended. The Commission believes that the phase-in period is reasonable and consistent with the Act. The Commission believes that the phase-in period for issuers of domestic securities that were previously trading on the OTCBB will provide these issuers with ample notice of the rule change and adequate time to comply with the new rules' requirements. Regarding issuers of domestic securities not currently quoted on the OTCBB and foreign securities, the Commission believes it is consistent with the Act and in the public interest that they be required to comply with the amendments to Rule 6530 effective immediately. The Commission finds that the phase-in period for issuers previously quoted on the OTCBB and immediate effectiveness of the amendments to Rule 6530 with respect to other issuers is reasonable, and consistent with Section 15A(b)(6) of the Act.<sup>21</sup>

Proposed amendments to Rule 6540 will permit NASD members to quote only the securities of issuers that satisfy the requirements of proposed Rule 6530. As proposed, Rule 6540 will also necessitate that NASD members provide the NASD copies of reports filed with the Commission or other applicable regulatory authority. These reports can be provided by any market maker in the security to the NASD. Once a market maker has properly filed all necessary reports with the NASD, all market makers in the security may quote the security, as long as the reports remain current. The Commission believes that the rule should ensure that market makers have current financial information available to them regarding issuers quoted on the OTCBB and enable NASD market makers to reflect this information in their quote. The Commission finds that proposed Rule 6540 is consistent with Section

<sup>15</sup> 15 U.S.C. 78o-3.

<sup>16</sup> 15 U.S.C. 78o-3(b)(6) and (11).

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

<sup>18</sup> 15 U.S.C. 78o-3(b)(11).

<sup>19</sup> See, e.g., *SEC v. Savoy Industries, Inc.*, 587 F.2d 1149 (D.C. Cir. 1978), cert denied, 440 U.S. 913

(1979); Exchange Act Rule 10b-5, 17 CFR 240.10b-5.

<sup>20</sup> 15 U.S.C. 78o-3(b)(6).

<sup>21</sup> 15 U.S.C. 78o-3(b)(6).

<sup>13</sup> 15 U.S.C. 78l(g).

<sup>14</sup> See *supra* note 4.

15A(b)(11) of the Act<sup>22</sup> in that it is designed to produce fair and informative quotations, to prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-NASD-98-51) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-414 Filed 1-7-99; 8:45 am]

BILLING CODE 8010-01-M

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40874; File No. SR-NASD-98-88]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Listing and Continued Listing Determinations

December 31, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 27, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, The Nasdaq Stock Market Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("Commission") relating to issuer listing and continued listing determinations. The NASD amended this proposal on December 15, 1998.<sup>3</sup> The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>22</sup> 15 U.S.C. 78o-3(b)(11).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 15, 1998.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is filing with the Commission a proposed rule change that would replace the existing Rule 4800 Series (Rules 4810 through 4890) with a new code of procedure for review of Nasdaq listing determinations. The proposal also would temporarily relocate the existing Rule 4800 Series, to the extent it relates to other grievances concerning the Association's automated systems, to the Rule 9700 Series.<sup>4</sup> Below is the text of the proposed rule change. New language is *italicized* and deletions are [bracketed].

#### 4480. Termination Procedure.

(a) Failure to maintain compliance with the provisions of Rules 4450, 4460, or 4470 will result in the termination of an issuer's designation unless an exception is granted as provided in [this] *the* Rule [4480] 4800 Series. Termination shall become effective in accordance with the terms of the notice by Nasdaq.

(b) [An issuer that is subject to termination of its designation may request a review by a Panel authorized to hear appeals. If a review is requested, the issuer is entitled to submit materials and arguments in connection with such review.]

(c) The Panel may grant or deny continued designation on the basis of the written submission by the issuer and whatever other data it deems relevant.

(d) Determinations by the Panel may be appealed to the Nasdaq Listing and Hearing Review Committee by any aggrieved person. An appeal to the Nasdaq Listing and Hearing Review Committee shall not operate as a stay of the decision of the Panel unless the Nasdaq Listing and Hearing Review Committee in its discretion determines to grant such a stay.

(e) The Rule 4800 series sets forth procedures applicable to the review of the termination of an issuer's designation.

(f) An issuer may voluntarily terminate its designation upon written notice to Nasdaq.

\* \* \* \* \*

#### 4530. Issuer Hearing Fee

Removed

\* \* \* \* \*

#### [4800] 9700. PROCEDURES ON GRIEVANCES CONCERNING THE AUTOMATED SYSTEMS

#### [4810] 9710. Purpose

The purpose of this Rule 9700 [4800] Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by the Association, or any subsidiary thereof, and approved by the Commission, not

<sup>4</sup> The Association intends this latter change as a temporary measure pending submission and approval of amendments to the Rule 9510 Series addressing these issues.

otherwise provided for by the Code of Procedure as set forth in the Rule 9000 Series [or], the Uniform Practice Code as set forth in the Rule 11000 Series, [and to provide procedures for the handling of qualification matters pursuant to The Nasdaq Stock Market Rules, as set forth in the Rule 4000 Series] or the Procedures for Review of Nasdaq Listing Determinations as set forth in the Rule 4800 Series.

#### [4820] 9720. Form of Application

No change

#### [4830] 9730. Request for Hearing

No change

#### [4840] 9740. Consideration of Applications

No change

#### [4850] 9750. Decision

No change

#### [4860] 9760. Review by the Nasdaq Listing and Hearing Review Council

No change

#### [4870] 9770. Findings of the Nasdaq Listing and Hearing Review Council on Review

No change

#### [4880] 9780. Discretionary Review by the Board

No change

#### [4890] 9790. Application to Commission for Review

Any decision not appealed under Rule 9760 [4860] or called for review under Rule 9760 [4860] or Rule 9780 [4880] shall become the final action of the Association upon expiration of the time allowed for appeal or call for review. In any case where a person feels aggrieved by any final action of the Association issued pursuant to Rule 9770 [4870] or Rule 9780 [4880], the person may make application for review to the Commission in accordance with the Act.

### 4800. PROCEDURES FOR REVIEW OF NASDAQ LISTING DETERMINATIONS

#### 4810. Purpose and General Provisions

(a) *The purpose of this Rule 4800 Series is to provide procedures for the independent review of determinations of the Association that prohibit or limit the listing of an issuer's securities on the Nasdaq Stock Market based upon the Nasdaq Stock Market Rules, as set forth in the Rule 4000 Series. Securities of issuers that do not meet the quantitative or qualitative listing standards set forth in the Rule 4000 Series are subject to delisting from, or denial of initial inclusion on, The Nasdaq Stock Market.*

(b) *An issuer may file a written request for an extension of time to comply with any of the standards set forth in the Rule 4000 Series or an exception to those standards at any time during the pendency of a proceeding under the Rule 4800 Series. The Association may grant extensions or exceptions where it deems appropriate.*

(c) *At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel (as defined in Rule 4830), Nasdaq Listing and Hearing Review Council (the "Listing Council"), or the NASD Board of*

# NASD Notice to Members 99-16

**SEC Approves Changes To Rules Regarding Membership And Registration; Investigation And Sanctions; And Conduct And Code Of Procedure**

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

On December 28, 1998, the Securities and Exchange Commission (SEC) approved rule changes proposed by the National Association of Securities Dealers, Inc. (NASD® or Association) that amend the Rules of the Association to permit the Department of Enforcement to amend complaints one time prior to the filing of responsive pleadings, without Hearing Officer approval; to clarify and consolidate default provisions and shorten the call for review period for default decisions to 25 days; to require the Office of General Counsel to issue decisions in settled cases; to change the trigger date for which the timing of motions to introduce new evidence is keyed; to make certain sanctions effective 30 days after the service of the decision constituting final disciplinary action; to provide that decisions involving bars or expulsions be served by overnight courier, facsimile, or other means likely to obtain prompt service; to permit the Advertising Department staff to impose advertising pre-use filing requirements on members; to consolidate procedures for cancellation or suspension for failure to provide requested information; to simplify and expedite certain non-summary procedures in the Rule 9500 Series; and for other purposes.

The rule changes become effective on March 26, 1999. Questions regarding this Notice should be directed to Eric Moss, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc. (NASD Regulation™), (202) 728-8982.

## Discussion

**Advertisement:** Rules 2210(c)(4) and 2220(c) authorize the NASD to require members to file advertisements, sales literature, and educational material with the Association before using them in certain instances. The Rules currently pro-

vide that the District Business Conduct Committees (DBCC) may impose pre-use filing requirements and may conduct a hearing if a member opposes a pre-use filing requirement. The rules are amended to vest authority to impose a pre-use filing requirement solely with NASD Regulation staff, specifically the Advertising/Investment Companies Regulation Department. Any hearing requested regarding such requirement will be conducted by a Hearing Panel, as set forth in the non-summary proceedings of the Rule 9510 Series, rather than by a DBCC.

**Testimony:** Rule 8210 is being amended to clarify that Association staff may specify the location at which a member, associated person, or other person subject to the Association's jurisdiction must testify for the purpose of an investigation, complaint, examination, or proceeding.

**Requests for Information:** Currently, the Rule 8220 Series and the Rule 9510 Series both set forth procedures for suspending or canceling a member or associated person for failure to provide requested information to the Association. The rule change consolidates the provisions of the Rule 8220 Series and the Rule 9510 Series into the Rule 8220 Series.

Currently, the Rule 8220 Series authorizes the National Adjudicatory Council (NAC) to initiate a suspension proceeding for failure to provide requested information, and the Rule 9510 Series authorizes Association staff to initiate a cancellation proceeding for failure to provide requested information. Under the rule change, the Department of Enforcement will be able to initiate a suspension or cancellation proceeding if a member or associated person fails to provide requested information.

Several hearing procedures are being amended under the rule

change. First, the member or associated person who receives a notice initiating a cancellation or suspension will file a request for a hearing directly with the NASD Regulation Office of General Counsel, rather than the NAC. The Office of General Counsel is responsible for arranging such hearings.

Second, the rule change expands the pool of persons who could serve on the subcommittee conducting the hearing to include current and former members of the NAC, the NASD Regulation Board of Directors, and the NASD Board of Governors. At least one subcommittee member will have to be a current member of the NAC.

Third, the rule change expands the period in which a hearing must be held from 20 to 30 days. NASD Regulation has determined that 20 days is not a sufficient period both to find panelists who are available and to coordinate the schedules of all panelists, parties, and their attorneys. Lengthening this time period does not prejudice the member or person because once a hearing is requested, a suspension or cancellation cannot take effect until after the proceeding is completed.

Fourth, Rule 8222(b)(3) is being amended to include a provision of current Rule 9514(e), which allows the Association to withhold certain documents enumerated in Rule 9251 that are privileged or constitute attorney work product or are otherwise related to an examination, inspection, or investigation. Finally, the rule change adds a new requirement that if the subcommittee conducting the hearing requires that additional information be filed, then such information will have to be distributed promptly to all parties and in all cases not less than one business day before the subcommittee renders its decision.

The revised Rule 8223(b) revises the call for review process by placing the authority to conduct a review with a review panel, rather than the full NASD Board. The ability of any Governor to call the proceeding for review remains intact. Under the rule change, a review panel would conduct the review, rather than the full Board.

The reinstatement provisions set forth in proposed Rule 8225 are amended by providing that requests to terminate a suspension should be filed with the Department of Enforcement. If the Department denies the request, then a further request for relief may be filed with the review panel that rendered the decision in the underlying proceeding, as long as the request for relief is filed within 30 days after service of the decision. The review panel would be most familiar with the decision and issues during this period. If the request for relief is filed more than 30 days after service of the decision, then the NAC would act on the request for relief. This would ensure that the review panel's responsibilities conclude shortly after its decision is rendered and do not continue for an indefinite period.

References throughout the Rule Series to service by commercial courier are revised to require service by overnight commercial courier to ensure that service is effected quickly.

**Release of Disciplinary Information:** Interpretive Material 8310-2 provides for the release of disciplinary information to the public. The rule change amends this Interpretation to permit the NASD to release information about suspensions and cancellations imposed under the Rule 8220 Series, unless the NAC determines otherwise.

**Amending Complaints:** The rule change enables the Department of

Enforcement to amend complaints one time prior to the filing of responsive pleadings, without Hearing Officer approval. Rule 9212 currently requires the Department of Enforcement to move to amend any complaint, and a Hearing Officer to grant such a motion before the complaint may be amended.

**Default Provisions:** The proposed amendments to Rules 9215, 9241, 9269 and 9312 are designed to clarify and consolidate the NASD Code of Procedure (Code) default provisions, and to shorten the call for review period for default decisions to 25 days.

These amendments also make non-substantive changes that clarify the existing rules. The changes clarify that the default decisions issued by Hearing Officers should include the same contents as decisions issued in litigated cases. The amendments also clarify that either the Review Subcommittee or the NAC may set aside a default judgment. Furthermore, the changes clarify that defaults need to be appealed within 25 days after the service of the decision, and that sanctions are effective 30 days after service of the decision (other than bars and suspensions which are effective immediately). These time periods are already set forth in Rules 9360 and 9311(a), respectively.

In addition, the changes to Rule 9312 shorten to 25 days the period in which the General Counsel may call a default decision for review. The rules currently give the General Counsel 45 days to determine whether to call a default decision for review, which is the same call period for litigated decisions.

**Decisions in Settled Cases:** Rule 9270 is amended to establish that the issuance of decisions relating to accepted offers of settlement is to be

done by the General Counsel. Rule 9270 currently requires that decisions in settled cases be issued by the Office of Hearing Officers.

Returning decisions related to offers of settlement to the Hearing Officers after acceptance by the NAC, the Review Subcommittee, or the General Counsel, however, serves no useful purpose and only introduces additional delay and the possibility of error.

**Motions to Introduce New Evidence:** The change to Rule 9346(b) imposes the requirement that motions to introduce new evidence in cases that are appealed or called for review be made within 30 days of service of the index to the record under Rule 9321. Rule 9346(b) currently requires that motions to introduce new evidence in these cases be made within 30 days of service of the notice of appeal (or within 35 days of service of notice of a call for review). Because motions to introduce new evidence generally can best be made after the parties have received copies of the official index to the record, it is logical to key the timing of such motions to the parties' receipt of the index.

**Effectiveness of Sanctions:** Rule 9360 is amended to state that unless otherwise provided in decisions issued under Rule 9349 or Rule 9351, a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Association, shall become effective 30 days after the date of service of the decision. Under the current Rule 9360, a sanction becomes effective on a date established by the Chief Hearing Officer, which shall not be earlier than 30 days after the date of service of the decision constituting final disciplinary action. This change was made because the Chief Hearing Officer plays no part in the final stages of a disciplinary proceeding appealed or called for review.

In cases involving bars or expulsions, Rules 9269 and 9360 are amended to provide that service of decisions should be done by overnight courier, facsimile, or other means likely to obtain prompt service. Currently, Rule 9360 provides for personal service for final decisions imposing bars or expulsions. Rule 9269 does not currently contain language addressing the means by which service of default decisions in cases involving bars and expulsions should be accomplished. With respect to final default decisions imposing bars or expulsions, reasonable efforts at personal service (hand delivery) are generally not successful, and with respect to litigated decisions the most effective type of service is a method such as overnight courier or facsimile.

**Summary and Nonsummary Proceedings:** The Rule 9510 Series will be simplified by deleting certain non-summary proceedings and consolidating them with other rules or by replacing the current procedures with simpler procedures in a separate rule series. As noted above, the provisions of the Rule 9510 Series and the Rule 8220 Series, which both relate to failure to provide requested information, will be consolidated into the Rule 8220 Series. Similarly, the non-summary proceedings for statutory disqualification matters will be deleted from the Rule 9510 Series, and the Rule 9520 Series, which governs regular statutory disqualification matters, will be amended by adding new procedures for expediting the review of a statutory disqualification proceeding when necessary to protect investors. Finally, non-summary proceedings for failure to pay fees, dues, assessments, and other charges will be deleted from the Rule 9510 Series, and new procedures providing for a hearing by a Hearing Officer will be added as a new Rule 9530 Series.

The rule change amends Rule 9511, which sets forth the purpose of the Rule 9510 Series, to reflect these changes and to remove redundant provisions that appear in Rules 9512 and 9513.

The rule change also revises the hearing and decision provisions of Rule 9514. First, the amended Rule 9514(a)(1) contains a non-substantive, simplifying amendment that provides that a member or person who requests a hearing must set forth the specific grounds for setting aside the notice, rather than listing in the Rule each type of action that the member or person would seek to reverse or oppose at the hearing.

Second, the Rule is amended to provide that a member that received a notice of an advertising pre-use filing requirement under Rule 2210 or 2220 would have 30 days to request a hearing. Under the current Rule, which does not address pre-use filing requirements, a member or person has seven days to request a hearing in a non-summary proceeding. NASD Regulation will provide additional time in the case of advertising pre-use filing requirements because members may need additional time to consider whether to comply with or contest the requirements.

Third, the custodian of record provision under Rule 9514(f)(5) authorizes the Office of Hearing Officers to act as custodian for non-summary proceedings for a failure to comply with an arbitration award or settlement agreement related to an NASD arbitration or mediation. Under Rule 9514(b)(1), Hearing Officers serve as the adjudicators in such proceedings, and as such, the Office of Hearing Officers is a more appropriate custodian than the NASD Regulation Office of General Counsel.

Rule 9516 is amended to provide that a request for reinstatement

could be made after either a summary or a non-summary proceeding under the Rule 9510 Series. Currently, reinstatement is available only after a non-summary proceeding.

**Eligibility Proceedings:** The Rule 9520 Series, which concerns statutory disqualifications, is amended to clarify certain procedures and to expedite statutory disqualification proceedings if necessary to protect investors. Rule 9522(a) is amended to clarify that although a statutory disqualification proceeding may be initiated by the Association, a member has an independent obligation to initiate such a proceeding if it wishes to continue to associate with a statutorily disqualified person. The Rule is further amended to provide that if a member does not respond to a statutory disqualification notice issued by the Association by filing a request for relief within 10 days, the member's membership may be canceled and the associated person's registration may be revoked, unless the NAC grants an extension of time to respond for good cause shown.

NASD Regulation amended Rule 9525 to provide for an expedited review of statutory disqualification proceedings if the Statutory Disqualification Committee requests an expedited review and the NASD Board Executive Committee determines that such action is necessary for the protection of investors. In such a case, any Governor could call the proceeding for review. If such a call were made, a review panel would conduct the review, as in amended Rule 8223 (b)(2).

**Suspension or Cancellation for Failure to Pay Dues, Fees, and Other Charges:** The new Rule 9530 Series sets forth procedures for suspending or canceling the membership of a member or the registration of an associated person who fails to

pay fees, dues, assessments, or other charges. Procedures for such a cancellation or suspension are currently set forth in the Rule 9510 Series. Under the rule change, the NASD Treasurer would be authorized to initiate such proceedings by sending a notice to the member or associated person. The hearing would be conducted by a Hearing Officer, who would be authorized to suspend or cancel the membership of a member or the registration of a person. The hearing procedures are modeled on the Rule 8220 Series.

The rule change does not include a call for review because the issues to be resolved in this type of proceeding are narrow and largely administrative. NASD Regulation has determined that it would be more efficient to have one Hearing Officer conduct the hearing and render a final decision. Hearing Officers are well-suited to resolve the issues presented in hearings for failure to pay fees due to their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series and in non-summary proceedings for failure to pay arbitration awards under the Rule 9510 Series.

### **Text Of Amendments**

*(Note: New text is underlined; deletions are bracketed.)*

### **0100. GENERAL PROVISIONS**

#### **0120. Definitions**

**(m) "National Adjudicatory Council [Business Conduct Committee]"**

The term "National Adjudicatory Council [Business Conduct Committee]" means the committee of [the Board of Directors of] NASD Regulation which may be authorized and directed to act for the Board of Directors of NASD Regulation in a manner

consistent with the By-Laws of NASD Regulation, the Rules of the Association, and the Delegation Plan with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; and (6) such other proceedings or actions authorized by the Rules of the Association.

## **2000. BUSINESS CONDUCT**

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

#### **2210. Communications With The Public**

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

(4) (A) Notwithstanding the foregoing provisions, [any District Business Conduct Committee of the Association] the Department, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department [and/or the District Committee], at least ten days prior to use. The member must provide with each filing the actual or anticipated date of first use.

(B) The [Committee] Department shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement

shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing [before the District Business Conduct Committee] under Rule 9514, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the [Code of Procedure as contained in the] Rule [9000] 9510 Series.

## **2220. Options Communications with the Public**

### **(c) Association Approval Requirements and Review Procedures**

(1) In addition to the approval required by paragraph (b) of this Rule, every advertisement and all educational material of a member or member organization pertaining to options shall be submitted to the Advertising/Investment Companies Regulation Department of the Association ("Department") at least ten days prior to use (or such shorter period as the Association may allow in particular instances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement or educational material has been resubmitted for, and has received, Association approval.

(2) (A) Notwithstanding the foregoing provision, [any District Business Conduct Committee of the Association] the Department, upon review of a member's options advertisements, educational material and/or sales literature, and after determining that the member will again depart from the standards of this Rule, may require that such member file all options advertisements, educational material and/or sales literature, or the portions of such member's material

that is related to any specific types or classes of securities or services, with the [Association and/or the District Committee] Department, at least ten days prior to use.

(B) The [Committee] Department shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing [before the District Business Conduct Committee] under Rule 9514, and any such hearing shall be in conformity with the hearing and appeal procedures of the [Code of Procedure, as set forth in the] Rule [9000] 9510 Series.

## **2320. Best Execution and Interpositioning**

(a) In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that [which] will be considered [by the Business Conduct Committees] in determining whether a member has used [applying the standard of] "reasonable diligence" [in this area] are:

(g) (1) In any transaction for or with a customer pertaining to the execution of an order in a non-Nasdaq security (as defined in the Rule 6700 Series), a member or person associated with a member, shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) Pursuant to the Rule 9600 Series, [T]he staff, for good cause shown [upon written request,] after taking into consideration all relevant factors, may exempt any transaction or classes of transactions, either unconditionally or on specified terms, from any or all of the provisions of this paragraph if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest. [Any decision whether to grant such an exemption may be appealed to the National Business Conduct Committee.]

## **8210. Provision of Information and Testimony and Inspection and Copying of Books**

### **(a) Authority of Adjudicator and Association Staff**

For the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or the Rules of the Association, an Adjudicator or Association staff shall have the right to:

(1) require a member, person associated with a member, or person subject to the Association's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by Association staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) No change.

## **8220. Suspension or Cancellation for Failure to Provide Requested Information**

### **8221. Notice**

### **(a) Notice to Member**

If a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, or fails to keep its membership application or supporting documents current, the [National Adjudicatory Council] Department of Enforcement may provide written notice to such member specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspension or cancellation [from] of membership.

### **(b) Notice to Person Associated with Member**

If a person associated with a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, the [National Adjudicatory Council] Department of Enforcement may provide written notice to such person specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspending the association of the person with the member.

### **(c) Service of Notice**

The [National Adjudicatory Council] Department of Enforcement shall serve the member or person associated with a member with such notice via personal service or overnight commercial courier.

## **8222. Hearing**

### **(a) Request for Hearing**

Within five days after the date of service of a notice issued under Rule 8221, a member or person associated with a member served with a notice under Rule 8221(c) may file

with the [National Adjudicatory Council] NASD Regulation Office of General Counsel a written request for an expedited hearing before a subcommittee of the National Adjudicatory Council. The request shall state with specificity why the member or associated person believes that there are insufficient grounds for suspension or cancellation or any other reason for setting aside the notice issued [by the National Adjudicatory Council] under Rule 8221.

### **(b) Hearing Procedures**

#### **(1) Appointment of Subcommittee**

If a hearing is requested, the National Adjudicatory Council or the Review Subcommittee described in Rule 9120 shall appoint a subcommittee to conduct the hearing and decide whether the member or person associated with a member should be suspended or canceled. The subcommittee shall be composed of a current member of the National Adjudicatory Council and one or more current or former members of the National Adjudicatory Council, NASD Regulation Board [and], or [the] NASD Board.

#### **(2) Time of Hearing**

The hearing shall be held within [20] 30 days after the date of service of the notice issued under Rule 8221. Not later than seven days before the hearing, the subcommittee shall serve the member or person associated with a member with written notice of the date and time of the hearing via overnight commercial courier or facsimile and notify the [appropriate department or office of NASD Regulation] Department of Enforcement of the date and time of the hearing. [The appropriate department or office of NASD Regulation (hereinafter "appropriate department or office" in the Rule 8220 Series) shall be the department or office that

issued the request for the information, report, material, data, or testimony that the member or associated person failed to provide, or in the case of a member that failed to keep its membership application or supporting documents current, the Department of Member Regulation.]

### **(3) Transmission of Documents**

Not later than seven days before the hearing, the [subcommittee] Department of Enforcement shall serve the member or person associated with a member via overnight commercial courier with all documents that were considered in connection with the [National Adjudicatory Council's] decision to issue a notice under Rule 8221, unless a document meets the criteria of Rule 9251(b) (1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon the conclusion of any review by the Commission or the federal courts. The Department of Enforcement shall provide a copy of the documents transmitted to the member or person associated with a member to the subcommittee.

### **(4) Counsel**

The member or person associated with a member and the [appropriate department or office] Department of Enforcement may be represented by counsel at a hearing conducted under this Rule.

### **(5) Evidence**

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the member or person associated with a member and the [appropriate department or office] Department of Enforcement shall

exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the subcommittee.

#### **(6) Witnesses**

No change.

#### **(7) Additional Information**

At any time during its consideration, the subcommittee may direct the member or person associated with a member or the [appropriate department or office] Department of Enforcement to submit additional information. Any additional information submitted shall be provided promptly to all parties at least one business day before the subcommittee renders its decision.

#### **(8) Transcript**

No change.

#### **(9) Record**

The record shall consist of all documents that were considered in connection with the [National Adjudicatory Council's] decision to issue a notice under Rule 8221, the notice issued under Rule 8221, the request for hearing filed under Rule 8222, the transcript of the hearing, and each document or other item of evidence presented to or considered by the subcommittee. The Office of the General Counsel of NASD Regulation shall be the custodian of the record.

#### **(10) Failure to Appear at Hearing**

If a member or person associated with a member fails to appear at a hearing for which it has notice, the subcommittee may dismiss the request for a hearing as abandoned, and the notice [of the National Adjudicatory Council] issued under Rule 8221 shall become the final action of the Association. Upon a showing of

good cause, the subcommittee may withdraw a dismissal entered pursuant to this subparagraph.

### **8223. Decision**

#### **(a) Subcommittee**

##### **(1) Proposed Written Decision**

The subcommittee may suspend or cancel the membership of a member or suspend the association of a person with a member for failure to take the action required by the notice issued under Rule 8221. The subcommittee shall prepare a proposed written decision, and if the subcommittee determines that a suspension should be imposed, the proposed written decision shall state the grounds for the suspension or cancelation and the conditions for terminating the suspension. The subcommittee shall provide its proposed written decision to the NASD Board of Governors.

##### **(2) Issuance of Decision After Expiration of Call for Review Period**

If no Governor calls the [suspension] proceeding for review within the time prescribed in paragraph (b)(1), the subcommittee's proposed written decision shall become final, and the subcommittee shall serve the final written decision on the member or associated person via overnight commercial courier or facsimile. The decision shall state the disposition of the suspension or cancelation proceeding, and if a suspension is imposed, state the grounds for the suspension and the conditions for terminating the suspension.

#### **(b) NASD Board of Governors**

##### **(1) Call For Review by Governor**

A Governor may call the suspension or cancelation proceeding for review if the call for review is made not later than ten days after the Governor receives the subcommittee's proposed written decision. By a unanimous vote of the NASD Board of Governors, the NASD Board of Gov-

ernors may shorten the call for review period to less than ten days. By an affirmative vote of the majority of the NASD Board of Governors then in office, the NASD Board of Governors may, during the ten day period, vote to extend the period to more than ten days.

#### **(2) Review and Decision**

If a Governor calls the suspension or cancelation proceeding for review within the time prescribed in subparagraph (1), [the NASD Board of Governors] a review panel shall meet and conduct a review not later than [its next meeting] 14 days after the call for review. The review panel shall be composed of the NASD Board Executive Committee, except that the Governor who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Industry, Non-Industry, or Public) as such Governor. The [NASD Board of Governors] review panel may affirm, modify, or reverse the decision of the subcommittee. Not later than seven days after the [NASD Board of Governors] review panel meeting, the [NASD Board of Governors] review panel shall serve a final written decision on the member or person associated with a member via overnight commercial courier or facsimile. The decision shall state the disposition of the suspension or cancelation proceeding, and if a suspension is imposed, state the grounds for the suspension and the conditions for terminating the suspension.

#### **(c) Effective Date**

No change.

### **8224. Notice to Membership**

The Association shall provide notice of a suspension or cancelation under the Rule 8220 Series and the

grounds therefor in the next membership supplement.

## **8225. Termination of Suspension**

### **(a) Filing of Request**

A suspended member or person associated with a member may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 8221 or, if applicable, the conditions of a decision under Rule 8223, with the head of the [appropriate department or office] Department of Enforcement.

### **(b) Response by Department of Enforcement**

The head of the [appropriate department or office] Department of Enforcement shall respond to the request in writing within five days after receipt of the request.

#### **(1) Request Granted**

If the head of the [appropriate department or office] Department of Enforcement grants the request, he or she shall serve the member or person associated with a member with written notice of the termination of the suspension via overnight commercial courier or facsimile.

#### **(2) Request Denied**

If the head of the department or office denies the request, the suspended member or person associated with a member may file a written request for relief with the [National Adjudicatory Council] NASD Regulation Office of General Counsel. If the member or person associated with a member files the written request for relief within 30 days after service of the decision under Rule 8223, [The National Adjudicatory Council] the

review panel constituted under Rule 8223 shall respond to the request for relief in writing within ten days after receipt of the request. If the member or person associated with a member files the written request for relief more than 30 days after service of the decision under Rule 8223, the National Adjudicatory Council shall respond to the request for relief in writing within ten days after receipt of the request. The review panel's or National Adjudicatory Council's response shall be served on the member or person associated with a member via overnight commercial courier or facsimile.

## **8300. SANCTIONS**

### **IM-8310-2. Release of Disciplinary Information**

(d) (1) The Association shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest. The Association also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the

association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

## **9000. CODE OF PROCEDURE**

## **9200. DISCIPLINARY PROCEEDINGS**

### **9212. Complaint Issuance-- Requirements, Service, Amendment, Withdrawal, and Docketing**

#### **(a) Form, Content, Notice, Docketing, and Service**

No change.

#### **(b) Amendments to Complaint**

The Department of Enforcement may file and serve an amended complaint that includes new matters of fact or law once as a matter of course at any time before the Respondent answers the complaint. Otherwise, u[U]pon motion by the Department of Enforcement, the Hearing Officer may permit the Department of Enforcement to amend the complaint to include new matters of fact or law, [at any time] after considering whether the Department of Enforcement has shown good cause for the amendment [shown by the Department of Enforcement] and whether any Respondent will suffer any unfair prejudice if the amendment is allowed [to any Respondent, permit the Department of Enforcement to amend a complaint to include new matters of fact or law].

## **9215. Answer to Complaint**

### **(e) Extension of Time to Answer Amended Complaint**

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be the greater of the original time period within which the Respondent is required to respond, or [extended to] 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have 14 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer within which to file an amended answer.

### **(f) Failure to Answer, Default**

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, the Department of Enforcement shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) issue [enter] a default decision against the Respondent [pursuant to Rule 9269]. If the Respondent fails to file an [no] answer [is filed] with the Office of Hearing Officers within the time required, the Hearing Officer may issue [allegations of the complaint may be considered admitted by such Respondent and] a default decision against the Respondent pursuant to Rule 9269 [may be issued by the Hearing Officer]. A Respondent may, for good cause shown, move the National Adjudicatory Council to set aside a default].

## **9241. Pre-hearing Conference**

### **(a) through (e)**

No change.

### **(f) Failure to Appear: Default**

The Hearing Officer may issue a default decision, pursuant to Rule 9269, against a[A] Party that [who] fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party [he or she] has [been duly] due notice [notified, may be deemed in default pursuant to Rule 9269]. A Party may, for good cause shown, file a motion to set aside the default].

## **9269. Default Decisions**

### **[Failure to Appear at Hearing; Defaults]**

#### **(a) Issuance of Default Decisions [Failure to Appear May Result in Default Decision]**

(1) The Hearing Officer may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at a pre-hearing conference held pursuant to Rule 9241 of which the Party has due notice, or a [A] Party that [who] fails to appear at [a] any hearing that a Party is required to attend under the Rule 9200 Series of which the Party [he or she has been] has due notice [been duly notified may be deemed to be in default].

(2) If the defaulting Party is the Respondent, [As a consequence of the default], the Hearing Officer may deem the allegations against [a non-appearing] that Respondent [may be deemed] admitted [and a default decision entered by the Hearing Officer]. If the [non-appearing Party] defaulting Party is the Department of Enforcement, the Hearing Officer may issue a default decision ordering

that the complaint be dismissed with prejudice.

(3) [In addition, t]The Hearing Officer may order a Party that fails to appear at the pre-hearing conference or the hearing to [the non-appearing Party] pay the costs incurred by other Parties in connection with their appearance [at the hearing].

#### **(b) Contents of Decision [Request to Set Aside Default]**

A party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs.]The contents of a default decision shall conform to the requirements of Rule 9268(b).]

#### **(c) Review of Default Decision**

Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs. Upon a showing of good cause, either the Review Subcommittee or the National Adjudicatory Council may enter such an order.

#### **(d) Final Disciplinary Action of the Association; Effectiveness of Sanctions**

If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective 30 days after the default decision becomes the final disciplinary action of the Association, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Association. The Association shall serve the decision on a

Respondent by overnight courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

## **9270. Settlement Procedure**

### **(e) Uncontested Offers of Settlement**

(1) through (2)

No change.

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council, the Review Subcommittee, or the General Counsel, they shall become final and [the National Adjudicatory Council, the Review Subcommittee or] the General Counsel shall [communicate the acceptance to the Hearing Officer who shall thereafter] issue the order and notify the Office of Hearing Officers.

### **(f) Contested Offers of Settlement**

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council or the Review Subcommittee, the General Counsel [National Adjudicatory Council or the Review Subcommittee shall communicate the acceptance to the Hearing Officer who] shall [thereafter] issue the order and notify the Office of Hearing Officers.

## **9312. Review Proceeding by National Adjudicatory Council**

### **(a) Call for Review**

#### **(1) Rule 9268 Decision**

No change.

#### **(2) Rule 9269 Decision**

A default decision issued pursuant to Rule 9269 shall be subject to a call

for review by the General Counsel, on his or her own motion within 25 [45] days after the date of service of the decision. If called for review, such decision shall be reviewed by the National Adjudicatory Council.

## **9346. Evidence in National Adjudicatory Council Proceedings**

### **(a) Scope of Review**

No change.

### **(b) Leave to Introduce Additional Evidence**

A Party may apply to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Adjudicatory Council for leave to introduce additional evidence by motion filed not later than 30 days after the Office of Hearing Officers transmits to the National Adjudicatory Council and serves upon all Parties the index to the record, pursuant to Rule 9321 [service of such Party's notice of appeal or cross-appeal or not later than 35 days after service upon the Party by the National Adjudicatory Council of a notice of review]. The motion shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, demonstrate why the evidence is material to the proceeding, and be filed and served. The Party may attach the documentary evidence as an exhibit to the motion.

By a motion filed in accordance with Rule 9146, a Party may request an extension of the period during which a Party may file a motion for leave to introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

## **9360. Effectiveness of Sanctions**

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a[A] sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1) shall become effective [on a date established by the Chief Hearing Officer, which shall not be earlier than] 30 days after the date of service of the decision constituting final disciplinary action. A bar or an expulsion shall become effective upon service of the decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1), unless otherwise specified therein. The Association shall [take reasonable steps to obtain personal service of] serve the decision on a Respondent by overnight courier, facsimile or other means reasonable likely to obtain prompt service when the sanction is a bar or an expulsion.

## **9500. [SUSPENSION, CANCELLATION, BAR, DENIAL OF ACCESS, AND ELIGIBILITY,] OTHER [PROCEDURES] PROCEEDINGS**

### **9510. [Procedures for] Summary and Non-Summary Proceedings [Suspension, Cancellation, Bar, Limitation, or Prohibition]**

### **9511. Purpose and Computation of Time**

#### **(a) Purpose**

[1] The purpose of the Rule 9510 Series is to set forth procedures for certain suspensions, cancellations, bars, and limitations and prohibitions on access to the Association's services authorized by the Act and the NASD By-Laws. Pursuant to Section

15A(h)(3) of the Act, the Association may summarily:]

[(A) suspend a member or associated person who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;]

[(B) suspend a member who is in such financial or operating difficulty that the Association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the Association; or]

[(C) limit or prohibit any person with respect to access to services offered by the Association if subparagraph (A) or (B) applies to such person, or in the case of a person who is not a member, if the Association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.]

[(2) The Association also may take the following actions, after notice and opportunity for hearing:]

[(A) cancel the membership of a member that becomes ineligible for continuance in membership, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with a member because such person is or becomes ineligible for association under Article III, Section 3 of the NASD By-Laws;]

[(B) suspend or cancel the membership of a member or the registration of a person for failure to pay fees, dues, assessments, or other charges; failure to submit a required

report or information related to such payment; or failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article VI, Section 3 of the NASD By-Laws;]

[(C) cancel the membership of a member for failure to file or submit on request any report, document, or other information required to be filed with or requested by the Association under Article VII, Section 2 of the NASD By-Laws; and]

[(D) limit or prohibit any member, associated person, or other person with respect to access to services offered by the Association or a member thereof if the Association determines that such person does not meet the qualification requirements or other prerequisites for such access or such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.]

[(3) Other procedures for suspending the membership of a member, suspending the registration of an associated person, or suspending a person from association with any member are found in the Rule 8220 Series and Rule 8320. Procedures for listing qualification matters are found in the Rule 9700 Series; the Rule 9510 Series does not apply to listing qualification matters.]

The Rule 9510 Series sets forth procedures for: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with

respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; or (C) an advertising pre-use filing requirement.

#### **(b) Computation of Time**

For purposes of the [9510] Rule 9510 Series, time shall be computed as set forth in Rule 9138, except that intermediate Saturdays, Sundays, and holidays shall be included in the computation.

### **9512. Initiation of Summary [Proceedings for Summary Suspension, Limitation, or Prohibition] Proceeding**

No change.

### **9513. Initiation of Non-Summary Proceeding[s] [for Non-Summary Suspension, Cancellation, Bar, Limitation, or Prohibition]**

#### **(a) Notice**

Association staff [shall] may initiate a proceeding authorized under [Section 3 of Article III, Section 3 of Article VI, or Section 2 of Article VII of the NASD By-Laws, or] Rule 9511(a)(2)[(D)] (A) or (B), by issuing a written notice to the member, associated person, or other person. The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight commercial courier.

## **(b) Effective Date**

[For any cancellation, suspension, or bar under Section 3 of Article III of the NASD By-Laws, the effective date shall be at least seven days after service of the notice on the member or associated person.] For any cancellation or suspension [under Section 3 of Article VI or Section 2 of Article VII of the NASD By-Laws] pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action pursuant to Rule 9511(a)(2)(B), the effective date shall be at least seven days after service of the notice on the member or person, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof [pursuant to Rule 9511(a)(2)(D), the effective date shall be upon receipt of the notice] with respect to services to which the member, associated person, or other person does not have access [and shall be at least seven days after service of the notice with respect to services to which the member, associated person, or other person already has access] shall be upon receipt of the notice.

## **9514. Hearing and Decision**

### **(a) Request**

#### **(1) Request by Member, Associated Person, or Other Person**

A member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, 9512(a), or 9513(a) may file a written request for a hearing with the Association. The request shall state [either] the specific grounds for [reversing the summary suspension, limitation, or prohibition or for opposing the cancellation, suspension, bar, limitation, or prohibition] setting aside the notice.

The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the notice under Rule 9512 or 9513, or, with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice. The member, associated person, or other person may withdraw its request for a hearing at any time by filing a written notice with the Association pursuant to Rules 9135, 9136, and 9137.

### **(2) Failure to File Request**

If the member, associated person, or other person subject to the notice issued under Rule 2210, 2220, 9512(a), or 9513(a) does not file a written request for a hearing under subparagraph (1), the notice shall constitute final action by the Association.

### **(3) Ex Parte Communications**

No change.

#### **(b) Designation of Party for the Association and Appointment of Hearing Panel**

If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement

agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 2210, 2220, 9512(a), or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on a Hearing Panel.

(2) No change.

### **(c) Stays**

#### **(1) Summary Proceeding [Suspension, Limitation, or Prohibition]**

No change.

#### **(2) Non-Summary [Cancellation, Suspension, Bar, Limitation, or Prohibition] Proceeding**

Unless the NASD Board orders otherwise, a request for a hearing shall stay the notice issued under Rule 2210, 2220, or 9513, except that a request for a hearing shall not stay a notice of a limitation or prohibition on services offered by the Association or a member thereof with respect to services to which a member, associated person, or other person does not have access.

### **(d) Time of Hearing**

#### **(1) Summary [Suspension] Proceeding**

No change.

#### **(2) Non-Summary [Suspension, Cancellation, Bar, Limitation or Prohibition] Proceeding**

If a member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, or 9513(a) files a written request for a hearing, a hearing shall be held within 21 days after the filing of the request for hearing. The Hearing Panel may, during the initial 21 day period, extend the time in which the hearing shall be held by an additional 21 days on its own motion or at the request of a Party. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight commercial courier.

#### **(e) Transmission of Documents**

(1) Not less than five days before the hearing, the Association shall provide to the member, associated person, or other person who requested the hearing, by facsimile or overnight commercial courier, all documents that were considered in issuing the notice under Rule 2210, 2220, 9512, or 9513, unless a document meets the criteria of Rule 9251(b) (1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(2) No change.

#### **(f) Hearing Panel Consideration**

**(1) - (3) No change.**

#### **(4) Record**

The record shall consist of: (1) the notice issued under Rule 2210, 2220, 9512, or 9513; (2) all documents transmitted by the Association under Rule 9514(e)(1); (3) the request for hearing; (4) any other

submissions by the Parties; (5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.

#### **(5) Custodian of the Record**

If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 2210, 2220, 9512, or 9513, the Office of the General Counsel of NASD Regulation shall be the custodian of the record, except that the Office of Hearing Officers shall be the custodian of record for proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of Nasdaq shall be the custodian of the record.

#### **(6) Evidence Not Admitted**

No change.

#### **(g) Decision of the Hearing Panel**

##### **(1) Summary [Suspension, Limitation, or Prohibition] Proceeding**

No change.

##### **(2) Non-Summary [Suspension, Cancellation, Bar, Limitation, or Prohibition] Proceeding**

Based on its review of the record, the Hearing Panel shall decide whether a cancellation, suspension, bar, limitation, [or] prohibition, or pre-use filing requirement shall be imposed or continue to be imposed. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (3).

#### **(3) Contents of Decision**

The decision shall include:

(A) a statement setting forth the specific statute, rule, or NASD by-law that authorized the proceeding;

(B) a statement describing the investigative or other origin of the proceeding;

(C) the grounds for issuing the notice under Rule 2210, 2220, 9512, or 9513;

(D) a statement of findings of fact with respect to any act or practice that was alleged to have been committed or omitted by the member, associated person, or other person;

(E) a statement in support of the disposition of the principal issues raised in the proceedings; and

(F) if a summary suspension, limitation, or prohibition continues to be imposed, the specific grounds for imposing such suspension, limitation, or prohibition, and the terms of the suspension, limitation, or prohibition[,]; or, if a non-summary suspension, cancellation, bar, limitation, [or] prohibition or pre-use filing requirement is to be imposed or continue to be imposed, [the] its effective date, time, and terms [of the suspension, cancellation, bar, limitation, or prohibition].

#### **(4) Issuance of Decision After Expiration of Call for Review Period**

No change.

#### **9515. Discretionary Review by the NASD Board**

No change.

#### **9516. Reinstatement**

A member, associated person, or other person who has been suspend-

ed or limited by a final action of the Association [after a non-summary proceeding] under the Rule 9510 Series may file a written request for reinstatement on the ground of full compliance with the conditions of the suspension or limitation. The request shall be filed with the department or office of the Association that acted as a Party in the proceeding. The head of the department or office shall serve its response on the member or person via facsimile or overnight commercial courier within five days after receipt of the request. If the head of the department or office denies the request, the member or person may file a written request for relief with the NASD Board. The NASD Board shall respond to the request in writing within 14 days after receipt of the request. The NASD Board shall serve its response by facsimile or overnight commercial courier.

## **9520. Eligibility Proceedings**

### **9521. Purpose**

No change.

### **9522. Initiation of Eligibility Proceeding[s]**

#### **(a) [Notice of Disqualification or Ineligibility] Initiation by Association**

##### **(1) Issuance of Notice of Disqualification or Ineligibility**

If Association staff has reason to believe that a statutory disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of the Association, Association staff shall issue a written notice to the member or associated person. The notice shall specify the grounds for such disqualification or ineligibility.

#### **(2) Notice to Member**

A notice issued to a member that is subject to a statutory disqualification or is otherwise ineligible for membership shall state that the member may apply for relief by filing a written application for relief pursuant to paragraph (c) with the National Adjudicatory Council within ten days after service of the notice. If the member fails to file the written application for relief within the 10-day period, the membership of the member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

#### **(3) Notice to Associated Person**

A notice issued to an associated person who is subject to a statutory disqualification or is otherwise ineligible for association shall state that a member may apply for relief on behalf of itself and such person by filing a written application for relief pursuant to paragraph (c) with the National Adjudicatory Council within ten days after service of the notice. If the member fails to file the written application for relief within the 10-day period, the registration of the associated person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

#### **(4) Service**

No change.

#### **(b) [Application by] Obligation of Member to Initiate Proceeding**

A member shall file a written application for relief from the eligibility requirements of the Association pursuant to paragraph (c) with the National Adjudicatory Council if the member determines prior to receiving a notice under paragraph (a) that:

(1) [determines that it] the member is subject to a statutory disqualification

or otherwise is no longer eligible for membership;

(2) [determines that] a person associated with [it] such member is subject to a statutory disqualification or otherwise is no longer eligible for association with the member; or

(3) the member wishes to sponsor the association of a person who is subject to a statutory disqualification or otherwise is ineligible for association with a member.

### **9525. Expedited Review**

#### **(a) Direction by Executive Committee**

Notwithstanding Rules 9523 and 9524, the NASD Board Executive Committee, upon request of the Statutory Disqualification Committee, may direct an expedited review of a recommended written decision of the Statutory Disqualification Committee if the NASD Board Executive Committee determines that expedited review is necessary for the protection of investors.

#### **(b) Call for Review Period**

If a recommended decision is subject to expedited review, a Governor may call the eligibility proceeding for review within seven days after receipt of the recommended written decision.

#### **(c) No Call for Review**

If no Governor calls the proceeding for review within the time prescribed, the decision shall become final, and the Statutory Disqualification Committee shall serve the decision on the member, the current or prospective associated person, and Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of the Association.

**(d) Call for Review**

If a Governor calls the eligibility proceeding for review within the prescribed time, a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the NASD Board Executive Committee, except that the Governor who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Industry, Non-Industry, or Public) as such Governor. The review panel may affirm, modify, or reverse the recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule 9524(d) and (e).

**9526. Application to Commission for Review**

No change.

**9530. Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges**

**9531. Notice**

**(a) Notice**

Association staff may issue a written notice suspending or canceling the membership of a member or the registration of a person who has failed to pay a fee, due, assessment, other charge, or submit a required report or information related to such payment.

**(b) Service of Notice**

Association staff shall serve the notice by facsimile or overnight commercial courier and shall file a copy of the notice with the Office of Hearing Officers.

**(c) Effective Date of Notice**

A notice issued and served under this Rule shall become effective 15 days after the date of service of the notice.

**9532. Hearing**

**(a) Request for Hearing**

Within five days after the date of service of a notice issued under Rule 9531, the member or person served with such notice may file with the Office of Hearing Officers a written request for a hearing. The request shall state with specificity why the member or person believes that the notice should be set aside. The request for the hearing shall stay the effective date of the notice.

**(b) Hearing Procedures**

**(1) Appointment of Hearing Officer**

If a hearing is requested, the Chief Hearing Officer shall appoint a Hearing Officer to conduct the hearing and decide whether the member or the person's registration should be suspended or canceled.

**(2) Parties**

The Parties shall be the member or person to whom the notice was issued and the NASD Treasurer.

**(3) Time of Hearing**

The hearing shall be held within 45 days after the date of service of the notice under Rule 9531. Not later than seven days before the hearing, the Hearing Officer shall serve the Parties with written notice of the date and time of the hearing.

**(4) Transmission of Documents**

Not later than seven days before the hearing, the NASD Treasurer shall

serve the member or person associated with a member via overnight commercial courier with all documents that were considered in connection with the decision to issue a notice under Rule 9531 and provide copies of the same to the Hearing Officer.

**(5) Counsel**

The Parties may be represented by counsel at a hearing conducted under this Rule.

**(6) Evidence**

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the Parties shall exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the Hearing Officer.

**(7) Witnesses**

A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

**(8) Additional Information**

At any time during its consideration, the Hearing Officer may direct the Parties to submit additional information. Any additional information submitted shall be provided promptly to all Parties at least one business day before the Hearing Officer renders his or her decision.

**(9) Transcript**

The hearing shall be recorded and a transcript prepared by a court reporter. A Party may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the

transcript may be submitted by affidavit to the Hearing Officer within a reasonable time determined by the Hearing Officer. Upon notice to the participants in the hearing, the Hearing Officer may order corrections to the transcript as requested or sua sponte.

#### **(10) Record**

The record shall consist of all documents that were considered in connection with the decision to issue a notice under Rule 9531, the notice issued under Rule 9531, the request for hearing filed under Rule 9532, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Hearing Officer. The Office of Hearing Officers shall be the custodian of the record.

#### **(11) Failure to Appear at Hearing**

If a member or person fails to appear at a hearing for which he has notice, the Hearing Officer may dismiss the request for a hearing as abandoned, and the notice issued under Rule 9531 shall become final. Upon a showing of good cause, the Hearing Officer may withdraw a dismissal entered pursuant to this subparagraph.

#### **9533. Decision**

The Hearing Officer may suspend or cancel the membership of a member or the registration of a person for failure to pay a due, fee, assessment,

other charge, or for failure to submit a required report or information related to such payment. The Hearing Officer shall prepare a proposed written decision, and if the Hearing Officer determines that a suspension or cancellation should be imposed, the proposed written decision shall state the grounds for the suspension or cancellation, and in the case of a suspension, the conditions for terminating the suspension. The written decision served under this Rule shall become effective upon service and shall constitute final action of the Association.

#### **9534. Notice to Membership**

The Association shall provide notice of a suspension or cancellation under this Rule Series and the grounds therefor in the next membership supplement.

#### **9535. Termination of Suspension**

A suspended member or person may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 9531 or, if applicable, the conditions of a decision under Rule 9533, with the Office of Hearing Officers. The Office of Hearing Officers shall respond to the request in writing within five days after receipt of the request. The Office of Hearing Officers shall send the written response via overnight commercial courier or facsimile.

#### **9536. Copies of Notices and Decisions to Member**

A copy of a notice or decision under the Rule 9530 Series that is served on a person associated with a member shall be served on such member.

#### **9537. Other Action Not Foreclosed**

Action by the Association under the Rule 9530 Series shall not foreclose action by the Association under any other Rule.

### **9600. Procedures for Exemptions**

#### **9610. Application**

##### **(a) Where to File**

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010, 3210, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

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# NASD Notice to Members 99-17

SEC Approves  
Amendments Regarding  
Application Of The  
Corporate Financing Rule  
To Certain Offerings By  
Charitable Organizations

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

On December 21, 1998, the Securities and Exchange Commission (SEC) approved amendments submitted by NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) to exempt certain offerings by charitable organizations from the filing requirements of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 2710 (the Corporate Financing Rule). The new exemption was effective on December 21, 1998.

Questions regarding this Notice may be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, at (202) 974-2747.

## Discussion

The Corporate Financing Rule requires that public offerings of securities be filed with the Corporate Financing Department of NASD Regulation (Department) so that the Department has an opportunity to determine whether compensation terms and arrangements are fair and reasonable for purposes of the rule. Offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act of 1933 (Securities Act) have been subject to the filing requirements of the Corporate Financing Rule.

The Department has found that such public offerings by charitable organizations no longer present regulatory issues requiring pre-offering review. In particular, the aggregate underwriting compensation received by church bond broker/dealers has been significantly below the maximum amount of underwriting compensation that is permitted under the Corporate Financing Rule.

NASD Regulation has, therefore, amended the Corporate Financing

Rule to exempt public offerings by a church or other charitable institution from the filing requirements, but not the substantive requirements, of the Corporate Financing Rule. In order for the new exemption to apply to an offering, the offering must qualify for the exemption from SEC registration provided by Section 3(a)(4) of the Securities Act, which requires that the securities offered by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, not be for pecuniary profit, and that no part of the net earnings inure to the benefit of any person, private stockholder, or individual. The registration exemption provided by Section 3(a)(4) is also available to any security of a fund that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940.

## Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

### 2710. Corporate Financing Rule - Underwriting Terms and Arrangements

#### (a) No change.

#### (b) Filing Requirements

(1) - (6) No change.

(7) Offerings Exempt from Filing

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with the Association for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with

this Rule or Rule 2810, as applicable:

(A) - (C) No change.

(D) securities offered pursuant to a redemption standby "firm commitment" underwriting arrangement registered with the Commission on Forms S-3, F-3 or F-10 (only with respect to Canadian issuers); [and]

(E) financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories; and

(F) offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act.

(8) No change.

(9) Offerings Required to be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:

(A) - (E) No change.

(F) securities offered by a bank, savings and loan association, [church or other charitable institution,] or common carrier even though such offering may be exempt from registration with the Commission;

(G) - (H) No change.

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# NASD Notice to Members 99-18

## Annual Checklist Of NASD Notices to Members

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

The National Association of Securities Dealers, Inc. (NASD®) published the following *Notices to Members* during 1998. Duplicate copies are available for \$25 per monthly or special issue. A two-volume, bound and indexed edition of the entire year's *Notices* is also available for \$100. Requests, accompanied by a self-addressed mailing label and a check payable to the National Association of Securities Dealers, Inc., or credit card information, should be sent to NASD MediaSource<sup>SM</sup>, P.O. Box 9403, Gaithersburg, MD 20898-9403. Credit card telephone orders can be made by calling (301) 590-6142, Monday through Friday, 9 a.m. to 5 p.m., Eastern Time.

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# NASD Notice to Members 99-19

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of December 22, 1998

## Suggested Routing

- Senior Management
- Advertising
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- Insurance
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- Legal & Compliance
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- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of December 22, 1998, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
AES.GF	AES Corp.	8.000	12/31/08
CAI.GB	Continental Airlines Inc.	8.000	12/15/05
ESPI.GC	E Spire Communications Inc.	10.625	07/01/08
GBBP.GA	GBB Capital II	0.000	09/15/28
HRHO.GA	Harrahs Operating Co. Inc.	7.875	12/15/05
LODG.GB	Sholodge Inc. Series A	9.750	11/01/06
PAPA.GA	Rapid American Corp. Del	0.000	03/01/00
PAPA.GB	Rapid American Corp. Del	0.000	03/01/01
PAPA.GC	Rapid American Corp. Del	0.000	03/01/02
PAPA.GD	Rapid American Corp. Del	0.000	03/01/03
PAPA.GE	Rapid American Corp. Del	0.000	03/01/04
PAPA.GF	Rapid American Corp. Del	0.000	03/01/05
PAPA.GG	Rapid American Corp. Del	0.000	03/01/06
PAPA.GH	Rapid American Corp. Del	0.000	03/01/07
PAPA.GI	Rapid American Corp. Del	0.000	03/01/99
PDCH.GA	Plaid Clothing Group Inc.	11.000	08/01/03
PIDM.KC	Piedmont Aviation Inc. Series I	9.950	11/08/09
PIDM.KD	Piedmont Aviation Inc. Series H	9.950	11/08/10
PIDM.KE	Piedmont Aviation Inc. Series I	9.950	11/08/10
PIDM.KF	Piedmont Aviation Inc. Series H	10.000	11/08/11
PIDM.KG	Piedmont Aviation Inc. Series I	10.000	11/08/11
PIDM.KH	Piedmont Aviation Inc. Series H	10.000	11/08/12
PIDM.KI	Piedmont Aviation Inc. Series I	10.000	11/08/12
PIDM.KJ	Piedmont Aviation Inc. Series J	9.800	05/13/99
PIDM.KK	Piedmont Aviation Inc. Series K	9.800	05/13/99
PIDM.KL	Piedmont Aviation Inc. Series J	9.850	05/13/00
PIDM.KM	Piedmont Aviation Inc. Series K	9.850	05/13/00
PIDM.KN	Piedmont Aviation Inc. Series J	9.900	05/13/01
PIDM.KO	Piedmont Aviation Inc. Series K	9.900	05/13/01
PIDM.KP	Piedmont Aviation Inc. Series J	9.900	05/13/02
PIDM.KQ	Piedmont Aviation Inc. Series K	9.900	05/13/02
PIDM.KR	Piedmont Aviation Inc. Series J	9.950	05/13/03
PIDM.KS	Piedmont Aviation Inc. Series K	9.950	05/13/03
PIDM.KT	Piedmont Aviation Inc. Series J	10.000	05/13/04
PIDM.KU	Piedmont Aviation Inc. Series K	10.000	05/13/04
PIDM.KV	Piedmont Aviation Inc. Series J	10.050	05/13/05
PIDM.KW	Piedmont Aviation Inc. Series K	10.050	05/13/05
PIDM.KX	Piedmont Aviation Inc. Series J	10.100	05/13/07
PIDM.KY	Piedmont Aviation Inc. Series K	10.100	05/13/07
PIDM.KZ	Piedmont Aviation Inc. Series J	10.100	05/13/08
PIDM.LA	Piedmont Aviation Inc. Series K	10.100	05/13/08
PIDM.LB	Piedmont Aviation Inc. Series J	10.100	05/13/09
PIDM.LC	Piedmont Aviation Inc. Series K	10.100	05/13/09
PIDM.LD	Piedmont Aviation Inc. Series J	10.150	05/13/10
PIDM.LE	Piedmont Aviation Inc. Series K	10.150	05/13/10
PIDM.LF	Piedmont Aviation Inc. Series J	10.150	05/13/11
PIDM.LG	Piedmont Aviation Inc. Series K	10.150	05/13/11
PIDM.LH	Piedmont Aviation Inc. Series J	10.200	05/13/12
PIMO.GA	Primeco Inc.	12.750	03/01/05

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
PRS.GB	Presidio Oil Inc.	11.500	09/15/00
PUSM.GA	Purity Supreme Inc. Series B	11.750	08/01/99
RCEO.GA	Robertson-Ceco Corp.	12.000	11/30/99
RDFL.GA	RailRoad Financial Corp.	10.000	01/31/99
RDNH.GB	Radnor Holdings Inc. Series B	10.000	12/01/03
REVI.GB	Reeves Industries Inc.	11.000	01/15/02
RICP.GA	Riggs Capital Trust II	8.875	03/15/27
RMGY.GA	Ram Energy Inc.	11.500	02/15/08
RVDU.GA	Reeves Industries Inc.	13.000	11/15/04
SATH.GA	Shop at Home Inc.	11.000	04/01/05
SBDU.GA	Signature Brands USA Inc.	13.000	08/15/02
SCOP.GA	SCM Corp.	13.000	01/15/08
SELO.GB	Selmer Co. Inc.	11.000	06/30/00
SELO.GC	Selmer Co. Inc.	10.920	06/30/00
SFXB.GC	SFX Broadcasting Inc.	11.375	10/01/00
SHG.GA	Sun Healthcare Group Inc.		
	Series B	9.500	07/01/07
SLRP.GA	Sellco Corp.	12.000	12/15/04
SLT.GB	Salant Corp.	10.500	12/31/98
SLTF.GC	Specialty Foods Acq Corp.		
	Series B	11.250	08/15/03
SMDU.GA	Smith Food & Drug Ctrs Inc.		
	Series 94A2	8.640	07/02/12
SMDU.GB	Smith Food & Drug Ctrs Inc.		
	Series 94A3	9.200	07/02/18
SMFD.GA	Smiths Food & Drug Ctrs Inc.	11.250	05/15/07
SMKG.GA	Supermarkets General Holdings		
	Corp.	11.625	06/15/02
SNGY.GB	Synergy Group Inc.	9.500	09/15/00
SNSA.GA	Statia Terminals Inc. Series B	11.750	11/15/03
SPRT.GB	Sprint Spectrum LP	11.000	08/15/06
SRET.GC	Specialty Retailers Inc. Series B	11.000	08/15/03
STW.GA	Standard Commercial Corp.	8.875	08/01/05
TBAG.GA	3 Bealls Holdings Corp.	12.000	12/31/02
TDHC.GB	Thermadyne Holdings Corp.	10.750	11/01/03
TLLP.GD	Toll Corp.	7.750	09/15/07
TRHG.GA	Trump Holdings & Funding	15.500	06/15/05
TRLY.GA	Trans-Lux Corp.	9.500	12/01/12
TTG.GA	Transtexas Gas Corp. Series D	13.750	12/31/01
TUBC.GB	Tuboscope Inc.	10.750	04/15/03
TXF.GC	Texfi Industries Inc. Series C	13.000	04/01/00
TYVT.GA	Taylor Investment Corp.	11.000	01/01/01
UATS.GA	United Artists Theater Co.		
	Series 95-A	9.300	07/01/15
UC.GD	United Cos Financial Corp.	7.700	01/15/04
ULME.GA	Ultimate Electronics Inc.	10.250	01/31/05
USAR.GD	US Air Inc. Series A	10.250	01/15/99
USAR.GE	US Air Inc. Series B	10.250	01/15/99
USAR.GF	US Air Inc. Series C	10.250	01/15/99
USAR.GG	US Air Inc. Series D	10.250	01/15/99
USAR.GH	US Air Inc. Series E	10.250	01/15/99
USAR.GI	US Air Inc. Series F	10.250	01/15/99

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.GJ	US Air Inc. Series A	10.300	01/15/00
USAR.GK	US Air Inc. Series B	10.300	01/15/00
USAR.GL	US Air Inc. Series C	10.300	01/15/00
USAR.GM	US Air Inc. Series D	10.300	01/15/00
USAR.GN	US Air Inc. Series E	10.300	01/15/00
USAR.GO	US Air Inc. Series F	10.300	01/15/00
USAR.GP	US Air Inc. Series A	10.350	01/15/01
USAR.GQ	US Air Inc. Series B	10.350	01/15/01
USAR.GR	US Air Inc. Series C	10.350	01/15/01
USAR.GS	US Air Inc. Series D	10.350	01/15/01
USAR.GT	US Air Inc. Series E	10.350	01/15/01
USAR.GU	US Air Inc. Series F	10.350	01/15/01
USAR.GV	US Air Inc. Series A	10.400	01/15/02
USAR.GW	US Air Inc. Series B	10.400	01/15/02
USAR.GX	US Air Inc. Series C	10.400	01/15/02
USAR.GY	US Air Inc. Series D	10.400	01/15/02
USAR.GZ	US Air Inc. Series E	10.400	01/15/02
USAR.HA	US Air Inc. Series F	10.400	01/15/02
USAR.HB	US Air Inc. Series A	10.450	01/15/03
USAR.HC	US Air Inc. Series B	10.450	01/15/03
USAR.HD	US Air Inc. Series C	10.450	01/15/03
USAR.HE	US Air Inc. Series D	10.450	01/15/03
USAR.HF	US Air Inc. Series E	10.450	01/15/03
USAR.HG	US Air Inc. Series F	10.450	01/15/03
USAR.HH	US Air Inc. Series A	10.500	01/15/04
USAR.HI	US Air Inc. Series B	10.500	01/15/04
USAR.HJ	US Air Inc. Series C	10.500	01/15/04
USAR.HK	US Air Inc. Series D	10.500	01/15/04
USAR.HL	US Air Inc. Series E	10.500	01/15/04
USAR.HM	US Air Inc. Series F	10.500	01/15/04
USAR.HN	US Air Inc. Series A	10.550	01/15/05
USAR.HO	US Air Inc. Series B	10.550	01/15/05
USAR.HP	US Air Inc. Series C	10.550	01/15/05
USAR.HQ	US Air Inc. Series D	10.550	01/15/05
USAR.HR	US Air Inc. Series E	10.550	01/15/05
USAR.HS	US Air Inc. Series F	10.550	01/15/05
USAR.HT	US Air Inc. Series C	10.700	01/15/06
USAR.HU	US Air Inc. Series D	10.700	01/15/06
USAR.HV	US Air Inc. Series E	10.700	01/15/06
USAR.HW	US Air Inc. Series F	10.700	01/15/06
USAR.HX	US Air Inc. Series A	10.700	01/15/07
USAR.HY	US Air Inc. Series B	10.700	01/15/07
USAR.HZ	US Air Inc. Series C	10.700	01/15/07
USAR.IA	US Air Inc. Series D	10.700	01/15/07
USAR.IB	US Air Inc. Series E	10.700	01/15/07
USAR.IC	US Air Inc. Series F	10.700	01/15/07
USAR.ID	US Air Inc. Series A	10.700	01/15/08
USAR.IE	US Air Inc. Series B	10.700	01/15/08
USAR.IF	US Air Inc. Series C	10.700	01/15/08
USAR.IG	US Air Inc. Series D	10.700	01/15/08
USAR.IH	US Air Inc. Series E	10.700	01/15/08
USAR.II	US Air Inc. Series F	10.700	01/15/08

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.IJ	US Air Inc. Series A	10.750	01/15/09
USAR.IK	US Air Inc. Series B	10.750	01/15/09
USAR.IL	US Air Inc. Series C	10.750	01/15/09
USAR.IM	US Air Inc. Series D	10.750	01/15/09
USAR.IN	US Air Inc. Series E	10.750	01/15/09
USAR.IO	US Air Inc. Series F	10.750	01/15/09
USAR.IP	US Air Inc. Series A	10.750	01/15/10
USAR.IQ	US Air Inc. Series B	10.750	01/15/10
USAR.IR	US Air Inc. Series C	10.750	01/15/10
USAR.IS	US Air Inc. Series D	10.750	01/15/10
USAR.IT	US Air Inc. Series E	10.750	01/15/10
USAR.IU	US Air Inc. Series F	10.750	01/15/10
USAR.IV	US Air Inc. Series A	10.750	01/15/11
USAR.IW	US Air Inc. Series B	10.750	01/15/11
USAR.IX	US Air Inc. Series F	10.750	01/15/11
USAR.IY	US Air Inc. Series 88-A	9.700	01/15/99
USAR.IZ	US Air Inc. Series 88-B	9.700	01/15/99
USAR.JA	US Air Inc. Series 88-C	9.700	01/15/99
USAR.JB	US Air Inc. Series 88-D	9.700	01/15/99
USAR.JC	US Air Inc. Series 88-A	9.800	01/15/00
USAR.JD	US Air Inc. Series 88-B	9.800	01/15/00
USAR.JE	US Air Inc. Series 88-C	9.800	01/15/00
USAR.JF	US Air Inc. Series 88-D	9.800	01/15/00
USAR.JG	US Air Inc. Series 88-A	9.900	01/15/01
USAR.JH	US Air Inc. Series 88-B	9.900	01/15/01
USAR.JI	US Air Inc. Series 88-C	9.900	01/15/01
USAR.JJ	US Air Inc. Series 88-D	9.900	01/15/01
USAR.JK	US Air Inc. Series 88-A	10.000	01/15/02
USAR.JL	US Air Inc. Series 88-B	10.000	01/15/02
USAR.JM	US Air Inc. Series 88-C	10.000	01/15/02
USAR.JN	US Air Inc. Series 88-D	10.000	01/15/02
USAR.JO	US Air Inc. Series 88-A	10.050	01/15/03
USAR.JP	US Air Inc. Series 88-B	10.050	01/15/03
USAR.JQ	US Air Inc. Series 88-C	10.050	01/15/03
USAR.JR	US Air Inc. Series 88-D	10.050	01/15/03
USAR.JS	US Air Inc. Series 88-A	10.150	01/15/04
USAR.JT	US Air Inc. Series 88-B	10.150	01/15/04
USAR.JU	US Air Inc. Series 88-C	10.150	01/15/04
USAR.JV	US Air Inc. Series 88-D	10.150	01/15/04
USAR.JW	US Air Inc. Series 88-A	10.200	01/15/05
USAR.JX	US Air Inc. Series 88-B	10.200	01/15/05
USAR.JY	US Air Inc. Series 88-C	10.200	01/15/05
USAR.JZ	US Air Inc. Series 88-D	10.200	01/15/05
USAR.KA	US Air Inc. Series 88-A	10.250	01/15/07
USAR.KB	US Air Inc. Series 88-B	10.250	01/15/07
USAR.KC	US Air Inc. Series 88-C	10.250	01/15/07
USAR.KD	US Air Inc. Series 88-D	10.250	01/15/07
USAR.KE	US Air Inc. Series 88-A	10.300	07/15/08
USAR.KF	US Air Inc. Series 88-B	10.300	07/15/08
USAR.KG	US Air Inc. Series 88-C	10.300	07/15/08
USAR.KH	US Air Inc. Series 88-D	10.300	07/15/08
USAR.KI	US Air Inc. Series 88-A	10.300	07/15/09

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.KJ	US Air Inc. Series 88-B	10.300	07/15/09
USAR.KK	US Air Inc. Series 88-C	10.300	07/15/09
USAR.KL	US Air Inc. Series 88-D	10.300	07/15/09
USAR.KM	US Air Inc. Series 88-A	10.300	07/15/10
USAR.KN	US Air Inc. Series 88-B	10.300	07/15/10
USAR.KO	US Air Inc. Series 88-C	10.300	07/15/10
USAR.KP	US Air Inc. Series 88-D	10.300	07/15/10
USAR.KQ	US Air Inc. Series 88-A	10.300	01/15/08
USAR.KR	US Air Inc. Series 88-B	10.300	01/15/08
USAR.KS	US Air Inc. Series 88-C	10.300	01/15/08
USAR.KT	US Air Inc. Series 88-D	10.300	01/15/08
USAR.KU	US Air Inc. Series 88-E	10.500	01/15/99
USAR.KV	US Air Inc. Series 88-F	10.500	01/01/99
USAR.KW	US Air Inc. Series 88-G	10.500	01/01/99
USAR.KX	US Air Inc. Series 88-H	10.500	01/01/99
USAR.KY	US Air Inc. Series 88-I	10.500	01/01/99
USAR.KZ	US Air Inc. Series 88-J	10.500	01/01/99
USAR.LC	US Air Inc. Series 88-E	10.550	01/01/00
USAR.LD	US Air Inc. Series 88-F	10.550	01/01/00
USAR.LE	US Air Inc. Series 88-G	10.550	01/01/00
USAR.LF	US Air Inc. Series 88-H	10.550	01/01/00
USAR.LG	US Air Inc. Series 88-I	10.550	01/01/00
USAR.LH	US Air Inc. Series 88-J	10.550	01/01/00
USAR.LI	US Air Inc. Series 88-K	10.550	01/01/00
USAR.LJ	US Air Inc. Series 88-L	10.550	01/01/00
USAR.LK	US Air Inc. Series 88-E	10.600	01/01/01
USAR.LL	US Air Inc. Series 88-F	10.600	01/01/01
USAR.LM	US Air Inc. Series 88-G	10.600	01/01/01
USAR.LN	US Air Inc. Series 88-H	10.600	01/01/01
USAR.LO	US Air Inc. Series 88-I	10.600	01/01/01
USAR.LP	US Air Inc. Series 88-J	10.600	01/01/01
USAR.LQ	US Air Inc. Series 88-K	10.600	01/01/01
USAR.LR	US Air Inc. Series 88-L	10.600	01/01/01
USAR.LS	US Air Inc. Series 88-E	10.600	01/01/02
USAR.LT	US Air Inc. Series 88-F	10.700	01/01/02
USAR.LU	US Air Inc. Series 88-G	10.700	01/01/02
USAR.LV	US Air Inc. Series 88-H	10.700	01/01/02
USAR.LW	US Air Inc. Series 88-I	10.700	01/01/02
USAR.LX	US Air Inc. Series 88-J	10.700	01/01/02
USAR.LY	US Air Inc. Series 88-K	10.700	01/01/02
USAR.LZ	US Air Inc. Series 88-L	10.700	01/01/02
USAR.MA	US Air Inc. Series 88-E	10.700	01/01/03
USAR.MB	US Air Inc. Series 88-F	10.700	01/01/03
USAR.MC	US Air Inc. Series 88-G	10.700	01/01/03
USAR.MD	US Air Inc. Series 88-H	10.700	01/01/03
USAR.ME	US Air Inc. Series 88-I	10.700	01/01/03
USAR.MF	US Air Inc. Series 88-J	10.700	01/01/03
USAR.MG	US Air Inc. Series 88-K	10.700	01/01/03
USAR.MH	US Air Inc. Series 88-L	10.700	01/01/03
USAR.MI	US Air Inc. Series 88-E	10.750	01/01/04
USAR.MJ	US Air Inc. Series 88-F	10.750	01/01/04
USAR.MK	US Air Inc. Series 88-G	10.750	01/01/04

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.ML	US Air Inc. Series 88-H	10.750	01/01/04
USAR.MM	US Air Inc. Series 88-I	10.750	01/01/04
USAR.MN	US Air Inc. Series 88-J	10.750	01/01/04
USAR.MO	US Air Inc. Series 88-K	10.750	01/01/04
USAR.MP	US Air Inc. Series 88-L	10.750	01/01/04
USAR.MQ	US Air Inc. Series 88-E	10.800	01/01/05
USAR.MR	US Air Inc. Series 88-F	10.800	01/01/05
USAR.MS	US Air Inc. Series 88-G	10.800	01/01/05
USAR.MT	US Air Inc. Series 88-H	10.800	01/01/05
USAR.MU	US Air Inc. Series 88-I	10.800	01/01/05
USAR.MV	US Air Inc. Series 88-J	10.800	01/01/05
USAR.MW	US Air Inc. Series 88-K	10.800	01/01/05
USAR.MX	US Air Inc. Series 88-L	10.800	01/01/05
USAR.MY	US Air Inc. Series 88-E	10.850	01/01/06
USAR.MZ	US Air Inc. Series 88-F	10.850	01/01/06
USAR.NA	US Air Inc. Series 88-G	10.850	01/01/06
USAR.NB	US Air Inc. Series 88-H	10.850	01/01/06
USAR.NC	US Air Inc. Series 88-I	10.850	01/01/06
USAR.ND	US Air Inc. Series 88-J	10.850	01/01/06
USAR.NE	US Air Inc. Series 88-K	10.850	01/01/06
USAR.NF	US Air Inc. Series 88-L	10.850	01/01/06
USAR.NG	US Air Inc. Series 88-E	10.850	01/01/07
USAR.NH	US Air Inc. Series 88-F	10.850	01/01/07
USAR.NI	US Air Inc. Series 88-G	10.850	01/01/07
USAR.NJ	US Air Inc. Series 88-H	10.850	01/01/07
USAR.NK	US Air Inc. Series 88-I	10.850	01/01/07
USAR.NL	US Air Inc. Series 88-J	10.850	01/01/07
USAR.NM	US Air Inc. Series 88-K	10.850	01/01/07
USAR.NN	US Air Inc. Series 88-L	10.850	01/01/07
USAR.NO	US Air Inc. Series 88-E	10.900	01/01/08
USAR.NP	US Air Inc. Series 88-F	10.900	01/01/08
USAR.NQ	US Air Inc. Series 88-G	10.900	01/01/08
USAR.NR	US Air Inc. Series 88-H	10.900	01/01/08
USAR.NS	US Air Inc. Series 88-I	10.900	01/01/08
USAR.NT	US Air Inc. Series 88-J	10.900	01/01/08
USAR.NU	US Air Inc. Series 88-K	10.900	01/01/08
USAR.NV	US Air Inc. Series 88-L	10.900	01/01/08
USAR.NW	US Air Inc. Series 88-E	10.900	01/01/09
USAR.NX	US Air Inc. Series 88-F	10.900	01/01/09
USAR.NY	US Air Inc. Series 88-G	10.900	01/01/09
USAR.NZ	US Air Inc. Series 88-H	10.900	01/01/09
USAR.OA	US Air Inc. Series 88-I	10.900	01/01/09
USAR.OB	US Air Inc. Series 88-J	10.900	01/01/09
USAR.OC	US Air Inc. Series 88-K	10.900	01/01/09
USAR.OD	US Air Inc. Series 88-L	10.900	01/01/09
USAR.OE	US Air Inc. Series 88-E	10.900	01/01/10
USAR.OF	US Air Inc. Series 88-F	10.900	01/01/10
USAR.OG	US Air Inc. Series 88-G	10.900	01/01/10
USAR.OH	US Air Inc. Series 88-H	10.900	01/01/10
USAR.OI	US Air Inc. Series 88-I	10.900	01/01/10
USAR.OJ	US Air Inc. Series 88-J	10.900	01/01/10
USAR.OK	US Air Inc. Series 88-K	10.900	01/01/10

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.OL	US Air Inc. Series 88-L	10.900	01/01/10
USAR.OM	US Air Inc. Series 88-B	10.180	06/27/99
USAR.ON	US Air Inc. Series 88-C	10.180	06/27/99
USAR.OO	US Air Inc. Series 88-A	10.180	06/27/99
USAR.OP	US Air Inc. Series 88-D	10.180	06/27/99
USAR.OQ	US Air Inc. Series 88-C	10.230	06/27/00
USAR.OR	US Air Inc. Series 88-A	10.230	06/27/00
USAR.OS	US Air Inc. Series 88-B	10.230	06/27/00
USAR.OT	US Air Inc. Series 88-D	10.230	06/27/00
USAR.OU	US Air Inc. Series 88-C	10.230	06/27/01
USAR.OV	US Air Inc. Series 88-A	10.230	06/27/01
USAR.OW	US Air Inc. Series 88-B	10.230	06/27/01
USAR.OX	US Air Inc. Series 88-D	10.280	06/27/01
USAR.OY	US Air Inc. Series 88-C	10.330	06/27/02
USAR.OZ	US Air Inc. Series 88-A	10.330	06/27/02
USAR.PA	US Air Inc. Series 88-B	10.330	06/27/02
USAR.PB	US Air Inc. Series 88-D	10.330	06/27/02
USAR.PC	US Air Inc. Series 88-C	10.380	06/27/03
USAR.PD	US Air Inc. Series 88-A	10.380	06/27/03
USAR.PE	US Air Inc. Series 88-B	10.380	06/27/03
USAR.PF	US Air Inc. Series 88-D	10.380	06/27/03
USAR.PG	US Air Inc. Series 88-C	10.430	06/27/04
USAR.PH	US Air Inc. Series 88-A	10.430	06/27/04
USAR.PI	US Air Inc. Series 88-B	10.430	06/27/04
USAR.PJ	US Air Inc. Series 88-D	10.430	06/27/04
USAR.PK	US Air Inc. Series 88-C	10.490	06/27/05
USAR.PL	US Air Inc. Series 88-A	10.490	06/27/05
USAR.PM	US Air Inc. Series 88-B	10.490	06/27/05
USAR.PN	US Air Inc. Series 88-D	10.490	06/27/05
USAR.PO	US Air Inc. Series 88-C	10.550	06/27/06
USAR.PP	US Air Inc. Series 88-A	10.550	06/27/06
USAR.PQ	US Air Inc. Series 88-B	10.550	06/27/06
USAR.PR	US Air Inc. Series 88-D	10.550	06/27/06
USAR.PS	US Air Inc. Series 88-A	10.610	06/27/07
USAR.PT	US Air Inc. Series 88-C	10.610	06/27/07
USAR.PU	US Air Inc. Series 88-B	10.610	06/27/07
USAR.PV	US Air Inc. Series 88-D	10.610	06/27/07
USAR.PW	US Air Inc. Series 88-A	10.680	06/27/08
USAR.PX	US Air Inc. Series 88-C	10.680	06/27/08
USAR.PY	US Air Inc. Series 88-B	10.680	06/27/08
USAR.PZ	US Air Inc. Series 88-D	10.680	06/27/08
USAR.QA	US Air Inc. Series 88-A	10.760	06/27/09
USAR.QB	US Air Inc. Series 88-B	10.760	06/27/09
USAR.QC	US Air Inc. Series 88-D	10.760	06/27/09
USAR.QD	US Air Inc. Series 88-A	10.760	06/27/10
USAR.QE	US Air Inc. Series 88-B	10.760	06/27/10
USAR.QF	US Air Inc. Series 88-C	10.760	06/27/10
USAR.QG	US Air Inc. Series 88-D	10.760	06/27/10
USAR.QH	US Air Inc. Series 88-A	10.760	06/27/11
USAR.QI	US Air Inc. Series 88-B	10.760	06/27/11
USAR.QJ	US Air Inc. Series 88-C	10.760	06/27/11
USAR.QK	US Air Inc. Series 88-D	10.760	06/27/11

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.QL	US Air Inc. Series 88-C	10.760	06/27/12
USAR.QM	US Air Inc. Series 88-C	10.760	06/27/13
USAR.QN	US Air Inc. Series 89A1	9.330	01/01/06
USAR.QO	US Air Inc. Series 89A2	9.820	01/01/13
USAR.QP	US Air Inc. Series 90A1	11.200	03/19/05
USAR.QQ	US Air Inc. Series 90A2	11.350	03/19/14
USAR.QR	US Air Inc. Series 93A2	9.625	09/01/03
USAR.QS	US Air Inc. Series 93A3	10.375	03/01/13
UXVT.GA	Unifrax Investment Corp.	10.500	11/01/03
WCII.GD	Winstar Communications Inc.	10.000	03/15/08
WCII.GE	Winstar Communications Inc.	11.000	03/15/08

As of December 22, 1998, the following bonds were deleted from FIPS.

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
AEN.GB	AMC Entertainment Inc.	12.625	07/15/02
ANCP.GD	Anacomp Inc.	10.875	04/01/04
CCIR.GA	CCI Corp.	12.750	12/15/03
CCIR.GA	CCI Corp.	12.750	12/15/98
CVXP.GC	Cleveland Elec Illum Co.	8.375	12/01/11
EE.GA	EI Paso Electric Co.	7.250	02/01/99
ENVI.GA	Envirotest Systems Corp.	9.625	04/01/03
ENVI.GB	Envirotest Systems Corp.	9.125	03/15/01
GPAD.GA	GPA Delaware Inc.	8.750	12/15/03
GPAD.GA	GPA Delaware Inc.	8.750	12/15/98
HAVA.GA	Harvard Industries Inc.	12.00	07/15/04
HAVA.GC	Harvard Industries Inc.	11.125	08/01/05
HHI.GB	Home Holdings Inc.	7.750	12/15/03
HHI.GB	Home Holding Inc.	7.750	12/15/98
IBUI.GA	Intl Business Interiors Corp.	14.250	12/15/03
IBUI.GA	Intl Business Interiors Corp.	14.250	12/15/98
KOB.GA	Coca Cola Bottling Group SW Inc.	9.000	11/15/03
MBCA.GB	Metropolitan Broadcasting Corp.	13.250	09/30/06
MBN.GA	MBNA Capital I	8.278	12/01/26
MBN.GB	MBNA Capital I	6.487	02/01/27
NVR.GA	NVR Inc.	11.000	04/15/03
PHO.GA	People's Telephone Co. Inc.	12.250	07/15/02
PIDM.GA	Piedmont Aviation Series A	9.700	01/15/99
PIDM.GB	Piedmont Aviation Series B	9.700	01/15/99
PIDM.GC	Piedmont Aviation Series C	9.700	01/15/99
PLST.GA	Plastic Specialties & Tech Inc.	11.250	12/01/03
SKLE.GA	Safety Kleen Corp.	9.250	09/15/99
SLBC.GA	Sullivan Broadcasting Inc.	9.625	12/15/03
SPEQ.GA	Specialty Equip Cos Inc.	11.375	12/01/03
SPRT.GA	Sprint Spectrum LP	12.500	08/15/06
TEXN.GE	Texas New Mexico Power Co.	12.500	01/15/99
TNC.GA	Town & Country Corp.	13.000	05/31/98
TUBC.GB	Tuboscope Inc.	10.750	04/15/03
USAR.GD	US Air Inc. Series A	10.25	01/15/99

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
USAR.GE	US Air Inc. Series B	10.25	01/15/99
USAR.GF	US Air Inc. Series C	10.25	01/15/99
USAR.GG	US Air Inc. Series D	10.25	01/15/99
USAR.GH	US Air Inc. Series E	10.25	01/15/99
USAR.GI	US Air Inc. Series F	10.25	01/15/99
USAR.IY	US Air Inc. Series 88-A	9.70	01/15/99
USAR.IZ	US Air Inc. Series 88-B	9.70	01/15/99
USAR.JA	US Air Inc. Series 88-C	9.70	01/15/99
USAR.JB	US Air Inc. Series 88-D	9.70	01/15/99
USAR.KU	US Air Inc. Series 88-E	10.500	01/15/99
USAR.KV	US Air Inc. Series 88-F	10.500	01/01/99
USAR.KW	US Air Inc. Series 88-G	10.500	01/01/99
USAR.KX	US Air Inc. Series 88-H	10.500	01/01/99
USAR.KY	US Air Inc. Series 88-I	10.500	01/01/99
USAR.KZ	US Air Inc. Series 88-J	10.500	01/01/99

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation<sup>SM</sup>, at (301) 590-6451.

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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# Disciplinary Actions

## Disciplinary Actions Reported For February

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 Tuesday, February 16, 1999. The information relating to matters contained in this Notice is current as of the end of January 20, 1999.

### Firm Fined, Individual Sanctioned

**Ascend Financial Services, Inc. (St. Paul, Minnesota) and Barry Howard Burton (Registered Representative, Great Falls, Virginia)** submitted Letters of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000, and Burton was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm allowed a registered representative to sign a variable annuity application as the registered representative of record, falsely indicating that he had sold the investment, when, in fact, the variable annuity had been sold by another registered representative. Moreover, the NASD found that the firm accepted the variable annuity application knowing that the individual had never met with and/or discussed the variable annuity investment with the client. The findings also stated that Burton signed two variable annuities applications as the registered representative of record, falsely indicating that he had sold the investments, when, in fact, the

variable annuities had been sold by another registered representative.

Burton, however, shall not be required to serve the suspension, having already served a 14-day suspension in July 1996 imposed by his member firm based on the same conduct.

**Firms And Individuals Fined**  
**Equity Programs Corporation (San Diego, California) and Barton Basel Switzer (Registered Principal, Ramona, California)** submitted an Offer of Settlement pursuant to which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Switzer, failed to establish, maintain, and enforce a system reasonably designed to achieve compliance with applicable securities laws and regulations, and the rules of the NASD in order to supervise the activities of a branch office. The firm also knew, or should have known, that the branch office was offering and selling interests in a contingent offering.

**Kennedy, Cabot & Co., (Beverly Hills, California) and James Dominic Toussaint (Registered Principal, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$25,000, jointly and severally, and the firm was fined an additional \$2,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Toussaint, aired television commercials concerning registered investment companies, and failed to file the advertisements with the NASD's Advertising Department. The findings also stated that the firm, acting through Toussaint, engaged in communications to the

public through television commercials that failed to provide a sound basis for evaluating the facts in regard to the securities offered, and omitted material facts and qualifications which, in light of the context of the material presented, caused the advertisements to be misleading. Moreover, the NASD found that the firm, acting through Toussaint, made exaggerated and unwarranted claims, and/or contained comparative references that were incomplete and unbalanced. The NASD also determined that the firm failed to establish, maintain, and enforce adequate procedures to address the NASD's filing requirements for mutual fund advertisements, and to identify in its written supervisory procedures, a supervisory principal responsible for communications with the public.

**Pellett Investments, Inc. (Missoula, Montana) and Ronald Neil Pellett (Registered Principal, Missoula, Montana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Pellett, participated in contingent offerings of limited partnership interests and failed to transmit funds received from investors to a proper escrow account as required by Securities and Exchange Commission (SEC) Rule 15c2-4(b). The findings also stated that the firm, acting through Pellett, failed to maintain records documenting the completion of the continuing education training plan for covered registered persons, and failed to complete and implement a needs analysis and training plan for the Continuing Education Firm Element.

## Firms Fined

**Joseph Stevens & Company, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$38,393. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted a registered person to continue to perform duties as a registered person even though the person had not complied with the NASD continuing education requirements.

**M.H. Meyerson & Company, Inc. (Jersey City, New Jersey)** 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 reported transactions to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to update its own quotation for broadcast orders into SelectNet<sup>SM</sup> immediately. Furthermore, 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, 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 minimis change in relation to the size associated with the firm's bid or offer in each security.

**Smith Barney, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$17,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it

reported transactions to the ACT in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to preserve for a period of not less than three years the memoranda of brokerage orders and failed to show the correct time of execution, or the time of execution, on memoranda of brokerage orders. The firm also failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws, regulations, and rules regarding trade reporting and recordkeeping.

**W. J. Nolan & Company, Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$5,000, jointly and severally, with an individual, and required to disgorge \$22,060 in excessive markups to public customers. Should disgorgement payments not be completed by a specified time, the firm will be suspended until such time as such payments have been completed. 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 effected municipal securities principal transactions at excessive markups.

**William E. Simon & Sons Municipal Securities, Inc. (Morristown, New Jersey)** 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 made a \$10,000 payment to a member firm purportedly in connection with a municipal bond transaction in the hope of developing a business relationship with the firm. According to the findings, the respondent's records regarding expenses

for the transaction inaccurately reflected that \$10,000 was paid to the other firm in connection with that offering and its records regarding disbursement of cash and debits for the transaction inaccurately reflected that \$10,000 was paid to the firm as management fees for that offering.

### **Individuals Barred Or Suspended**

**Craig Douglas Baker (Registered Representative, West Jordan, Utah)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$12,250, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Baker consented to the described sanctions and to the entry of findings that he intercepted approximately \$450 worth of gift certificates/checks intended to compensate other employees for overtime they had earned, deposited the checks into his own bank account, and used the money for his personal use.

**Alfred Gerald Block (Registered Principal, Livingston, New Jersey)** submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from acting as a principal for 30 days. Without admitting or denying the allegations, Block consented to the described sanctions and to the entry of findings that he failed to have a financial and operations principal registered with the NASD at his member firm, and as a result, he was responsible for the firm's failure to file some of its FOCUS reports, to file some FOCUS reports in a timely manner, and to file its annual audit report.

**Djoly Boliere (Associated Person, Stamford, Connecticut)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any

capacity. Without admitting or denying the allegations, Boliere consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Clyde Joseph Bruff (Registered Principal, Oakland, California)** was censured and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of an August 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that Bruff exercised effective control over the account of a public customer and made recommendations to the customer that resulted in unsuitable excessive trading.

This action has been appealed to the Ninth Circuit Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

**John Milford Buob (Registered Representative, Henderson, Nevada)** submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Buob consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prompt written notification to his member firm prior to participating in such transactions. The findings also stated that, in connection with the offer or sale of limited partnership interests, Buob made misrepresentations to investors and failed to return investor funds when the terms of the contingency were not met. The findings also stated that Buob recommended and induced public customers to purchase the security by means of fraudulent and deceptive devices and contrivances in that he represented to customers that proceeds of a limited partnership

offering would be used to pay the purchase price of real estate and office building improvements. The NASD found that Buob knew, or should have known, that only \$64,399.43 of the necessary \$212,500 had been raised and, therefore, the proceeds were insufficient to pay the purchase price of such real estate and were instead used to pay suppliers of goods or services consumed or used by Buob in the conduct of his business.

**Harvey Michael Burstein (Registered Representative, Leawood, Kansas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$57,100, and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Burstein consented to the described sanctions and to the entry of findings that he engaged in outside business activities for which he received compensation and engaged in private securities transactions without prior written notice to, and approval from, his member firm.

**Peter Thomas Chen (Registered Principal, Sayville, New York)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chen failed to respond to NASD requests for information and failed to appear for testimony.

**Michael Henry Christ (Registered Principal, Lynbrook, New York)** was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Christ failed to respond to NASD requests for information.

**Keith Robert Cottrell (Registered Representative, Washington, D.C.)** was censured, fined \$25,000, and

barred from association with any NASD member in any capacity. The sanctions were based on findings that Cottrell failed to respond to NASD requests for information.

**Dennis Wayne Cowden (Registered Representative, Pittsburgh, Pennsylvania)** was censured, suspended from association with any NASD member in any capacity for two months, and required to requalify by exam before again becoming registered in any capacity. The sanctions were based on findings that Cowden recommended and effected securities transactions for the accounts of public customers without having reasonable grounds to believe that such transactions were suitable based on the information disclosed by the customers concerning their financial situations and needs.

**Rudolph Crockett, Jr. (Registered Representative, Westerville, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$925,000, barred from association with any NASD member in any capacity, and required to pay \$179,642 in restitution to a member firm. Without admitting or denying the allegations, Crockett consented to the described sanctions and to the entry of findings that he received funds totaling \$179,642 from public customers. The NASD determined that Crockett deposited these funds into accounts under his control without the knowledge or permission of the customers and used the funds for his own benefit without their knowledge, authorization, or consent.

**Glenn Adam Davis (Registered Principal, West Palm Beach, Florida)** was censured, fined \$75,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Davis executed unauthorized

transactions in a public customer's account.

**Carlton Case Ellis (Registered Principal, Mercer Island, Washington)** was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam in all capacities before again being employed in the securities industry. The sanctions were based on findings that Ellis participated in private securities transactions without giving his member firm prior written notification. Ellis also signed a letter agreement on behalf of his member's clearing firm without authority to do so.

**Gregory Marclafau Hawkins, Jr. (Registered Representative, Mission Viejo, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$112,900, barred from association with any NASD member in any capacity, and ordered to pay \$7,580 in restitution to a public customer. Without admitting or denying the allegations, Hawkins consented to the described sanctions and to the entry of findings that he solicited and sold to a public customer an investment in a business entity he formed away from his member firm. Although the customer gave Hawkins \$20,000 for investment purposes, the customer received a promissory note evidencing only a \$10,000 investment in the company. In addition, the NASD found that Hawkins proceeded to convert approximately \$7,580 of the customer's funds to his personal use and benefit. The above-described transactions were effected outside the regular course and scope of his employment with his member firm, and Hawkins failed to provide prior written notice to, or obtain written approval from, his firm.

**Kirby Michael Hryn (Registered Representative, Clearfield, Pennsylvania)** submitted a Letter of

Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$18,000 in restitution to defrauded investment club members. Without admitting or denying the allegations, Hryn consented to the described sanctions and to the entry of findings that he converted approximately \$18,000 from members of an investment club, of which he was also a member, without the consent or authority of the club members.

**James Andrew Hyde (Registered Principal, Niwot, Colorado)** submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Hyde consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information in a timely manner.

**Ann Wei Ping Lo (Registered Principal, New York, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lo failed to appear for an on-the-record interview.

**James Dean Loeffelbein (Registered Representative, Bucyrus, Kansas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for one day. Without admitting or denying the allegations, Loeffelbein consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm.

**Smail Loutfi (Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$213,437.31, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Loutfi consented to the described sanctions and to the entry of findings that he arranged to have an impostor take the Series 7 exam on his behalf.

**Robert Gregory McCormack (Registered Principal, Ft. Myers, Florida)** was censured, fined \$60,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that McCormack conducted a securities business while not registered. McCormack also forged a registered representative's signature on a new account application and failed to respond to NASD requests for information.

**Arleigh Clayton Merrill (Registered Representative, Jacksonville, Florida)** was censured, fined \$17,500, and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Merrill effected a private securities transaction and guaranteed a customer against a loss.

**Norman Mathias Merz (Registered Principal, Brookfield, Wisconsin)** was censured, fined \$110,000, and barred from association with any NASD member in any capacity. The National Adjudicatory Council (NAC) affirmed the sanctions following review of a Chicago District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Merz engaged in private securities transactions without prior written notice to, and approval from, his member firm. Merz also failed to give prompt written notice to his firm

of compensation received from outside business activities.

**Donerval Kevin Moreland (Registered Representative, San Clemente, California)** was censured, fined \$65,000, barred from association with any NASD member in any capacity, and ordered to pay \$25,000 plus interest in restitution to a public customer. The sanctions were based on findings that Moreland recommended, offered, and sold securities without being properly registered. Furthermore, Moreland recommended securities to a public customer without having reasonable grounds for believing the securities were suitable for the customer. Moreland also failed to respond to NASD requests for information about his sales practices.

**Vincent Michael Nunez (Registered Representative, Staten Island, New York)** was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to disgorge to the NASD all monies he earned in the securities industry before becoming registered, in the amount of at least \$5,151. The sanctions were based on findings that Nunez arranged to have an impostor take the Series 7 exam on his behalf. Nunez also failed to respond to NASD requests to appear for on-the-record interviews.

**Donald Charles Panek (Registered Representative, Fort Madison, Iowa)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Panek consented to the described sanctions and to the entry of findings that he participated in private securities transactions without prior written notice to, and written approval and/or acknowledgment from, his member firms.

**James Basil Peters (Registered Representative, Oxnard, California)** was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify as a general securities representative. The NAC imposed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Peters forged the signature of a bank branch manager on documents submitted to his firm that falsely reflected purchases involving new funds and thereby increased Peters' commission payout.

**Christopher John Plucinski (Registered Representative, Stevenson Ranch, California)** submitted an Offer of Settlement pursuant to which he was censured, fined \$255,000, barred from association with any NASD member in any capacity, and ordered to pay \$782.17 in restitution to a member firm. Without admitting or denying the allegations, Plucinski consented to the described sanctions and to the entry of findings that he received \$35,000 from a public customer for investment purposes. According to the findings, Plucinski did not apply the funds as directed by the customer, and instead, converted the funds to his own use and benefit by depositing the funds into his bank account, and writing personal and business checks on the funds without the customer's knowledge or consent.

**Donald Eugene Radle (Registered Principal, Springfield, Missouri)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Radle failed to respond to NASD requests to appear for an on-the-record interview.

**Kirk Francis Ruffler (Registered Representative, Perrineville, New Jersey)** was censured, fined

\$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ruffler failed to respond to NASD requests for information.

**Randel Arthur Russell (Registered Representative, Wheeling, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Russell consented to the described sanctions and to the entry of findings that he received cash from a public customer intended for deposit into a money market account and failed to handle the funds properly. According to the findings, Russell placed the funds in a non-secure location and certain funds were lost. The findings also stated that Russell accepted checks intended for employee contributions to a company-sponsored Simple Individual Retirement Account (IRA) and failed to forward those checks promptly to the mutual fund company for investment.

**Russell Marlowe Ryan (Registered Representative, Hempstead, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ryan failed to respond to NASD requests to appear for on-the-record interviews.

**Steven Paul Sanders (Registered Principal, Jericho, New York)** and **Daniel Mark Porush (Registered Principal, Oyster Bay Cove, New York)**. Sanders was censured, fined \$25,000, and barred from association with any NASD member in any capacity, and Porush was censured, fined \$250,000, and barred from association with any NASD member in any capacity. The SEC affirmed

the sanctions following appeal of a December 1996 NBCC decision. The sanctions were based on findings that Sanders charged excessive markups in the sale of warrants as a consequence of his member firm's domination and control of the market for those securities. In addition, Porush failed to establish and enforce supervisory requirements that might have prevented the markup violations.

**Steven Albert Seager (Registered Representative, Geneseo, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$275,000, barred from association with any NASD member in any capacity, and required to pay \$49,935.37 in restitution to a member firm. Without admitting or denying the allegations, Seager consented to the described sanctions and to the entry of findings that he caused loans totaling \$49,935.37 to be made against the life insurance policies of public customers. According to the findings, Seager caused the checks for these loans to be mailed to a post office box under his control, endorsed the checks, and used the proceeds for his own benefit without the prior authorization or consent of the customers.

**Wallace Efford Sheely (Registered Principal, Gulfport, Mississippi)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$6,800, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Sheely consented to the described sanctions and to the entry of findings that he exercised discretion in the individual accounts of public customers without prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm.

**Daniel Wright Sisson (Registered Principal, Menlo Park, California)** was censured, fined \$35,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam as a general securities representative. The NAC imposed the sanctions following review of a San Francisco DBCC decision. The sanctions were based on findings that Sisson recommended trades that were unsuitable as to size and frequency in the accounts of public customers.

**Chad Robert Soerens (Registered Representative, Middleton, Wisconsin)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Soerens failed to respond to NASD requests for information.

**Gerald James Stoiber (Registered Representative, Mokena, Illinois)** was censured, fined \$450,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$450,000 in restitution to public customers. The SEC affirmed the sanctions following appeal of a March 1996 NBCC decision, and following dismissal of an appeal to the U.S. Court of Appeals. The sanctions were based on findings that Stoiber engaged in private securities transactions while failing to give prior written notification to his member firm of his intention to engage in such activities.

**Steve Tabaluyan (Associated Person, Palatine, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity, with the right to reapply for association with an NASD member firm three years from the date of the effectiveness of

the bar. Without admitting or denying the allegations, Tabaluyan consented to the described sanctions and to the entry of findings that he altered his Series 6 test results to show that he passed the exam, when in fact, he failed the exam, and presented the altered results to his member firm.

**Carlos Christopher Tellez (Registered Representative, Darmstadt, Germany)** submitted an Offer of Settlement pursuant to which he was censured, fined \$13,000, and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Tellez consented to the described sanctions and to the entry of findings that he misused \$155,000 belonging to a public customer. According to the findings, Tellez deposited the funds in his personal business account, failed to purchase mutual fund shares for the customer, and failed to promptly return the funds to the customer as requested.

**Steven Harry Vornea (Registered Representative, Brookville, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$700,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vornea consented to the described sanctions and to the entry of findings that he acted as principal of his member firm while failing to register as a principal with the NASD. The findings also stated that Vornea caused his firm and its registered representatives to purchase securities before the completion of each of the distributions. Furthermore, the NASD found that Vornea, through his direct and indirect actions, caused his firm to engage in numerous sales practice abuses including, but not limited to, baseless price predictions or guaran-

tees, misrepresentations about issuers, failures to execute customer orders, and requiring customers to purchase aftermarket shares as a condition of receiving initial public offering units, and other high pressure tactics. In addition, the NASD determined that Vornea, through his direct and indirect actions, caused his firm and its registered representatives to manipulate the prices of securities in aftermarket trading, and as a result, the firm generated over \$6 million in illegal profits. Vornea also failed to supervise the activities of his member firm's registered representatives to ensure compliance with applicable securities laws, regulations, and NASD rules.

**John Jeffrey Walker (Registered Representative, Covington, Kentucky)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Walker failed to respond to NASD requests for information.

**Andrew Neal Watson (Registered Principal, Raleigh, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$125,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Watson consented to the described sanctions and to the entry of findings that he misappropriated \$19,137.78 from his member firm by arranging to have himself paid unauthorized increases in his salary.

**Todd Richard Woods (Registered Representative, Columbus, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations,

Woods consented to the described sanctions and to the entry of findings that he forged the signature of a public customer onto documents that caused the customer's IRA accounts to be transferred to another firm, without the prior knowledge or consent of the customer.

## **Individuals Fined**

**Lance Reed Dalton (Registered Representative, Isle Of Palms, South Carolina)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$22,400. Without admitting or denying the allegations, Dalton consented to the described sanctions and to the entry of findings that he engaged in numerous purchase and sale transactions in various securities without having reasonable grounds for believing that such recommendations were suitable for the customers and accounts in view of the frequency of the recommended transactions; the risks associated with the recommended transactions; and the customers' financial situations, objectives, circumstances, and needs.

**William H. Gerhauser, Sr. (Registered Principal, Surrey, Great Britain) and William C. Gerhauser, Jr. (Registered Principal, Brentwood, New York)** were censured and fined \$15,000, jointly and severally. In addition, William H. Gerhauser was required to requalify by exam as a financial and operations principal, and William C. Gerhauser was required to requalify by exam as a general securities principal. The SEC imposed the sanctions following appeal of a November 1997 NBCC decision. The sanctions were based on findings that the Gerhausers, acting on behalf of a member firm, conducted a securities business while failing to maintain adequate net capital. The firm, acting through William H. Gerhauser, filed

inaccurate FOCUS Part I and IIA reports, failed to maintain accurate books and records, and failed to give telegraphic notice of a net capital deficiency.

## Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of January 20, 1999. 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*.

**Roger Harry Chlowitz (Registered Principal, Northridge, California)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chlowitz failed to respond to NASD requests for information and to provide documents.

Chlowitz has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

**Robert Jay Kendzierski (Registered Representative, Erie, Pennsylvania)** was censured, fined \$80,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kendzierski converted \$6,000 in funds given to him by a public customer by receiving checks totaling \$10,000 from the customer to be deposited in an interest-bearing insurance policy. Kendzierski altered the checks made payable to his member firm and wrote his name instead on the payee line of the checks, converted \$6,000 of the funds to his own use and benefit. Also, Kendzierski made two payments to repay the customer for

\$1,000 and \$5,050, and in an attempt to conceal his conversion, he backdated the \$5,050 check. Kendzierski appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

**Terry Don Rader (Registered Principal, Dallas, Texas)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rader failed to respond to NASD requests for information.

Rader has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

**Jerome Edward Rosen (Registered Representative, Miami, Florida)** was censured, fined \$62,000, and suspended from association with any NASD member in any capacity for six months. The sanctions were based on findings that Rosen engaged in anti-competitive harassment of another Market Maker by making a series of telephone calls to the broker in which he attempted to harass the broker for engaging in competitive trading and entering competitive quotations, and otherwise attempted to improperly influence and/or interfere with the broker's competitive activities. Rosen also made certain threatening statements to the broker. The findings also stated that Rosen backed away from a specific order another broker placed with him at his quoted bid or offer for a Nasdaq SmallCap<sup>SM</sup> security.

Rosen has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

## 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.

**Ralph Charles Altomare (Registered Representative, Bellevue, Washington)** was named as a respondent in an NASD complaint alleging that he effected transactions in the accounts of public customers without the prior authorization and consent of the customers.

**Daniel Richard Howard (Registered Representative, Cambridge, Massachusetts)** was named as a respondent in an NASD complaint alleging that he recommended and initiated purchase and sales transactions in the securities account of a public customer without having reasonable grounds for believing that the recommendations and resulting transactions were suitable for the customer in view of the size, frequency, concentration of speculative securities; the nature of the recommended transactions; and in light of the customer's financial situation, investment objectives, circumstances, and needs. The complaint also alleges that Howard falsely answered a question on his Form U-4 and failed to update his Form U-4 to reflect that he was the subject of an NASD investigation in connection with his recommendation of unsuitable securities to a customer.

**Damon Todd Lazar (Registered Representative, Plainview, New York)** was named as a respondent in an NASD complaint alleging that he knowingly or recklessly made numer-

ous material misrepresentations of fact to a public customer in connection with his recommendation to purchase common stock. The complaint also alleges that the misrepresentations were material to the investment decision of the customer and caused him to refrain from executing sales of his position in the common stock. The customer was thereby lulled by Lazar into a false sense of security with respect to his position in the common stock.

**John Anthony Massaro (Registered Representative, Smithtown, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations, failed to disclose material facts, and made fraudulent price predictions to public customers in connection with his solicitation to customers to purchase securities. The complaint also alleges that Massaro effected transactions in the accounts of public customers without the prior authorization of the customers. The complaint alleges that Massaro failed to execute sell orders as instructed by public customers. The complaint also alleges that Massaro failed to respond to NASD requests for information.

### **Firms Suspended/Canceled**

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 suspensions 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.

**Alden Capital Markets, Inc.**, New York, New York (January 13, 1999)

**American Freedom Securities, Inc.**, Rochester, New York (January 13, 1999)

**Ash Financial Corp.**, Great Neck, New York (January 13, 1999)

**Cassidy & Co., Inc.**, Blue Bell, Pennsylvania (January 13, 1999)

**Elswick, Banks and Associates, Inc.**, Atlanta, Georgia (January 13, 1999)

**Fisher Hill Securities Corporation**, San Francisco, California (January 13, 1999)

**Fundamental Service Corporation**, New York, New York (January 13, 1999)

**J. Robbins Securities, L.L.C.**, New York, New York (January 13, 1999)

### **Suspensions Lifted**

The NASD has lifted the suspension from membership on the dates shown for the following firms because they have complied with formal written requests to submit financial information.

**Northbridge Financial Services**, Ann Arbor, Michigan (December 18, 1998)

### **Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Awards**

**Bryant, Steven Ernest**, Pompano Beach, Florida (January 13, 1999 - January 15, 1999)

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# Notices to Members

# YEAR 2000 UPDATE

March 1999

## Deadline For Completion Of Form BD-Y2K Is Near

The National Association of Securities Dealers, Inc. (NASD®) recently mailed a Form BD-Y2K package to each member firm for completion by **April 30, 1999.**

The recent amendments to Securities and Exchange Commission (SEC) Rule 17a-5 require all NASD members with minimum net capital requirements of \$5,000 or greater as of March 15, 1999, to file the Form BD-Y2K report with the SEC and the firm's designated examining authority (DEA). Broker/dealers with minimum net capital requirements of \$5,000 or greater as of March 15, 1999, are required to file Part I of Form BD-Y2K by **April 30, 1999.**

Broker/dealers with minimum net capital requirements of \$100,000 or greater are required to file, also by **April 30, 1999**, the Part II narrative and Part III—an independent public accountant's report—in addition to Part I. Part III of the Form must be completed by an independent public accountant; to complete this process, the independent public accountant must review completed Parts I and II. For background on constructing the independent public accountant's report, visit the American Institute of Certified Public Accountants Web Site ([www.aicpa.org](http://www.aicpa.org)).

If you did not get a copy of this package, please call the Year 2000 Program Office at (888) 227-1330 or visit the Year 2000 Web Pages on the NASDR and NASD Web Sites ([www.nasdr.com](http://www.nasdr.com) and [www.nasd.com](http://www.nasd.com), respectively).

**See the following page for helpful hints in preparing the Form BD-Y2K.**

## SEC Readiness Information

The SEC has provided a searchable database on the SEC Web Site ([www.sec.gov](http://www.sec.gov)), which features information from Year 2000 required reports from securities firms and other constituents. Currently, the database includes more than 13,000 reports that describe the following for each firm included in the database:

- ◆ *state of Year 2000 readiness*
- ◆ *costs to address the Year 2000 problem*
- ◆ *Year 2000 risks*
- ◆ *progress in developing contingency plans*



# **Year 2000 Education And Events**

## **1999 Form BD-Y2K Best Practices And Helpful Hints**

Firms should keep in mind the following points when completing and submitting the Form BD-Y2K:

- 1) Each broker/dealer firm must file separately.**
- 2) Forms must be signed by those authorized to sign FOCUS reports. Unsigned and/or incomplete forms will not be accepted; and, therefore, will not be considered filed by the deadline.**
- 3) The CRD number must be that of the member firm responding.**
- 4) The address must be the firm's principal place of business and not a Post Office Box number.**
- 5) Forms submitted to the DEA must be preserved in accordance with SEC Rules 17a-3 and 4 (for a period of three years).**
- 6) Each firm must fill out the proper filing and identification information at the top of each page.**
- 7) The original report and two copies must be mailed to the Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop A-2, Washington, D.C. 20549.**
- 8) One copy must be mailed to Lyn Kelly, Year 2000 Program Office, NASD Year 2000 Program Office, 15201 Diamondback Drive, Rockville, MD 20850, ATTN: Report-BD-Y2K.**
- 9) Firms required to file Parts I, II, and III must file these parts together for receipt at the SEC and DEA by close of business on April 30, 1999. Incomplete report submissions will not be accepted, and reports will not be considered "filed" unless all applicable parts are received together with the signed cover sheet (Appendix A) by the April 30th due date.**
- 10) All Parts of Form BD-Y2K will be made available to the public.**
- 11) Each firm should send the Form BD-Y2K in as early as possible (your firm may want to use a form of delivery that permits a receipt to be kept for records).**
- 12) Form BD-Y2K may not be filed by fax.**
- 13) The Form BD-Y2K should represent each firm's Year 2000 progress, not that of a separate clearing firm or service bureau.**
- 14) If the firm's DEA is a self-regulatory organization (SRO) other than the NASD, the report should be sent to that DEA, not the NASD.**

### **New York Workshop**

The NASD Year 2000 Program Office will host a workshop on contingency planning at the Marriott World Trade Center in New York City on April 5, 1999. Please note that registration is required; to register, call (888) 227-1330.

### **Virtual Workshops**

The NASD Year 2000 Program Office is continuing to offer Virtual Workshops—conference call-in sessions. The NASD strongly encourages registration, but it is not required. To register, call (888) 567-0578, listen to the greeting, and provide the following information when prompted: firm name, Broker/Dealer #, and workshop date. On the day of the session, call (800) 857-7323 and indicate the password and confirmation number provided for the specific workshop. See next page for a list of these specifics organized by date of session, as well as a brief summary of issues to be discussed.

**See next page for Virtual Workshops.**

### **More Information/Questions**

#### **NASD Year 2000 Program Office**

**e-mail: [y2k@nasd.com](mailto:y2k@nasd.com)**

**phone: (888) 227-1330**

# **Year 2000 Education And Events**

## **Virtual Workshops**

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**March 17 BD-Y2K 1999  
Frequently Asked  
Questions and  
Answers**

Password: Questions  
Conf #: 2920202

*Issues to be covered:*

- ◆ Frequently asked questions about the Form BD-Y2K 1999 in comparison to the Form BD-Y2K 1998
- ◆ Helpful hints in the completion of Part 2 and how your DEA will review your SOP

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**March 23 Year 2000 Overview/  
Business Continuity  
Strategies**

Password: Strategies  
Conf #: 2920237

*Issues to be covered:*

- ◆ Developing or updating a disaster and contingency plan
- ◆ Documenting plans
- ◆ Business impact analysis
- ◆ Recovering mission-critical systems
- ◆ Validating firms' business continuity strategies

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**April 6 Investor  
Communication  
“Best Practices”**

Password: Communication  
Conf #: 3111435

*Issues to be covered:*

- ◆ Frequent problems
- ◆ Disclosure issues
- ◆ Best practices
- ◆ Questions & Answers

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**April 13 Internal Testing**

Password: Testing  
Conf #: 3112914

*Issues to be covered:*

- ◆ What kinds of firms need to test
- ◆ Testing best practices
- ◆ Potential testing – contingency planning
- ◆ Questions & Answers

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**April 20 Contingency Planning**

Password: Contingency  
Conf #: 3112165

*Issues to be covered:*

- ◆ Step-by-step guide
- ◆ Timeline/impact if no contingency - a case study
- ◆ External/internal contingency planning
- ◆ Global view
- ◆ Questions & Answers

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**April 27 Utilities and Critical  
Services**

Password: Services  
Conf #: 3111865

*Issues to be covered:*

- ◆ State of utilities and recent guidelines
- ◆ Other critical services
- ◆ How these critical services affect broker/dealer's preparedness
- ◆ Best practices in dealing with uncertainty
- ◆ Questions & Answers

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**May 6 Audit, Agreed Upon  
Procedures, and  
Examination**

Password: Audit  
Conf #: 3111848

*Issues to be covered:*

- ◆ Differences between audit and agreed upon procedures
- ◆ Purpose of examination
- ◆ Records retention and documentation
- ◆ Sources of information to retain (e-mails, letters, etc.)
- ◆ Questions & Answers

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**May 13 Investor  
Communication  
“Best Practices”**

Password: Communication  
Conf #: 3111736

*Issues to be covered:*

- ◆ Frequent problems
- ◆ Disclosure issues
- ◆ Best practices
- ◆ Questions & Answers

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**May 20 Utilities and Critical  
Services**

Password: Services  
Conf #: 3113760

*Issues to be covered:*

- ◆ State of utilities and recent guidelines
- ◆ Other critical services
- ◆ How these critical services affect broker/dealer's preparedness
- ◆ Best practices in dealing with uncertainty
- ◆ Questions & Answers

# Year 2000 Education And Events

## 1999 NASD Regulation Spring Securities Conference

As mentioned in the last issue of *Notices to Members*, Year 2000 issues will be featured as part of the 1999 NASD Regulation annual Spring Securities Conference to be held in New Orleans on May 20-21. A conference brochure has been mailed to NASD members and is available on the NASD Regulation Web Site at [www.nasdr.com](http://www.nasdr.com).

## NASD Year 2000 Event Calendar

Topic	Location	Date	Time
BD-Y2K 1999 Frequently Asked Questions and Answers	Virtual	March 17	11:00 a.m., ET
Y2K Overview/Business Continuity Strategies	Virtual	March 23	11:00 a.m., ET
Contingency Planning	New York	April 5	9:00 a.m. - 11:00 a.m.
Contingency Planning	New York	April 5	1:30 p.m. - 4:00 p.m.
Investor Communication "Best Practices"	Virtual	April 6	11:00 a.m., ET
Internal Testing	Virtual	April 13	11:00 a.m., ET
Contingency Planning	Virtual	April 20	11:00 a.m., ET
Utilities and Critical Services	Virtual	April 27	11:00 a.m., ET
Audit, Agreed Upon Procedures, and Examination	Virtual	May 6	11:00 a.m., ET
Investor Communication "Best Practices"	Virtual	May 13	11:00 a.m., ET
NASD Regulation Spring Securities Conference	New Orleans	May 20-21	
Utilities and Critical Services	Virtual	May 20	11:00 a.m., ET

# NASD Notice to Members 99-20

**SEC Approves Rule Change Increasing Position Limits On Standardized Equity Options; NASD Reminds Members Of Their Reporting Obligations When Trading Options**

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

On January 11, 1999, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 2860(b)(3)(A), tripling the position limits on standardized (exchange-traded) equity options to make them equivalent to the limits on conventional (over-the-counter) equity options overlying the same security. These amendments were effective upon approval.

Separately, NASD Regulation's Market Regulation Department is reminding members of their reporting obligations when trading options.

Questions regarding the amendments to Rule 2860(b)(3)(A) may be directed to Gary L. Goldsholle, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) at (202) 728-8104; and questions regarding members' reporting obligations may be directed to Joseph Alotto, Supervisor, Market Regulation Department, NASD Regulation, at (301) 590-6845.

## Tripling Standardized Equity Options Position Limits

NASD Rule 2860(b)(3)(A) governs members' activities in standardized, conventional, and FLEX equity options. Standardized options are exchange-traded options issued by the Options Clearing Corporation (OCC) that have standardized terms for strike prices, expiration dates, and the amount of the underlying security. Conventional options are any other options contracts not issued, or subject to issuance, by the OCC. Conventional options are also frequently referred to as over-the-counter options. FLEX equity options are exchange-traded options issued by OCC that give investors the ability, within specified limits, to

designate terms of the option (*i.e.*, the exercise price, exercise style, expiration date, or option type).

NASD Rule 2860(b)(3)(A) imposes a ceiling or position limit on the number of conventional and standardized equity options contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by a member, a person associated with a member, a customer, or a group of customers acting in concert. NASD Rule 2860(b)(3)(A) provides that the position limits for equity options are determined according to a five-tiered system in which more actively-traded stocks with larger public floats are subject to higher position limits.

The SEC recently approved amendments tripling the limits for standardized equity options.<sup>1</sup> Under the new amendments, the five tiers are: 13,500; 22,500; 31,500; 60,000; and 75,000 contracts. These new limits conform the NASD's position limits for standardized equity options to the increased limits recently approved by the SEC for the options exchanges.<sup>2</sup> These new limits are also the same tiers that are in effect for conventional equity options. Members are reminded that the NASD's limits on standardized equity options are applicable only to those members who are not also members of the exchange on which the options are traded. Members that conduct a business in standardized options but are not members of the exchange on which such options are listed and traded are commonly referred to as "access" firms. By contrast, the NASD's limits on conventional equity options are applicable to all members.

Members also should note that as part of the recent amendments, NASD Regulation deleted the provisions of Rule 2860(b)(3)(A) that established that the limits for

conventional equity options are "three times" the limits for standardized equity options overlying the same security. This numerical relationship was established in a prior rule change<sup>3</sup> that was designed to increase the limits on conventional equity options to correspond to the numerical limits that were previously in effect with respect to FLEX equity options.<sup>4</sup> Under current rules, the position limits for standardized and conventional equity options are the same. Thus, the recent increase in limits for standardized equity option position limits did not correspondingly increase the position limits for conventional equity options.

### **NASD Reminds Members Of Their Reporting Obligations When Trading Options**

Rule 2860(b)(5) addresses members' options reporting obligations and is applicable to all standardized and FLEX option positions established by "access" firms or their customers, and all conventional option positions established by member firms and their customers. Rule 2860(b)(5) requires members to file a report with the NASD if the member's account, a customer's account, or an associated person's account establishes an aggregate options position of 200 or more options contracts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index. In aggregating options on the "same side of the market," long calls in any class of options should be combined with short puts on the same class and short calls should be combined with long puts to determine whether the member has a reporting obligation. Members should not "net out" long and short positions for the same class in the same account (e.g., 200 contracts long and 200 contracts short in the same options class in the same account should *both* be reported).

Members have an obligation to report option positions in the following situations:

- A long and/or short position of 200 or more options contracts of the put class and the call class on the same side of the market is established in the account.
- There is an increase in a previously reported position (e.g., from 225 to 250 contracts).
- There is a decrease in a previously reported position to a position of less than 200 contracts (e.g., 225 contracts to 199 contracts). Once a position has been reduced to less than 200 contracts, no subsequent position reports would have to be filed until the account once again established a long and/or short position of 200 or more contracts of the put class and call class on the same side of the market.

Members are also reminded that intra-day option positions of 200 or more contracts of the put class and the call class on the same side of the market covering the same underlying security or index must be reported even if the position decreases to less than 200 contracts by the end of the day. For example, if an option position increases from 199 contracts to 225 contracts at 11:00 a.m., and then at 3:00 p.m. there is a decrease in the position from 225 contracts to 199 contracts, the member firm must file a report to reflect the position at 11:00 a.m. that exceeded 200 option contracts, even though the option position at the end of the day was less than 200 contracts. The member firm is also required to file a report reflecting the decrease in the option position.

To report an option position, members should complete the Option Position Summary Report

and file the report with NASD Regulation Market Regulation Department no later than each business day following the establishment of the reportable position. Following this *Notice* are a copy of the Option Position Summary Report, instructions, and a sample report.

### **Text Of Amendments**

(Note: New text is underlined; deletions are bracketed.)

### **Rule 2860. Options.**

#### **(3) Position Limits**

(A) Stock Options--Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) [4,500] 13,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

(ii) [7,500] 22,500 options contracts of the put class and the call class on

the same side of the market covering the same underlying security, providing that the [7,500] 22,500 contract position limit shall only be available for option contracts on securities which underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of [7,500] 22,500 option contracts; or

(iii) [10,500] 31,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security providing that the [10,500] 31,500 contract position limit shall only be available for option contracts on securities which underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of [10,500] 31,500 option contracts; or

(iv) [20,000] 60,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the [20,000] 60,000 contract position limit shall only be available for option contracts on securities which underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of [20,000] 60,000 option contracts; or

(v) [25,000] 75,000 options contracts of the put and the call class on the

same side of the market covering the same underlying security, providing that the [25,000] 75,000 contract position limit shall only be available for option contracts on securities which underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of [25,000] 75,000 option contracts; or

\* \* \*

(ix) Conventional Equity Options

a. For purposes of this paragraph (b), standardized equity options contracts of the put class and call class on the same side of the market overlying the same security shall not be aggregated with conventional equity options contracts or FLEX Equity Options contracts overlying the same security on the same side of the market. Conventional equity options contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a position limit equal to the greater of:

1. [three times] the basic limit of [4,500] 13,500 contracts, or
2. [three times] any standardized equity options position limit as set forth in subparagraphs (b)(3)(A)(ii)

through (v) for which the underlying security qualifies or would be able to qualify.

b. In order for a security not subject to standardized equity options trading to qualify for an options position limit of more than [4,500] 13,500 contracts, a member must first demonstrate to the Association's Market Regulation Department that the underlying security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

## Endnotes

<sup>1</sup>64 Fed. Reg. 2930 (January 19, 1999).

<sup>2</sup>See 64 Fed. Reg. 1842 (January 12, 1999) (approving File Nos. SR-CBOE-98-25, SR-Amex-98-22, SR-PCX-98-33, and SR-Phlx-98-36).

<sup>3</sup>63 Fed. Reg. 23317 (April 28, 1998).

<sup>4</sup>Position limits on FLEX equity options have been eliminated pursuant to a two-year pilot program. See 62 Fed. Reg. 48638 (September 16, 1997).

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# SAMPLE REPORT

NAME OF FIRM: ABC BROKERAGE  
 PREPARED BY: JOE SMITH

FIRM SYMBOL: ABCD  
 PHONE: 212-212-2121

(Indicate counterparty to transaction if other than reporting firm.)

ACCOUNT INFORMATION		OPTION CONTRACT INFORMATION						UNDERLYING SECURITY					
TAX ID or Social Sec.#	Account Number Name Address	Long/ Short	Number of Contracts	Put/ Call	Symbol	Trade Date	Expiration Date	Strike Price	Trade Price per Contract	No. of Shares per Contract*	Open/ Close	Long/ Short	Number of Shares
23-1234567	AA-12345-010 ABC BROKERAGE WALL STREET NEW YORK, NY	SHORT SHORT SHORT SHORT	250 500 100 50	CALL CALL CALL CALL	XYZ XYZ XYZ XYZ	3/5/97 3/5/97 3/6/97 3/12/97	3/6/98 3/6/98 3/9/98 3/13/98	10.25 10.39 10.00 9.88	1.9375 1.15 1.4375 1.25	0 0 0 0	LONG	90,000	
123-45-6789	AA-98765-101 JOHN DOE MAIN STREET NEW YORK, NY	LONG LONG LONG LONG	250 500 100 50	CALL CALL CALL CALL	XYZ XYZ XYZ XYZ	3/5/97 3/5/97 3/6/97 3/12/97	3/6/98 3/6/98 3/9/98 3/13/98	10.25 10.39 10.00 9.88	1.9375 1.15 1.4375 1.25	0 0 0 0	LONG	90,000	

\* required if other than 100 shares per contract

## **INSTRUCTIONS**

### **NASD CONDUCT RULE: 2860-1 (5) REPORTING OF OPTION POSITIONS**

This rule is applicable to member transactions in **exchange-listed options** which are effected on an "access" basis (i.e., transactions effected by NASD members that conduct a business in exchange listed options but which are not members of any option exchange upon which options are listed and traded) and to all member transactions in **conventional, over-the-counter option contracts**. This rule requires every member to file a report on each business day following the establishment of long and/or short positions of 200 or more option contracts of the put class and the call class on the same side of the market in the same underlying security in each account in which the member has an interest; in each account of a partner, officer, director or employee of such member; and, in each customer account. Positions of 200 or more contracts, long or short, of the same class, not just the same series, should be reported.

It is important to include the tax identification number (social security number) as well as other information for each person having an interest in the account. The symbol (P) should be used to identify put options and the symbol (C) should be used to identify call options under the heading "Option Class/Type".

In aggregating options on the "same side of the market" long calls in any class of options should be combined with short puts of the same class and short calls should be combined with long puts to determine a reportable position. Long and short positions for the same class should not be netted or combined (e.g., both 200 contracts long and 200 contracts short for the same class in the same account should be reported and 100 contracts long and 100 contracts short for the same class in the same account should not be reported).

An option position summary report should be filed in each of the following situations:

- (a) a long and/or short position of 200 or more contracts of the put class and the call class on the same side of the market is established in an account;
- (b) there is an increase in a previously reported position (e.g., from 250 contracts to 275 contracts); or,
- (c) there is a decrease in a previously reported position to a position less than 200 contracts (e.g., from 250 contracts to 199 contracts). Once a position has been reduced to less than 200 contracts, no subsequent position report would have to be filed until the account once again established a long/and or short position of 200 or more contracts of the put class and the call class on the same side of the market.

**For more information regarding this report, see NASD Rules of Conduct 2860-1 (5) - Reporting of Option Positions.**

This form may be duplicated at your convenience. Copies may also be obtained from your local NASD Regulation, Inc. District Office.

Completed reports should be sent to the attention of **Karen Herlihy, Brian Shute, Syvera O'Pharrow, Susan Polaski or Katherine Price** at **NASD Regulation, Inc., Market Regulation Department, 9513 Key West Ave. Rockville, MD 20850** or sent via facsimile to **301-590-6481**.

Any questions regarding the NASD Regulation's reporting requirements should be directed to Joseph Alotto at 301-590-6845.

**NASD Regulation, Inc.**  
**OPTION POSITION SUMMARY REPORT**

Pursuant to NASD Conduct Rule 2860, this report must be completed and filed with the Market Regulation Department each business day following the establishment of a long and/or short position of 200 conventional and/or listed option contracts (or combination of both) or more of the put class and the call class on the same side of the market in the same underlying security. (See reverse side for instructions).

THE FOLLOWING INFORMATION MUST BE COMPLETED IN ITS ENTIRETY

Return To: Syvera O'Pharrow or Karen Herlihy  
NASD Regulation, Inc.  
Market Regulation Dept.  
9513 Key West Ave.  
Rockville, MD 20850

Tel: 301-590-6452 or 301-590-6470  
Fax: 301-590-6481

\* required if other than 100 shares per contract

# NASD Notice to Members 99-21

## The Nasdaq Stock Market Eliminates The SOES Five-Minute Presumption

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

On January 13, 1999, The Nasdaq Stock Market, Inc. (Nasdaq®), filed a rule change with the Securities and Exchange Commission (SEC or Commission) that would eliminate the single investment decision aggregation presumption for Small Order Execution System™ (SOES™) orders entered within five minutes of each other contained in National Association of Securities Dealers, Inc. (NASD®) *Notice to Members 88-61*.<sup>1</sup> The elimination of the presumption is effective immediately.

Questions regarding the elimination of the five-minute presumption should be directed to Robert E. Aber, Senior Vice President and General Counsel, Office of General Counsel, The Nasdaq Stock Market, at (202) 728-8290; or Thomas P. Moran, Assistant General Counsel, Office of General Counsel, The Nasdaq Stock Market, at (202) 728-8401.

### Background And Summary

SOES was developed in 1984 to provide a simple and efficient means to execute the small agency orders of public customers at the inside quote. Trading is done automatically and is negotiation-free. SOES participation is mandatory for all Market Makers in Nasdaq National Market® securities and each Nasdaq issue is assigned a maximum SOES order share size limit of either 200, 500, or 1,000 shares which is determined by the particular trading characteristics of that security.

NASD Rule 4730(c)(3) prohibits the splitting of orders larger than the applicable SOES maximum share size order limit into smaller parts so as to make any of those smaller parts eligible for entry into SOES. For example, it is a violation of NASD rules to break up a 5,000-share order for a Nasdaq security having a 1,000-share SOES order entry limit into five separate 1,000-share seg-

ments and then enter each of those five 1,000-share segments into SOES. Likewise, the splitting of a 5,000-share order into a 4,000-share SelectNet™ order and a 1,000-share SOES order would, in Nasdaq's view, also violate the prohibition on order splitting.

In *Notice to Members 88-61*, the NASD, interpreting Rule 4730(c)(3), established a presumption that orders entered within five minutes of each other into any Nasdaq system were based on a single investment decision and that the share amounts purchased or sold by those trades were to be aggregated together to determine if the orders, when combined, violated Rule 4730's limits on SOES usage.

On January 13, 1999, Nasdaq filed a proposed rule change to eliminate the single investment decision aggregation presumption. Nasdaq eliminated the presumption in response to SEC concerns raised in communications with Nasdaq staff and NASD senior management about various aspects of the presumption including what the Commission perceived as the lack of guidelines as to how the presumption could ever be rebutted.<sup>2</sup> The Commission also questioned the continued use of such a presumption given the advent of the Actual Size Rule (ASR). The ASR now allows Market Makers to display the actual size of their trading interest in their quotes and replaced previous mandates that Market Makers display a minimum share size equal to the SOES order size of the quoted security.

Given the SEC's concerns about the practicability of rebutting the presumption, and the ASR's removal of artificial mandatory minimum quote increments which now increase the ability of Market Makers to manage their exposure to automatic order

execution, Nasdaq has determined to eliminate the presumption.

While eliminating the single investment decision presumption, it is important to note that the restrictions on splitting up larger orders to obtain SOES access contained in NASD Rule 4730(c)(3) remain in effect and, if violated, may still serve as the basis for disciplinary action by NASD Regulation, Inc. The elimination of

the presumption changes only the procedures for enforcing the rule, and makes no changes to the rule's substantive mandates. In short, the splitting of larger orders into smaller parts to obtain SOES access remains prohibited.

### **Endnotes**

<sup>1</sup> See SEC Release No. 34-41015 (February 3, 1999), 64 FR 6415 (February 9, 1999).

<sup>2</sup> Letter from Richard R. Lindsey, Director, United States Securities and Exchange Commission, to Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market, Inc. dated June 16, 1997.

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# NASD Notice to Members 99-22

Maximum SOES Order  
Sizes Set To Change  
April 1, 1999

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

Effective April 1, 1999, the maximum Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) order sizes for 383 Nasdaq National Market<sup>®</sup> (NNM) securities will be revised in accordance with National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 4710(g).

For more information, please contact Nasdaq<sup>®</sup> Market Operations at (203) 378-0284.

## Description

Under Rule 4710, the maximum SOES order size for an NNM security is 1,000, 500, or 200 shares, depending on the trading characteristics of the security. The Nasdaq Workstation II<sup>®</sup> (NWII) indicates the maximum SOES order size for each NNM security. The indicator "NM10," "NM5," or "NM2" displayed in NWII corresponds to a maximum SOES order size of 1,000, 500, or 200 shares, respectively.<sup>1</sup>

The criteria for establishing maximum SOES order sizes are as follows:

- (1) a 1,000-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to \$100, and three or more Market Makers;
- (2) a 500-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to \$150, and two or more Market Makers; and
- (3) a 200-share maximum order size shall apply to NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price of less than or equal to

\$250, and two or more Market Makers.

In accordance with Rule 4710, Nasdaq periodically reviews the maximum SOES order size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant an adjustment. Such a review was conducted using data as of December 31, 1998, pursuant to the aforementioned standards. The maximum SOES order-size changes called for by this review are being implemented with three exceptions.

- First, issues were not permitted to move more than one size level. For example, if an issue was previously categorized in the 1,000-share level, it would not be permitted to move to the 200-share level, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share level as a result of any single review.
- Second, for securities priced below \$1 where the reranking called for a reduction in the level, the maximum SOES order size was not reduced.
- Third, for the top 50 Nasdaq securities based on market capitalization, the maximum SOES order sizes were not reduced, regardless of whether the reranking called for a reduction.

In addition, with respect to initial public offerings (IPOs), the SOES order-size reranking procedures provide that a security must first be traded on Nasdaq for at least 45 days before it is eligible to be reclassified.

Thus, IPOs listed on Nasdaq within the 45 days prior to December 31, 1998, were not subject to SOES order-size reranking procedures.

Following is a listing of the 383 NNM issues that will have the maximum SOES order size changed on April 1, 1999.

### Endnote

<sup>1</sup> Previously, Nasdaq Market Makers were required to maintain a minimum quotation

size for an NNM security in an amount equal to the maximum SOES order size for that security. See generally, NASD Rule 4613(a)(1) - (2). On July 15, 1998, the Securities and Exchange Commission approved an amendment to NASD Rule 4613(a)(1)(C), which reduced the minimum quotation size for all Nasdaq securities to one normal trad-

ing unit when a Market Maker is not displaying a limit order, and which thus eliminated the requirement that Market Makers quote a size equal to the maximum SOES order size.

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### Maximum SOES Order Size Changes In NNM Securities All Issues In Alphabetical Order By Security Name (Effective April 1, 1999)

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
SRCEP	1ST SOURCE CAP I P	500	200	BMCCP	BANDO MCGLOC PFD A	200	500
TCHC	21ST CENTURY HLDG	200	500	BNSC	BANK OF SANTA CLAR	200	500
TFSM	24/7 MEDIA INC	500	1000	BWFC	BANK WEST FIN CORP	500	1000
<b>A</b>				BKFR	BANKFIRST CORP	200	500
ACLNF	A C L N LIMITED	500	1000	BAYB	BAY BANCSHARES	1000	500
ABGX	ABGENIX INC	500	1000	BCSB	BCSB BANKCORP	500	1000
ACTU	ACTUATE SOFTWARE	500	1000	BEBE	BEBE STORES INC	500	1000
ADGO	ADAMS GOLF INC	500	1000	BNHNA	BENIHANA INC A	500	1000
AAABB	ADMIRALTY BCP B	200	500	BYND	BEYOND.COM CORP	500	1000
ALGX	ALLEGIANCE TELECOM	500	1000	BEERF	BIG ROCK BREWERY LTD	200	500
ALLN	ALLIN COMMUNICATION	1000	500	BVIEW	BINDVIEW DEV CORP	500	1000
AHAA	ALPHA INDS INC	500	1000	RINO	BLUE RHINO CORP	500	1000
AIRS	AMERICAN AIRCARRIE	500	1000	BOGN	BOGEN COMMUN INT	500	1000
AXTI	AMERICAN XTAL TECH	500	1000	BOGNW	BOGEN COMMUN WT	500	1000
AMPI	AMPLICON INC	1000	500	BORAY	BORAL LTD ADS	500	200
AFSC	ANCHOR FIN CORP	500	1000	BPFH	BOSTON PVT FIN	1000	500
ANDR	ANDERSEN GROUP INC	500	200	BOYD	BOYD BROS TRANS IN	1000	500
ANSR	ANSWERTHINK CONS	500	1000	BNBC	BROAD NATL BNCP	500	1000
ASYCF	ARCHITEL SYST CORP	500	1000	BCST	BROADCAST.COM	500	1000
ARSCW	ARIS CORP WTS	500	1000	BRCM	BROADCOM CORP CL A	1000	500
ASYM	ASYMETRIX LEARNING	500	1000	<b>C</b>			
ATPC	ATHEY PRODUCTS CP	1000	500	CBBI	C B BANCSHARES	1000	500
ADSC	ATLANTIC DATA SVCS	500	1000	CEMX	C E M CP	1000	500
AIII	AUTOLOGIC INFO INT	500	1000	CERB	C E R B C O INC	1000	500
AXHM	AXIOHM TRANS SOL	200	500	CFCI	C F C INTL INC	500	1000
AZTC	AZTEC TECH PTNRS	500	1000	FLYAF	C H C HELICO CL A	500	200
<b>B</b>				CNBF	C N B FINANCIAL CP	1000	500
BESIF	B E SEMICON ORD SHRS	200	500	CRHCY	C R H PLC ADR	500	1000
BFEN	B F ENTERPRISES IN	200	500	CSPI	C S P INC	1000	500
BHAG	B H A GP HLDGS	500	1000	CIBN	CALIFORNIA IND BNC	200	500
BNBCP	B N B CAP TR PFD	500	200	CNEBF	CALL-NET ENTRPR CL B	200	500
BBAR	BALANCE BAR CO	500	1000	CNTL	CANTEL INDS INC	1000	500
BPAO	BALDWIN PIANO ORGA	500	1000	CCBG	CAPITAL CITY BANK	1000	500
				CSWC	CAPITAL SOUTHWEST	500	1000
				CPRK	CAPROCK COMM	200	500
				CANI	CARREKER-ANTINORI	500	1000

<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>	<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>
CRRB	CARROLLTON BANCORP	200	500		<b>E</b>		
CASA	CASA OLE' RESTRS I	1000	500	EGLB	EAGLE BANC GROUP IN	500	1000
CECX	CASTLE ENERGY CP	1000	500	EWBX	EARTH WEB INC	200	500
CLPA	CELL PATHWAYS INC	200	500	ELON	ECHELON CORP	500	1000
CFAC	CENTRAL FIN ACCEPT	500	1000	ECLP	ECLIPSY'S CORP	500	1000
CITZ	CFS BANCORP INC	500	1000	ELBO	ELECTRONICS BOUT	500	1000
CHERA	CHERRY CP CL A	1000	500	ENBRF	ENBRIDGE INC	500	200
CNBA	CHESTER BANCORP IN	1000	500	ENGDF	ENGEL GNRL DEV SE	500	1000
CITC	CITADEL COMMUN CP	500	1000	ENSR	ENSTAR INC	1000	500
CHCOP	CITY HLDG CAP TR	200	500	ENTU	ENTRUST TECHS INC	200	500
CIVC	CIVIC BANCORP	1000	500	EQSB	EQUITABLE FED SAV	500	1000
CLKB	CLARK/BARDES HLDGS	200	500	ESBF	ESB FINANCIAL	1000	500
CLRS	CLARUS CORP	500	1000	ESCA	ESCALADE INC	1000	500
CCHE	CLINICHEM A	500	1000	EMCC	EUROPEAN MICRO HLD	500	1000
CMGI	CMG INC	1000	500	EXCO	EXCO RESOURCES INC	200	500
CNYF	CNY FINANCIAL CP	200	500		<b>F</b>		
CTBP	COAST BANCORP	500	200	FMCO	F M S FINANCIAL CP	1000	500
CTSH	COGNIZANT TECH SOL	500	1000	FSBI	FIDELITY BANCORP I	200	500
CSON	COHESION TECHS	500	1000	FFFLP	FIDELITY CAP TR I	500	1000
CLTX	COLLATERAL THERAP	500	1000	FMST	FINISHMASTER INC	500	1000
COBZ	COLORADO BUS BCSHS	500	1000	FBSI	FIRST BANCSHARES I	500	200
CBBO	COLUMBIA BANCORP	200	500	FBCG	FIRST BKG CO SE GA	200	500
CFKY	COLUMBIA FIN KY	1000	500	BUSE	FIRST BUSEY CL A	200	500
CMTO	COM21 INC	500	1000	FFES	FIRST FED S L E.HT	500	1000
CLBK	COMMERCIAL BANKSHR	1000	500	THFF	FIRST FIN CP (IN)	1000	500
CFIC	COMMUNITY FIN CP	500	1000	FTFN	FIRST FIN CP (RI)	200	500
CFBC	COMMUNITY FIRST BN	1000	500	FFIN	FIRST FINL BKSHS I	500	1000
CDIR	CONCEPTS DIRECT	500	1000	FFHS	FIRST FRANKLIN CP	500	200
COOP	COOPERATIVE BKSHS	500	1000	FGHC	FIRST GEORG HLDGS	1000	500
COMMF	CORECOMM LTD	200	500	FKAN	FIRST KANSAS FIN	500	1000
DLVRY	CORTECS PLC ADS	500	1000	CASH	FIRST MIDWST FIN I	1000	500
CULS	COST-U-LESS INC	500	1000	FMSB	FIRST MUTUAL SVGS	1000	500
CRRC	COURIER CP	1000	500	FRGB	FIRST REGIONAL BNC	500	200
CYOE	COYOTE NETWORK SYS	200	500	FUNC	FIRST UNITED CORP	1000	500
CRDT	CREDITRUST CORP	500	1000	FLBK	FLORIDA BANKS INC	500	1000
CTBIP	CTBI PFD CAP TRUST	500	200	FCIN	FLOUR CITY INTL	500	1000
CMLS	CUMULUS MEDIA INC	500	1000	FKKY	FRANKFORT FRST	1000	500
CURTF	CURTIS INTL LTD	200	500	FSVBP	FRANKLIN FIN PD A	1000	500
COOL	CYBERIAN OUTPOST	500	1000	FREEY	FREEPAGES GR PLC ADR	200	500
<b>D</b>				FTBK	FRONTIER FIN CORP	1000	500
DECC	D & E COMMUNICATIO	500	1000	FFHH	FSF FINANCIAL CP	1000	500
DLTDF	DELPHI INTL LTD	200	500	FTNB	FULTON BANCORP INC	500	1000
DCBI	DELPHOS CITIZENS B	1000	500		<b>G</b>		
DCBK	DESERT COMMUNITY B	500	200	GLDBP	GBCI CAP TR PFD	200	500
DRIV	DIGITAL RIVER INC	500	1000	GFLSP	GCB CAP TRUST PFD	200	500
DOCDF	DOCDATA NV	500	1000	GENBB	GENESEE CP B	500	1000
DXCPO	DYNEX CAPITAL PFD B	500	1000				

<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>	<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>
GZMO	GENZYME MOLEC	200	500	IYCOY	ITO YOKADO CO ADR	500	1000
GCTY	GEOCITIES	500	1000	CMIV	IVI CHECKMATE CORP	500	1000
GSCI	GEOSCIENCE CP	1000	500	XOSY	IXOS SOFTWARE ADS	200	500
GIGX	GIGA INFO GROUP	500	1000	<b>J</b>			
GFCO	GLENWAY FIN CP	500	200				
GBLX	GLOBAL CROSSING	500	1000				
GISX	GLOBAL IMAGING SYS	500	1000		JEFFP	J B I CAPITAL TR PFD	500
VINT	GOLDEN ST VINT B	500	1000		JPSP	JPS PACKAGING CO	500
GNCNF	GORAN CAPITAL INC	500	1000		JPST	JPS TEXTILE GRP	500
GUCO	GRAND UNION CO	200	500				
GTPS	GREAT AMER BNCP IN	1000	500				
GFLS	GREATER COMMUNITY	500	1000				
<b>H</b>				KASP	KASPER ASL LTD	500	1000
				KESI	KENTUCKY ELEC STEE	500	1000
				KNAP	KNAPE AND VOGT MFG	1000	500
HPSC	H P S C INC	1000	500	NITE	KNIGHT/TRIMARK GR	500	1000
HACHA	HACH COMPANY CL A	500	1000	KOSS	KOSS CP	1000	500
HAHN	HAHN AUTOMOTIVE	200	500	<b>L</b>			
HCRC	HALLWOOD CONS RES	500	200				
HNBC	HARLEYSVILLE NATL	500	1000				
HFGI	HARRINGTON FIN GRP	1000	500		LXBK	L S B BANCSHARES N	1000
HAVA	HARVARD IND NEW	200	500		LABH	LAB HOLDINGS INC	1000
HAST	HASTINGS ENT INC	500	1000		LAND	LANDAIR CORP	200
HMLK	HEMLOCK FED FIN CO	1000	500		LARK	LANDMARK BSCHS INC	500
HTBK	HERITAGE COMMERCE	500	200		LWIN	LEAP WIRELESS	200
HBNK	HIGHLAND BANCORP	500	200		LGSAF	LGS GROUP CL A	200
HORT	HINES HORTICULTURE	500	1000		LIBB	LIBERTY BANCORP	500
HOEN	HOENIG GP INC	1000	500	<b>M</b>	LIQB	LIQUI BOX CP	500
HLGCF	HOLLINGER INC	500	200		LMIA	LMI AEROSPACE INC	500
HEPH	HOLLIS-EDEN PHARM	500	1000		LONDY	LONDON INTL PLC ADR	200
HOLO	HOLOPAK TECHS INC	500	1000		LICB	LONG ISLAND FIN	500
HBFW	HOME BANCORP	1000	500		LSBI	LSB FINANCIAL CP	500
HLFC	HOME LOAN FINL CP	500	1000				
HCAR	HOMETOWN AUTO CL A	500	1000				
HCOW	HORIZON ORGANIC HD	500	1000				
HRBT	HUDSON RVR BNCP	500	1000				
<b>I</b>				MFRI	M F R I INC	500	1000
				MLCH	M L C HOLDINGS INC	500	1000
				MKFCF	MACKENZIE FIN CP	500	200
				MTLX	MARINE TRANSPORT	500	1000
ICOGF	ICO GLOBAL COMM	500	1000	FMARP	MARINER CAP TR PFD	500	1000
IDGB	IDG BOOKS WRLDWISE	500	1000	MVII	MARK VII INC	1000	500
INDBP	INDEP CAP TR I PFD	200	500	MARSA	MARSH SUPERMARKETS A	1000	500
INDYY	INDEP ENERGY ADS	500	1000	MARSB	MARSH SUPERMARKETS B	500	1000
INHO	INDEPENDENCE HLDG	500	200	MASB	MASSBANK CP	500	1000
IHIIZ	INDUSTRIAL HLDG WT	200	500	MAGR	MASTER GRAPICS INC	500	1000
IMGK	INTERACTIVE MAGIC	500	1000	MATE	MATEWAN BCSHS INC	200	500
INTG	INTERGROUP CP THE	200	500	MAXE	MAX ERMAS RESTR IN	1000	500
IPLY	INTERPLAY ENT CORP	500	1000	MAXC	MAXCO INC	500	1000
IVBK	INTERVISUAL BOOKS	500	1000	MXTR	MAXTOR CORP	500	1000
ICUB	INTL INTEGRATION	500	1000	MFLR	MAYFLOWER CO OP BK	200	500
ISKO	ISCO INC	500	1000	MDCA	MDC COMMUN CORP	200	500

<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>	<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>
MBIA	MERCHANTS BNCP IL	1000	500	PERM	PERMANENT BNCP INC	500	1000
MRET	MERIT HOLDING CP	1000	500	PHYL	PHIL CONS GR PRIDE	500	200
METFP	METROPOLITAN CAP	1000	500	PILT	PILOT NETWORK SVC	500	1000
MSTR	MICROSTRATEGY INC	500	1000	PHFCP	PITT HOME CAP TR	200	500
MDST	MID-STATE BCSH	500	1000	POSIF	POINT OF SALE LTD	500	1000
MBSI	MILLER BUILDING SY	1000	500	PNTE	POINTE FINCL CORP	500	1000
MNMD	MINIMED INC	1000	500	BPOPP	POPULAR INC PFD A	500	200
MMAN	MINUTEMAN INTL INC	200	500	PLSIA	PREMIER LASER SY	500	1000
MIPS	MIPS TECHS INC	500	1000	PRENP	PRICE ENTERPR PFD	200	500
MCRI	MONARCH CASINO	500	1000	PSMT	PRICESMART INC	1000	500
MUEL	MUELLER PAUL CO	500	200	PDII	PROF DETAILED INC	500	1000
LABL	MULTI COLOR CP	500	1000	PRSP	PROSPERITY BNCSHS	200	500
<b>N</b>				PAMC	PROVIDENT AMER	200	500
NSDB	N S D BANCORP INC	200	500	PSBI	PSB BANCORP INC	500	1000
NSSC	NAPCO SEC SYS INC	1000	500	PULB	PULASKI FINL CORP	500	1000
NARA	NARA BANK N A	1000	500	PLFC	PULASKI FURNITURE	500	1000
NADX	NATL DENTEX CP	500	1000	<b>Q</b>			
NTOL	NATROL INC	500	1000	QCFB	Q C F BANCORP INC	500	200
FLYR	NAVIGANT INTL INC	500	1000	QLGC	QLOGIC CP	1000	500
NERAY	NERA AS ADR	500	1000	<b>R</b>			
NTBK	NET.BANK INC	200	500	RGFCP	R&G FIN CP PFD A	200	500
NETG	NETGRAVITY INC	500	1000	RAGS	RAG SHOPS INC	1000	500
NSOL	NETWORK SOLUTIONS	1000	500	RWKS	RAILWORKS CORP	500	1000
NBSC	NEW BRUNSWICK SCI	1000	500	RBOW	RAINBOW RENTALS	500	1000
NRTI	NOONEY REALTY TRUS	500	200	RDGE	READING ENT INC	500	1000
NSYS	NORTECH SYSTEMS IN	1000	500	RIGX	REALTY INFO GROUP	500	1000
NOVB	NORTH VALLEY BNCP	500	1000	REBC	REDWOOD EMPIRE BCP	200	500
NEIB	NORTHEAST IND BNCP	1000	500	RBCAA	REPUBLIC BCP CL A	500	1000
NSCF	NORTHSTAR COMPUTER	500	1000	RSTO	RESTORATION HARDWR	500	1000
TONSF	NOVAMERICAN STEEL	500	1000	RTSTD	RIGHT START INC (THE)	500	1000
<b>O</b>				RIFL	ROYAL PRECISION INC	500	1000
OLGR	OILGEAR CO	200	500	RUSMF	RUSSELL METALS	500	200
ODFL	OLD DOMINION FREIG	1000	500	<b>S</b>			
OLCWFF	OLICOM A/S WTS	500	1000	SGVB	S G V BANCORP INC	500	200
FIBR	OSICOM TECH	500	1000	STVI	S T V GROUP INC	500	1000
OWOS	OWOSO CP	500	1000	SAVB	SAVANNAH BNCP INC	500	200
<b>P</b>				SCCX	SCC COMMUNICATIONS	500	1000
PBCI	PAMRAPO BNCP INC	1000	500	SAVO	SCHULTZ SAV O STOR	500	1000
PGEOF	PARADIGM GEOPHYS	500	1000	STIZ	SCIENTIFIC TECH IN	500	1000
PCCIP	PCC CAPITAL I PFD	200	500	SCOT	SCOTT AND STRINGF	1000	500
PNNW	PENNICHUCK CP	200	500	SEWY	SEAWAY FOOD TOWN I	1000	500
PPCO	PENWEST PHARM	500	1000	SNFCA	SECURITY NATL FINL A	200	500
PSFC	PEOPLES-SIDNEY FIN	1000	500	SEVN	SEVENSON ENVIRONME	1000	500
PEBK	PEOPLES BANK	200	500	SFNCA	SIMMONS FIRST NATL A	1000	500
PEBO	PEOPLES BNCP INC	1000	500	SKYKEY	SKYEPharma PLC	500	1000

<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>	<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>
SECBY	SOCIETE EUR ADS B	200	500	ULTI	ULTIMATE SOFTWARE	500	1000
SWRX	SOFTWORKS INC	500	1000	UCFC	UNITED COMM FIN CP	500	1000
SOMR	SOMERSET GP INC TH	200	500	UNEWY	UNITED NEWS & MEDIA	500	200
SFFS	SOUND FED BANCORP	200	500	UNTY	UNITY BANCORP INC	200	500
SMBC	SOUTHERN MO BNCP I	1000	500	<b>V</b>			
OKSB	SOUTHWEST BNCP INC	1000	500	VSEC	V S E CP	200	500
SPZN	SPEIZMAN INDs INC	1000	500	VDRY	VACU DRY CO	200	500
STHLY	STET HELL ADS	500	1000	VNGI	VALLEY NATL GASES	1000	500
SCSAY	STOLT COMEX ADS	500	1000	VALU	VALUE LINE INC	500	1000
SUBK	SUFFOLK BNCP	500	1000	VTRAO	VBC CAPITAL I CAP	500	200
SNBCP	SUN CAPITAL TR PFD	500	200	VENT	VENTURIAN CP	500	1000
SNBCO	SUN CAPITL TR II	200	500	VITX	VI TECHNOLOGIES	500	1000
SUNH	SUNDANCE HOMES INC	500	1000	VLGEA	VILLAGE SUPER MKT A	1000	500
SNRS	SUNRISE TECHNOLOGIES	500	1000	VBNJ	VISTA BANCORP INC	1000	500
SPPR	SUPERTEL HOSPITALI	500	1000	<b>W</b>			
SIVBP	SVB CAPITAL I PFD	500	1000	WVFC	W V S FINANCIAL CP	1000	500
SVBF	SVB FIN SVCS INC	500	200	WBCO	WASHINGTON BKG CO	500	1000
SWMAY	SWEDISH MATCH AB ADR	500	1000	WCNX	WASTE CONNECTIONS	500	1000
SYNM	SYNTROLEUM CORP	500	1000	WEFC	WELLS FINANCIAL CP	1000	500
<b>T</b>				WCSTF	WESCAST INDs INC A	200	500
				WEBK	WEST ESSEX BANCORP	200	500
				WOFC	WESTERN OHIO FIN	1000	500
				WTFCP	WINTRUST CAP PFD	200	500
				WORK	WORKFLOW MGMT INC	500	1000
				WHRTF	WORLD HEART CORP	500	1000
				<b>X</b>			
<b>U</b>				XCED	XCEED INC	500	1000
UFPT	U F P TECH INC	500	1000	<b>Z</b>	ZVXI	ZEVEX INTL INC	200
UCBH	UCBH HOLDINGS INC	200	500				

# NASD Notice to Members 99-23

SEC Approves New Arbitration Fees; Effective March 18, 1999

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

On February 16, 1999, the Securities and Exchange Commission (SEC) approved amendments to the fee schedules for customer and member arbitrations contained in Rules 10205 and 10332 of the National Association of Securities Dealers, Inc. (NASD®) Code of Arbitration Procedure (Code). This is the first increase in these fees since 1990. The filing fees and hearing session deposits are being increased to permit the NASD to cover more of its costs of operating the arbitration forum from revenue generated by the users of the forum; however, a large portion of the operating costs are covered by surcharges and other fees imposed only on members. In addition, even though filing fees and hearing session deposits are being increased, the small percentage of arbitration fee revenue paid by customers versus the large percentage paid by members will remain approximately the same as in the past. Arbitrator honoraria are also being increased in order to attract and retain qualified arbitrators willing to devote the time necessary to thoroughly consider arbitration claims.

The filing fee and hearing session deposit increases will be effective on March 18, 1999, for all cases filed on or after the effective date of the amendments. The arbitrator honoraria increases will be effective for arbitrators appointed to hear cases filed on or after the effective date of the amendments. The text of the amendments, including the new fee schedules, follows this *Notice*.

Questions regarding this *Notice* may be directed to Tom Wynn, Associate Director, Office of Dispute Resolution, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) at (212) 858-4392; or Elliott R. Curzon, Assistant General Counsel, NASD Regulation, at (202) 728-8451.

## Background

Since its adoption of the Code in 1968, the NASD has subsidized a substantial portion of the cost of the arbitration program from general member assessment revenue. The current filing fee and hearing session deposit schedules in the Code have been in effect since 1990. Under the current schedule, only a relatively small portion of the cost of the program is paid by filing fees and hearing session deposits.

Because the NASD believes that the cost of the arbitration process should be borne by the users of the program, the organization has been engaged in an effort to develop a fee structure that accomplishes that goal without imposing significant burdens on public customers who bring arbitration claims to the NASD's forum.

The first step toward that goal occurred in January 1998 when the NASD adopted a new process fee imposed entirely on member firms named as parties to arbitration proceedings (see *Notice to Members* 98-01 (January 1998)). In addition, in July 1997, the NASD substantially increased the surcharge on members named as parties to arbitration proceedings. Both of these fees shift much of the cost of the arbitration program from general membership assessment revenue collected from all NASD members to specific fees imposed on members which are parties to arbitration proceedings.

The final step in revamping the fee structure is to increase the filing fees and hearing session deposits required for customer arbitrations and member arbitrations. In all cases, the NASD is attempting as much as possible to match the filing fees to the actual costs the NASD incurs in the average case. Similarly, the new hearing session deposit amounts reflect the NASD's actual costs of conducting hearings. Also, the initial costs to customers filing

arbitration claims will not increase substantially relative to the amount of the claim. Finally, because the NASD's experience shows that the large majority of fees assessed by arbitrators in an award are assessed against members and not customers, the NASD believes that the overall impact of the fee increases on customers will be small.

## Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

### IM-10104. Arbitrator's Honorarium

All persons [serving on panels of arbitrators pursuant to Rule 10104 of] selected to serve as arbitrators pursuant to the Association's Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate [while in the performance of said duties].

The honorarium shall be \$[150]200 for [a single] each hearing session [, \$225 for a double session], \$50 for travel to a canceled hearing, and \$[50]75 per day additional honorarium to the chairperson of the panel. The honorarium for a case not requiring a hearing [is \$75 per case] shall be \$125.

### 10205. Schedule of Fees for Industry and Clearing Controversies

- (a) At the time of filing a Claim, Counterclaim, Third Party Claim, or Cross-Claim in an industry or clearing controversy which is required to be submitted to arbitration before the Association as set forth in Rule 10201, above, a party who is a member shall pay a non-refundable filing fee and shall remit a hearing session deposit to the Association in the amounts stated in paragraph (k) unless such fee or deposit is specifically waived by the Director of Arbitration. A party who is an associated person shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified for customer claimants in Rule 10332. If the associated person is a joint claimant with a member, the member shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified in paragraph (k) of this Rule. Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under the paragraph (k) below.
- (b) No change
- (c) No change
- (d) No change
- (e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing fee assessed on a party who is a member shall be \$500. If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the hearing session deposit to be remitted by a party shall be \$1000 [\$600]. These amounts may be adjusted by the Director of Arbitration or the panel of arbitrators may require the maximum amount specified in the schedule [\$1,000].
- (f) No change
- (g) No change
- (h) No change
- (i) If an eligible matter is submitted for arbitration as a large and complex case, under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334(b), the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over \$10,000,000 [\$5,000,000].
- (j) No change

(k) Schedule of Fees

**Schedule of Fees**

<b>Amount in Dispute (Exclusive of Interest and Expenses)</b>	Claim Filing Fee	<u>Deposit for Cases to be Decided on the Paper Record</u>		Hearing Session Deposit
		[Simplified <sup>1</sup> ]	One Arbitrator <sup>1[2]</sup>	Three Arbitrators <sup>2[3]</sup>
\$ .01 -- \$1,000	\$ <u>200</u> [500]	\$ <u>25</u> [ 75]	\$ <u>25</u> [300]	NA
\$1,000.01-\$2,500	\$ <u>300</u> [500]	\$ <u>50</u> [ 75]	\$ <u>50</u> [300]	NA
\$2,500.01-\$5,000	\$ <u>400</u> [500]	\$ <u>125</u> [ 75]	\$ <u>125</u> [300]	NA
\$5,000.01-\$10,000	\$ <u>500</u>	\$ <u>250</u> [ 75]	\$ <u>250</u> [300]	NA
\$10,000.01-\$ <u>25,000</u>	\$ <u>750</u>	\$ <u>300</u>	\$ <u>450</u>	NA
<u>\$25,000.01-\$30,000</u>	<u>\$1,000</u> [500]	NA	\$ <u>450</u> [300]	\$ 600
\$30,000.01-\$50,000	\$ <u>1,000</u> [500]	NA	\$ <u>450</u> [300]	\$ 600
\$50,000.01- \$100,000	\$ <u>1,000</u> [500]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>750</u> [ 600]
\$100,000.01-\$500,000	\$ <u>1,000</u> [500]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>1,125</u> [ 750]
\$500,000.01-\$1,000,000	\$ <u>1,250</u>	NA	\$ <u>450</u> <sup>3</sup>	\$ <u>1,200</u>
\$1,000,000.01-\$5,000,000	\$ <u>2,000</u> [500]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>1,200</u> [ 1,000]
<u>[Over]\$5,000,000.01-</u>				
<u>\$10,000,000.00</u>	<u>\$2,500</u> [500]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>1,200</u> [ 1,500]
<u>Over \$10,000,000</u>	<u>\$5,000</u>	NA	\$ <u>450</u> <sup>3</sup>	\$ <u>1,200</u>

<sup>1</sup>Simplified Arbitration (Without Hearing)

<sup>1[2]</sup>The dispute is resolved by one arbitrator per hearing session, including pre-hearing conferences. [(Per Hearing Session)]

<sup>2[3]</sup>The dispute is resolved by three [or more] arbitrators per hearing session. [(Per hearing session)]

<sup>3[4]</sup>Fee applies only to pre-hearing conferences [Only] with a single arbitrator.

\* \* \* \*

**10332. Schedule of Fees for Customer Disputes**

(a) No change

or such greater or lesser amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed the maximum amount specified in the schedule [\$1,000].

fees for claims over \$10,000,000 [\$5,000,000].

(b) No change

(i) No change

(c) No change

(j) No change

(d ) No change

(k) Schedule of Fees

(e) If the dispute, claim, or controversy does not involve, disclose, or specify a money claim, the non-refundable filing fee for a public customer shall be \$250 and the non-refundable filing fee for an industry party shall be \$500[.00]. The hearing session deposit to be remitted by a party shall be \$1000 [\$600]

(h) If an eligible matter is submitted for arbitration as a large and complex case under the procedures set forth in Rule 10334, or under procedures agreed upon by the parties, following the Administrative Conference specified in Rule 10334(b), the fees and deposits for such matter shall be those set forth in the schedule of

For purposes of the schedule of fees, the term "claim" includes Claims, Counterclaims, Third Party Claims, and Cross-Claims. Any such claim made by a customer or associated person is treated as a customer claim for purposes of the schedule of fees. Any such claim made by a member [or associated person of a member] is an industry claim.

### **Customer or Associated Person Claimant**

<b>Amount in Dispute (Exclusive of Interest and Expenses)</b>	Claim Filing Fee	<u><b>Deposit for Cases to be Decided on the Paper Record</b></u>		Hearing Session Deposit  One Arbitrator <sup>1[2]</sup> Three Arbitrators <sup>2[3]</sup>
		[Simplified <sup>1</sup> ]		
\$ .01 -- \$1,000	\$ <u>25</u> [ 15]	\$ <u>25</u> [15]	\$ <u>25</u> [ 15]	NA
\$1,000.01-\$2,500	\$ <u>25</u>	\$ <u>50</u> [25]	\$ <u>50</u> [ 25]	NA
\$2,500.01-\$5,000	\$ <u>50</u>	\$ <u>125</u> [75]	\$ <u>125</u> [100]	NA
\$5,000.01-\$10,000	\$ <u>75</u>	\$ <u>250</u> [75]	\$ <u>250</u> [200]	NA
\$10,000.01-\$ <u>25,000</u>	\$ <u>125</u> [100]	\$ <u>300</u> [NA]	\$ <u>450</u>	NA
\$ <u>25,000.01</u> -\$30,000	\$ <u>150</u>	NA	\$ <u>450</u> [300]	\$ <u>600</u> [ 400]
\$30,000.01-\$50,000	\$ <u>175</u> [120]	NA	\$ <u>450</u> [300]	\$ <u>600</u> [ 400]
\$50,000.01-\$100,000	\$ <u>225</u> [150]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>750</u> [ 500]
\$100,000.01-\$500,000	\$ <u>300</u> [200]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>1,125</u> [ 750]
\$500,000.01-\$ <u>1,000,000</u>	\$ <u>375</u> [250]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>1,200</u> [1,000]
\$1,000,000.01-\$3,000,000	\$ <u>500</u>	NA	\$ <u>450</u> <sup>3</sup>	\$ <u>1,200</u>
\$3,000,000.01-\$5,000,000	\$ <u>600</u>	NA	\$ <u>450</u> <sup>3</sup>	\$ <u>1,200</u>
[Over]\$5,000,000.01-				
\$10,000,000	\$600 [300]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>1,200</u> [1,500]
Over \$10,000,000	\$600	NA	\$ <u>450</u> <sup>3</sup>	\$ <u>1,200</u>

<sup>1</sup>[Simplified Arbitration (Without Hearing)]

<sup>1[2]</sup>The dispute is resolved by o[O]ne a[A]rbitrator per hearing session, including pre-hearing conferences. [(Per Hearing Session)]

<sup>2[3]</sup>The dispute is resolved by t[T]hree [or more] a[A]rbitrators per hearing session. [(Per hearing session)]

<sup>3[4]</sup>Fee applies only to p[P]re-hearing c[C]onferences [Only] with a single arbitrator.

### **Member [Industry] Claimant**

<b>Amount in Dispute (Exclusive of Interest and Expenses)</b>	Claim Filing Fee	<u><b>Deposit for Cases to be Decided on the Paper Record</b></u>		Hearing Session Deposit  One Arbitrator <sup>1[2]</sup> Three Arbitrators <sup>2[3]</sup>
		[Simplified <sup>1</sup> ]		
\$ .01 -- \$1,000	\$ <u>200</u> [500]	\$ <u>25</u> [ 75]	\$ <u>25</u> [300]	NA
\$1,000.01-\$2,500	\$ <u>300</u> [500]	\$ <u>50</u> [ 75]	\$ <u>50</u> [300]	NA
\$2,500.01-\$5,000	\$ <u>400</u> [500]	\$ <u>125</u> [ 75]	\$ <u>125</u> [300]	NA
\$5,000.01-\$10,000	\$ <u>500</u>	\$ <u>250</u> [ 75]	\$ <u>250</u> [300]	NA
\$10,000.01-\$ <u>25,000</u>	\$ <u>750</u>	\$ <u>300</u>	\$ <u>450</u>	NA
\$ <u>25,000.01</u> -\$30,000	\$ <u>1,000</u> [500]	NA	\$ <u>450</u> [300]	\$ <u>600</u>
\$30,000.01-\$50,000	\$ <u>1,000</u> [500]	NA	\$ <u>450</u> [300]	\$ <u>600</u>
\$50,000.01- \$100,000	\$ <u>1,000</u> [500]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>750</u> [ 600]
\$100,000.01-\$500,000	\$ <u>1,000</u> [500]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>1,125</u> [ 750]
\$500,000.01-\$ <u>1,000,000</u>	\$ <u>1,250</u>		\$ <u>450</u> <sup>3</sup>	\$ <u>1,200</u>
\$1,000,000.01-\$5,000,000	\$ <u>2,000</u> [500]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>1,200</u> [1,000]
[Over]\$5,000,000.01-				
\$10,000,000	\$ <u>2,500</u> [500]	NA	\$ <u>450</u> <sup>3</sup> [300 <sup>4</sup> ]	\$ <u>1,200</u> [1,500]
Over \$10,000,000	\$ <u>5,000</u>		\$ <u>450</u> <sup>3</sup>	\$ <u>1,200</u>

<sup>1</sup>[Simplified Arbitration (Without Hearing)]

<sup>1[2]</sup>The dispute is resolved by o[O]ne a[A]rbitrator per hearing session, including pre-hearing conferences. [(Per Hearing Session)]

<sup>2[3]</sup>The dispute is resolved by t[T]hree [or more] a[A]rbitrators per hearing session. [(Per hearing session)]

<sup>3[4]</sup>Fee applies only to p[P]re-hearing c[C]onferences [Only] with a single arbitrator.

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# NASD Notice to Members 99-24

**Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of January 21, 1999**

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of January 21, 1999, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
ADLA.GL	Adelphia Communications Corp. Series B	8.125	07/15/03
AECR.GA	American Eco Corp. Series B	9.625	05/15/08
AEUS.GA	Aetna Industries Inc.	11.875	10/01/06
AKIH.GA	Aki Holding Corp.	13.500	07/01/09
AMCU.GA	American Communication LLC Series B	10.250	06/30/08
APOA.GA	Apcoa Inc.	9.250	03/15/08
ARIP.GA	American President Co. Ltd	7.125	11/15/03
ARIP.GB	American President Co. Ltd	8.000	01/15/24
ATAC.GB	Aftermarket Technology Corp.	12.000	08/01/04
AVHC.GA	Advance Holding Corp. Series B	12.875	04/15/09
AVSR.GA	Advance Stores Inc. Series B	10.250	04/15/08
AVUS.GA	Advanta Capital Trust I Series B	8.990	12/17/26
BCEG.GA	Bank of New England Corp.	0.000	07/15/49
BCEG.GB	Bank of New England Corp.	9.875	09/15/99
BCEG.GC	Bank of New England Corp.	9.500	02/15/49
BCEG.GD	Bank of New England Corp.	8.750	04/01/99
BCEG.GE	Bank of New England Corp.	8.850	03/01/99
BCFD.GA	Brand Scaffold Services Inc.	10.250	02/15/08
BNCC.GA	BNC Corp. Inc.	8.625	05/31/04
BSPO.GA	Bell Sports Inc.	11.000	08/15/08
BYX.GA	Bayou Steel Corp.	9.500	05/15/08
CGM.GA	Congoleum Corp.	8.625	08/01/08
CGO.GB	Atlas Air Inc.	9.250	04/15/08
CHCA.GE	Chancellor Media Corp.	9.000	10/01/08
CILP.GA	Calair LLC/Calair Cap Corp.	8.125	04/01/08
CKMH.GB	Clark Material Handling Co. Series D	10.750	11/15/06
CKRM.GC	Clark R&M Inc.	8.625	08/15/08
CLUA.GA	Cluett American Corp. Series B	10.125	05/15/08
CMS.GF	CMS Energy Corp.	7.500	01/15/09
CNNB.GA	Colonial National Bank USA	7.000	08/01/03
COYN.GA	Coyne International Enterprises Corp.	11.250	06/01/08
CPN.GE	Calpine Corp.	7.875	04/01/08
CPVU.GA	Cooperative Computing Inc.	9.000	02/01/08
CVDU.GA	Covad Comm. Grp Inc. Series B	13.500	03/15/08
DBWR.GA	Dobson Wireline Co.	12.250	06/15/08
DCUC.GA	Decora Industries Inc. Series B	11.000	05/01/05
DHDG.GA	DTI Holdings Group LP Series B	12.500	03/01/08
DHI.GC	Horton (D.R.) Inc.	8.000	02/01/09
DVI.GB	DVI Inc.	9.875	02/01/04
EGEO.GA	Eagle Geophysical Inc. Series B	10.750	07/15/08
EPLC.GA	Epic Resort LLC/Cap Corp. Series B	13.000	06/15/05
ESCQ.GA	ESI Tractebel Acquisition Corp.	7.990	12/30/11
EVHC.GA	Everest Healthcare Svs Corp.	9.750	05/01/08
EXDS.GB	Exodus Communications Inc.	11.250	07/01/08
FCLU.GA	Focal Communications Corp. Series B	12.125	02/15/08

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
FHGP.GA	Falcon Holding Group LP Series B	8.375	04/15/10
FHGP.GB	Falcon Holding Group LP Series B	9.285	04/15/10
FNRV.GA	Fine Air Services Inc.	9.875	06/01/08
FOIL.GC	Forest Oil Corp.	10.500	01/15/06
FWLD.GA	Firstworld Communication Inc.	13.000	04/15/08
FXIL.GA	Flexitronics Intl Ltd. Series B	8.750	10/15/07
GBHN.GA	Global Health Science Inc.	11.000	05/01/08
GBIX.GA	Globix Corp.	13.000	05/01/05
GCKG.GA	Graham Packaging/GPC Cap Series B	10.750	01/15/09
GHCK.GA	Graham Packaging Co./GPC Cap Corp. Series B	8.750	01/15/08
GNBU.GA	Glenborough Properties LP Series B	7.625	03/15/05
GRVW.GA	Grove Worldwide LLC/Cap Inc.	9.250	05/01/08
GSCW.GA	GS Escrow Corp.	6.750	08/01/01
GSCW.GB	GS Escrow Corp.	7.000	08/01/03
GSCW.GC	GS Escrow Corp.	7.125	08/01/05
HBCR.GA	Harborside Healthcare Corp.	11.000	08/01/08
HDCO.GA	Hadco Corp.	9.500	06/15/08
HMIT.GA	Home Interiors & Gifts Inc.	10.125	06/01/08
HNYC.GA	Henry Co. Series B	10.000	04/15/08
HRCH.GA	Hard Rock Hotel Inc. Series B	9.250	04/01/05
ICFP.GA	Intl Comfort Products Hldgs Inc. Series B	8.625	05/15/08
ICGV.GA	ICG Service Inc.	9.875	05/01/08
IESC.GA	Indesco International Inc.	9.750	04/15/08
IHMD.GA	Imperial Home Decor Group Inc. Series B	11.000	03/15/08
IHSC.GA	Insight Health Svcs Corp. Series B	9.625	06/15/08
INHG.GA	Iron Age Holdings Corp.	12.125	05/01/09
INSL.GA	Insilco Holding Co.	14.000	08/15/08
IPCG.GA	Impac Group Inc. Series B	10.125	03/15/08
IPSC.GB	ImpSat Corp.	12.375	06/15/08
IRNP.GA	Iron Age Corp.	9.875	05/01/08
IRUC.GA	Intramericas Communication Corp.	14.000	10/27/07
JNET.GA	Jones International Networks Ltd.	11.750	07/01/05
JRGE.GA	Jorgensen Earle M. Co. Series B	9.500	04/01/05
KOGC.GC	Kelley Oil & Gas Corp. Series D	10.375	10/15/06
LDHG.GA	Lodestar Holdings Inc.	11.500	05/15/05
LENF.GC	Lenfest Communications Inc.	7.625	02/15/08
LENF.GD	Lenfest Communications Inc.	8.250	02/15/08
LFFU.GA	Lifestyle Furnishings Inc.	10.875	08/01/06
LNHG.GA	Lin Holdings Corp.	10.000	03/01/08
LNR.GB	LNR Property Corp.	10.500	01/15/09
LNTV.GA	Lin Television Corp.	8.375	03/01/08
MCUM.GA	Michael Petroleum Corp. Series B	11.500	04/01/05
MRSM.GA	Morris Materials Handling Inc.	9.500	04/01/08
MTLM.GA	Metal Management Inc.	10.000	05/15/08
NERU.GA	NE Restaurant Co. Inc.	10.750	07/15/08
NFF.GA	Neff Corp.	10.250	06/01/08
NRTY.GA	Norton McNaughton Inc.	12.500	06/01/05
NTLQ.GA	National Equipment Svcs Inc. Service B	10.000	11/30/04

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
OXAU.GB	Oxford Automotive Inc.	10.125	06/15/07
PHCO.GA	Philipp Brothers Chemicals Inc.	9.875	06/01/08
PKVW.GA	Park N View Inc. Series B	13.000	05/15/08
PLHY.GA	Pierce Leahy Command Co.	8.125	05/15/08
PLWC.GA	Plainwell Inc. Series B	11.000	03/01/08
PNHG.GA	Pen Holdings Inc. Series B	9.875	06/15/08
PRD.GA	Polaroid Corp.	11.500	02/15/06
PSRI.GA	Phase Metrics Inc.	10.750	02/01/05
PVH.GB	Philips Van Heusen Corp.	9.500	05/01/08
PZEW.GA	PX Escrow corp.	9.625	02/01/06
QSRI.GA	Queen Sand Resources Inc.	12.500	07/01/08
RHNY.GA	R. H. Donnelly Inc.	9.125	06/01/08
RHYC.GA	Rhythms Net Connections Inc. Series B	13.500	05/15/08
RMDP.GA	Renaissance Media Cap Corp.	10.000	04/15/08
RSAU.GA	The Restaurant Co.	11.250	05/15/08
RSV.GA	Rental Service Corp.	9.000	05/15/08
SAMC.GA	Samsonite Corp.	10.750	06/15/08
SGLS.GA	Safelite Glass Corp. Series B	9.875	12/15/06
SHUF.GA	Schuff Steel Co.	10.500	06/01/08
SKLN.GA	Safety-Kleen Svrs	9.250	06/01/08
SKS.GB	Saks Incorp.	7.375	02/15/19
SMUI.GA	Simonds Industries Inc.	10.250	07/01/08
SPCY.GA	Spincycle Inc.	12.750	05/01/05
SPLC.GA	Splitrock Services Inc. Series B	11.750	07/15/08
SWW.GA	Sitel Corp.	9.250	03/15/06
SYTG.GA	Styling Technology Corp.	10.875	07/01/08
TCOM.GB	Tele-Commun Inc. Series E	10.250	09/30/00
THYH.GA	Thermadyne Holdings Corp.	9.875	06/01/08
TLLP.GE	Toll Corp.	8.125	02/01/09
TLNU.GA	Talon Automotive Group Inc. Series B	9.625	05/01/08
TODR.GA	Tri-State Outdoor Media Group Inc.	11.000	05/15/08
TSIC.GA	Tropical Sportswear Intl Corp. Series A	11.000	06/15/08
TSUB.GA	Treasure Bay Gaming & Resort Inc.	12.000	08/01/06
UHSP.GA	Universal Hospital Svs Inc.	10.250	03/01/08
UMPR.GA	Universal Compression Inc.	9.875	02/15/08
USOF.GA	US Office Products Co.	9.750	06/15/08
USXG.GA	US Xchange LLC	15.000	07/01/08
UVCG.GA	Universal Compression Holdings Inc.	11.375	02/15/09
VCMK.GA	Victory Markets Inc.	12.500	03/15/00
VNDH.GA	Vendell Healthcare Inc.	12.000	05/15/00
VYTL.GA	Viatel Inc.	12.500	04/15/08
VYTL.GB	Viatel Inc.	11.250	04/15/08
WAX.GD	Waxman Industries Inc.	13.750	06/01/99
WBB.GF	Webb (Del) Corp.	10.250	02/15/10
WCOH.GA	Westworld Comm Healthcare Inc.	14.375	12/01/00
WFSG.GB	Wilshire Financial Service Group 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
WNRU.GA	Winthrop Resources Corp.	9.500	07/01/03

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
WPTL.GA	Webster Capital Trust II Series B	10.000	04/01/27
WSFL.GA	Western Financial Bank	8.875	08/01/07
WSFS.GA	WSFS Financial Corp. Series B	11.000	12/31/05
WSIN.GA	Wesco International Inc. Series B	11.125	06/01/08
YOUA.GA	Young America Corp. Series B	11.625	02/15/06

As of January 21, 1999, the following bonds were deleted from FIPS.

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
AEN.GD	AMC Entertainment Inc.	11.875	08/01/00
AFIT.GA	Affinity Group Inc.	11.500	10/15/03
BLE.GA	Bradlees Inc.	11.000	08/01/02
BLE.GB	Bradlees Inc.	9.250	03/01/03
CARS.GA	Carrols Corp.	11.500	08/15/03
CNLP.GF	Connecticut Light & Power Co.	5.500	02/01/99
ELAY.GA	Electro-Audio Dynamics Inc.	12.875	02/01/99
FNWH.GC	First Nationwide Hldgs Inc.	9.125	01/15/03
LIRP.GA	Liggett Group Inc. Del	11.500	02/01/99
MCAB.GA	Marcus Cable Co./Cap Corp. III	11.875	10/01/05
RDFL.GA	RailRoad Finl Corp.	10.000	01/31/99
REB.GA	Redwood Empire Bancorp	8.500	01/15/04
SPRT.GB	Sprint Spectrum LP	11.000	08/15/06
STN.GA	Station Casinos Inc.	9.625	06/01/03
STN.GB	Station Casinos Inc.	9.625	06/01/03
TBOT.GA	Texas Bottling Group Inc.	9.000	11/15/03
WDCP.GA	World Color Press Inc.	9.125	03/15/03
WPSN.GA	West Point Stevens Inc.	8.750	12/15/01
WPSN.GB	West Point Stevens Inc.	9.375	12/15/05

As of January 21, 1999, 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>
INLP.GA	INSL.GA	Insilco Corp.	10.250	08/15/07
SSNI.GA	SAMC.GA	Samsonite Corp.	11.125	07/15/05

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation<sup>SM</sup>, at (301) 590-6451.

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 99-25

## Good Friday: 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 2, 1999. "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>
March 29	April 1	April 6
30	5	7
31	6	8
April 1	7	9
2	Markets Closed	—
5	8	12

\*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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### Suggested Routing

- Senior Management
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- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

# NASD Rule Filing Status

Rule Filing Status As  
Of March 4, 1999

## NASD Rule Filing Status

The following is a list of rule filings by the National Association of Securities Dealers, Inc. (NASD® or Association) that are pending at the Securities and Exchange Commission (SEC); recently have been approved and have not been announced in a *Notice to Members*; or recently have been withdrawn. The information is current as of March 4, 1999. Copies of rule filings (and any amendments thereto), the SEC release publishing the rule proposal for comment, and the SEC release approving the rule change are available from the SEC Public Reference Room at (202) 942-8090, or from Christopher Leigh, NASD Office of General Counsel, at (202) 728-8236 or via e-mail at *leighc@nasd.com* (in certain cases a fee may be required). NASD rule changes are not effective until approved by the SEC.

## Rule Filings That Have Not Been Published For Comment By The SEC

### 99-12

Amend Rule 7010 to establish a fee for a voluntary trading data distribution facility, named Nasdaq Post Data™, accessible to NASD members, buy-side institutions (Qualified Institutional Buyers [QIBs]<sup>1</sup>) and market data vendors through its "NasdaqTrader.com" Web Site.

### 99-11

Amend Rules 4611, 4613, 4618, 4619, 4620, 4632, and Series 4700 to re-establish SelectNet™ as an order delivery and negotiation system for Nasdaq National Market® (NNM) securities and make numerous changes to the current rules relating to the trading of NNM securities.

### 99-09

Amend Rule 4613 to permit the separate display of customer orders by Market Makers in Nasdaq

through a Market Maker agency identification symbol.

### 99-08

Amend Rules 10201 and 10202, and adopt new Rule 3080 and new Rule Series 10210 to enhance the dispute resolution process for the handling of employment discrimination disputes, and to expand disclosure to employees concerning the arbitration of all disputes.

### 99-07

Submission of proposed Discovery Guide for use in arbitration proceedings to improve the discovery process in NASD-sponsored securities arbitrations. The Discovery Guide consists of introductory and instructional text, and 14 Document Production Lists.

### 99-05

Amend Rule 2520 relating to margin for exempted borrowers, good faith accounts, joint back office arrangements and options transactions.

### 99-02

Amend IM-2110-1 and Rule 2720 to clarify the definition of "public offering" to include all offerings of securities exempt from SEC registration under SEC Rule 504.

### 99-01

Amend Schedule A to the NASD By-Laws and Rule 2710 to simplify the fee structure for public offerings filed under Rules 2710, 2720, and 2810.

### 98-96

Amend Form U-4, the Uniform Application for Securities Industry Registration or Transfer, and Form U-5, the Uniform Termination Notice for Securities Industry Termination. Comments solicited in *Notice to Members* (NtM) 98-101.

### 98-74

Amend Rule 3110 to require

additional disclosure in pre-dispute arbitration agreements regarding the arbitration process, including possible limits on eligibility of claims and availability of punitive damages; to require member firms to provide certain information regarding arbitration and pre-dispute arbitration agreements to customers upon request; and to clarify the rule regarding use of choice-of-law provisions in pre-dispute arbitration agreements.

**98-55**

Amend Section 8 of Schedule A of the NASD By-Laws with respect to the collection of SEC transaction fees (SEC Fees).

**98-40**

Amend Rule 3350 governing short sales in NNM securities to allow Market Makers and broker/dealers to engage in certain customer facilitating, liquidity-providing transactions (Facilitation Exemption).

**98-11**

Adopt IM-2210-5, Presentation of Mutual Fund and Variable Contract-Related Performance Information, and amend Rule 2210 and IM-2210-2 to permit the presentation of related performance information (other than manager performance information) in mutual fund and variable product sales material, subject to certain conditions designed to make the presentation fair, balanced, and not misleading.

**Rule Filings That Have Been Published For Comment But Have Not Been Approved By The SEC**

**99-04**

Adopt new Rule 2315, which requires members to review current issuer information prior to recommending a transaction to a customer in an over-the-counter (OTC) equity security. Additionally, the proposed rule change would

amend NASD Rule 6740 to permit members to submit a certification to the Association that states that the member has conducted a review of specified information and has fulfilled its SEC Rule 15c2-11 obligations for documents that currently reside on the SEC's EDGAR database. Published for comment by the SEC in Release No. 34-41075 (February 19, 1999); 64 F.R. 10037 (March 1, 1999). Comment period expires March 22, 1999.

**98-94**

Amend Rule 11890 to conform the time frame for requesting a clearly erroneous adjudication for pre-opening transactions. Published for comment by the SEC in Release No. 34-40992 (January 28, 1999); 64 F.R. 5846 (February 5, 1999). Comment period expired February 26, 1999.

**98-88**

Code of Procedures for review of Nasdaq Listing Determinations. Amendment to NASD Rule 4800 Series. Published for comment by the SEC in Release No. 34-40874 (December 31, 1998); 64 F.R. 1258 (January 8, 1999). Comment period expired January 29, 1999.

**98-85**

Adopt new Rules 4990 through 4998 to establish the Nasdaq Application, a new electronic trading system based on the innovative information processing technology provided by Opti-Mark Technologies, Inc. Published for comment by the SEC in Release No. 34-40835 (December 28, 1998); 64 F.R. 549 (January 5, 1998). Comment period expired January 26, 1999.

**98-80**

Adopt Rule 9800 Series to establish procedures to enable NASD Regulation to issue temporary cease and desist orders. The proposed rule change also would grant NASD

Regulation authority to take expedited disciplinary actions when temporary or permanent cease and desist orders are violated.

Amendment No. 1 filed with the SEC on December 5, 1998. Published for comment by the SEC in Release No. 34-40826 (December 22, 1998); 63 F.R. 71984 (December 30, 1998). Comment period expired March 1, 1999.

**98-61**

Amend Rule 6420 to eliminate an unnecessary provision relating to the reporting of transactions in exchange-listed securities traded in the third market. Published for comment by the SEC in Release No. 34-40360 (August 21, 1998); 63 F.R. 46267 (August 31, 1998). Comment period expired September 25, 1998.

**98-59**

Amend the trade reporting rules, Rules 4632, 4642, 4652, 6620, with respect to "risk-less" principal transactions by Market Makers. Published for comment by the SEC in Release No. 34-40382 (August 28, 1998); 63 F.R. 47337 (September 4, 1998). Comment period expired September 25, 1998.

**98-49**

Amend Rule 10335 to make it a permanent part of the Code of Arbitration. Amendment No. 1 filed with the SEC on September 9, 1998. Amendment No. 2 filed with the SEC on September 10, 1998. Amendment No. 3 filed with the SEC on December 3, 1998. Published for comment by the SEC in Release No. 34-40441 (September 15, 1998); 63 F.R. 50611 (September 22, 1998). Comment period expired October 13, 1998.

**98-44**

Amend Rule 1060 and create new Interpretative Material, IM-3010, to codify existing practice by exempting from registration persons whose

securities business is limited to certain limited marketing activities and specify supervisory requirements for members concerning such unregistered persons. Published for comment by the SEC in Release No. 34-40784 (December 15, 1998); 63 F.R. 70173 (December 18, 1998). Comment period expired January 8, 1999.

**98-32**

Amend Rule 2210 to exclude independently-prepared research reports from the filing requirements of Rule 2210. Amendment No. 1 filed with the SEC on May 13, 1998. Published for comment by the SEC in Release No. 34-40074 (June 4, 1998); 63 F.R. 32690 (June 15, 1998). Comment period expired July 6, 1998.

**98-20**

Amend Rule 11860 to permit members to use the facilities of a Qualified Electronic Vendor for electronic confirmation and affirmation of depository eligible transactions. Published for comment by the SEC in Release No. 34-39831 (April 6, 1998); 63 F.R. 18057 (April 13, 1998). Comment period expired May 4, 1998. Comment period extended by the SEC in Release No. 34-39944 (May 1, 1998); 63 F.R. 25531 (May 8, 1998). Comment period expired June 3, 1998.

**98-18**

Adopt a new membership Rule 1150 that would provide NASD members with qualified immunity in arbitration proceedings for statements made in good faith in certain disclosures filed with the NASD on Forms U-4 and U-5. Published for comment by the SEC in Release No. 34-39892 (April 21, 1998); 63 F.R. 23321 (April 28, 1998). Comment period extended in SEC Release No. 34-40005 (May 19, 1998); 63 F.R. 29050 (May 27, 1998). Comment period expired June 19, 1998.

**98-17**

Amend Rules 4611, 4613, 4618, 4619, 4620, 4632, 4642, and adopt new Rule 4900 Series to establish an integrated order delivery and execution system. The new system would replace the existing Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) and SelectNet service, while retaining certain features of each in a combined infrastructure. It also will feature a voluntary limit order book. In addition, a component of the new system will permit institutions to obtain direct electronic access to The Nasdaq Stock Market<sup>®</sup> through a sponsored arrangement with a Nasdaq Market Maker. Amendment No. 1 filed with the SEC on March 3, 1998. Published for comment by the SEC in Release No. 34-39718 (March 4, 1998); 63 F.R. 12124 (March 12, 1998). Comment period expired April 2, 1998. Comment extended in SEC Release No. 34-39794 (March 25, 1998); 63 F.R. 15471 (March 31, 1998). Comment period extended to May 8, 1998.

**98-14**

Amend Rules 2820 and 2830 to: 1) provide maximum aggregate sales charge limits for fund of funds arrangements; 2) permit mutual funds to charge installment loads; 3) prohibit loads on reinvested dividends; 4) impose redemption order requirements for shares subject to contingent deferred sales loads; and 5) eliminate duplicative prospectus disclosure. Amendment No. 1 filed with the SEC on March 12, 1998. Amendment No. 2 filed with the SEC on June 10, 1998. Published for comment by the SEC in Release No. 34-40310 (August 7, 1998); 63 F.R. 43974 (August 17, 1998). Comment period expired September 8, 1998.

**98-08**

Amend trade reporting Rules 4623, 4632, 4652, 6420, and 6620. The proposals would: 1) implement a

new trade report modifier to identify trades effected at a prior reference price; 2) eliminate the 10,000-share limitation on individual trades that may be "bunched" for trade reporting purposes; 3) require electronic communications networks (ECNs) to be responsible for reporting all trades executed within the ECN; and 4) address risk-less principal trades involving exchange-listed securities traded in the Third Market. Published for comment by the SEC in Release No. 34-40047 (June 2, 1998); 63 F.R. 30791 (June 5, 1998). Comment period expired June 26, 1998.

**97-89**

Adopt a new interpretation to Rule 2210 to permit the use by members and associated persons of bond mutual fund volatility ratings in supplemental sales literature on an interim 18-month pilot basis. Published for comment by the SEC in Release No. 34-40627 (November 2, 1998); 63 F.R. 60431 (November 9, 1998). The comment period expired November 30, 1998.

**97-76**

Amend Rule 3230 to: 1) establish standards for the disposition of written customer complaints about introducing member firms that are received by clearing firms; 2) govern how exception reports are made available to introducing firms and retained by clearing firms; and 3) permit introducing firms to write checks on their clearing firm's account. Amendment No. 1 filed with the SEC on November 19, 1997. Amendment No. 1 filed with the SEC on November 19, 1997. Published for comment by the SEC in Release No. 34-39349 (November 21, 1997); 62 F.R. 63589 (December 1, 1997). Comment period expired December 22, 1997.

**97-61**

Adopt new IM-2240-2: Application of

the NASD Mark-Up Policy to Transactions in Government and Other Debt Securities. Published for comment by the SEC in Release No. 34-40511 (September 30, 1998); 63 F.R. 54169 (October 8, 1998). Comment period expired December 7, 1998.

**97-58**  
Amend Rule 3350 to implement Short Sale Rule on a permanent basis. Published for comment by the SEC in Release No. 34-38979 (August 26, 1997); 62 F.R. 46537 (September 3, 1997). Comment period expired September 24, 1997.

**97-47**  
Adopt new rule, 10336, to the Code of Arbitration Procedure to cap punitive damages at the lesser of twice compensatory damages or \$750,000. Amendment No. 1 filed with the SEC on October 17, 1997. Amendment No. 2 filed with the SEC on November 14, 1997. Published for comment by the SEC in Release No. 34-39371 (November 26, 1997); 62 F.R. 64428 (December 5, 1997). Comment period expired December 29, 1997.

**97-44**  
Amend Rule 10304 of the Code of Arbitration Procedure (Eligibility Rule) to retain current six-year eligibility rule, provide that all claims shall be eligible for arbitration unless challenged, eliminate involuntary bifurcation of claims, and eliminate election of remedies. Amendment No. 1 filed with the SEC on July 14, 1997. Amendment No. 2 filed with the SEC on July 18, 1997. Amendment No. 3 filed with the SEC on December 3, 1997. Amendment No. 4 filed with the SEC on December 18, 1997. Published for comment by the SEC in Release No. 34-39487 (December 23, 1997); 63 F.R. 588 (January 6, 1998). Comment period expired January 27, 1998.

**97-12**  
Amend Rule 2340 relating to the disclosure of values for direct participation program and real estate investment trust securities on customer account statements. Published for comment by the SEC in Release No. 34-38451 (March 27, 1997); 62 F.R. 15945 (April 3, 1997). Comment period expired April 24, 1997. Amendment No. 1 filed with the SEC on June 26, 1997.

Submission dated June 26, 1997, responds to comments. Amendment No. 2 filed with the SEC on July 7, 1997.

**96-47**  
Amend Rule 10304, Code of Arbitration Procedure, to establish interim policy of referring eligibility determinations to the arbitrators and to eliminate eligibility determinations by the staff pending adoption of final eligibility rule. Published for comment by the SEC in Release No. 34-38060 (December 18, 1996); 61 F.R. 68081 (December 26, 1996). Comment period expired January 16, 1997.

**96-43**  
Amend Rules 4613, 4623, 4710, 4730, 6330, and IM-4613 to modify SOES and SelectNet to implement the SEC's Order Handling Rules. Published for comment by the SEC in Release No. 34-38008 (December 2, 1996); 61 F.R. 64549 (December 5, 1996). Comment period expired December 26, 1996. Amendment No. 1 filed with SEC on January 9, 1997. Partial approval granted by the SEC in Release No. 34-38156 (January 10, 1997); 62 F.R. 2415 (January 16, 1997).

## Rule Filings Approved By The SEC

**99-10**  
Amend the NASDR and Nasdaq By-Laws to increase from 8 to 10 the maximum number of directors on the boards of those corporations. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-41026 (February 8, 1999); 64 F.R. 7223 (February 12, 1999). Comment period expired March 5, 1999.

**99-06**  
Explanation of Nasdaq's decision to cease the practice of using a fifth character identifier with a symbol of foreign securities. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-41076 (February 19, 1999); 64 F.R. 9552 (February 26, 1999). Comment period expires March 19, 1999.

**98-99**  
Amend Rule 7010 to establish a fee for a compliance and trading data report distribution facility accessible to members through the NasdaqTrader.com Web Site. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40983 (January 27, 1999); 64 F.R. 5329 (February 3, 1999). Comment period expired February 24, 1999.

**98-98**  
Amend Nasdaq's practices concerning Market Maker quotations in Nasdaq securities that are being quoted for the first time after an initial public offering (IPO). Under the proposal, the pre-opening period for the initial display of Market Maker quotes will be extended to 15 minutes prior to the commencement of trading to permit the development of orderly quotations, with provision for a single additional 15-minute extension of the pre-opening period if the market is locked or crossed at the conclusion of the first 15-minute period. Accelerated approval granted by the SEC in Release No. 34-40968 (January 22, 1999); 64 F.R. 4729 (January 29, 1999). Comment period expired February 19, 1999.

**98-97**  
Amend Rule 10335 of the Code of

Arbitration Procedure to extend the effectiveness of the rule for six months. Pilot rule now due to expire July 3, 1999. Accelerated approval granted by the SEC in Release No. 34-40846 (December 28, 1998); 64 F.R. 548 (January 5, 1999). Comment period expired January 26, 1999.

**98-95**

Amend Schedule A of the NASD By-Laws to reduce fees for the Regulatory Element of the Continuing Education requirements of Rule 1120 and to correct a cross-reference. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40851 (December 28, 1998); 64 F.R. 554 (January 5, 1999). Comment period expired January 26, 1999.

**98-93**

Amend Rule 10333(d) to change the time when members must pay the pre-hearing process fee in an arbitration. The fee now becomes payable when the parties are notified of the pre-hearing conference. Previously the fee was due and payable when the pre-hearing conference was held. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40933 (January 11, 1999); 64 F.R. 3142 (January 20, 1999). Comment period expired February 10, 1999.

**98-92**

Amend Rule 2860(b)(3)(A) to triple the position limits on standardized (exchange-traded) equity options and make them equivalent to the limits on conventional OTC equity options overlying the same security. Accelerated approval granted by the SEC in Release No. 34-40932 (January 11, 1999); 64 F.R. 2930 (January 19, 1999). Comment period expired February 9, 1999.

**98-91**

Amend Rule 10321 to modify the

earliest date to file document and information requests in arbitration proceedings from 20 business days to 45 calendar days after service of the Statement of Claim or upon filing of the Answer, whichever is earlier. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40954 (January 19, 1999); 64 F.R. 3993 (January 26, 1999). Comment period expired February 16, 1999.

**98-87**

Amend Schedule A to the NASD By-Laws and Rule 2710 to delete the provision mandating that Corporate Financing filing fees be paid in the form of a check or money order. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40706 (November 24, 1998); 63 F.R. 66618 (December 2, 1998). Comment period expired December 23, 1998.

**98-86**

Amend Rules 112, 120, 1060, 1100, 3010, 6120, and 10101 and Interpretive Material 2110-4, 2210-4, 2420-1, 2420-2, and 2440, to correct cross-references to the NASD By-Laws. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40718 (November 30, 1998); 63 F.R. 67499 (December 7, 1998). Comment period expired December 28, 1998.

**98-84**

Amend Rule 7010(l) to extend, through March 31, 1999, the fees currently charged for the execution of transactions in SelectNet. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40783 (December 15, 1998); 63 F.R. 70177 (December 18, 1998). Comment period expired January 8, 1999.

**98-79**

Amend Rule IM-4120-1 regarding Nasdaq issuers' disclosure

responsibilities when using the Internet to disseminate material news about the company. Published for comment by the SEC in Release No. 34-40771 (December 10, 1998); 63 F.R. 69701 (December 17, 1998). Comment period expired January 7, 1999. Approved by the SEC in Release No. 34-40988 (January 28, 1999); 64 F.R. 5331 (February 3, 1999).

**98-78**

Amend Rule 2860(b)(3)(A)(vii) to make permanent the Association's Equity Option Hedge Exemption, which has been operating as a pilot program since 1990. Published for comment by the SEC in Release No. 34-40652 (November 9, 1998); 63 F.R. 63764 (November 16, 1998). Comment period expired December 7, 1998. Approved by the SEC in Release No. 34-40814 (December 21, 1998); 63 F.R. 71534 (December 29, 1998).

**98-73**

Amend Rule 7010 to make permanent the \$21.25 monthly per port fee for subscribers who receive Nasdaq Level 1 service through automated voice response services. Published for comment by the SEC in Release No. 34-40547 (October 15, 1998); 63 F.R. 56055 (October 20, 1998). Comment period expired November 10, 1998. Approved by the SEC in Release No. 34-40689 (November 19, 1998); 63 F.R. 65626 (November 27, 1998).

**98-72**

To extend for one year: 1) the pilot term of the Nasdaq International Service; and 2) the effectiveness of certain rules (International Rules) that are unique to the Service. With this filing, the pilot period for the Service and the International Rules would be extended through October 8, 1999. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40528

(October 6, 1998); 63 F.R. 55165 (October 14, 1998). Comment period expired November 4, 1998.

#### **98-70**

Amend Rule 7090 to add a logon identification fee for subscribers to Nasdaq's Mutual Fund Quotation System (MFQS or Service) that use the MFQS to transmit to Nasdaq fund-pricing and other required information. Amendment No. 1 filed with the SEC on October 1, 1998. Published for comment by the SEC in Release No. 34-40543 (October 15, 1998); 63 F.R. 55909 (October 19, 1998). Comment period expired November 9, 1998. Approved by the SEC in Release No. 34-40694 (November 19, 1998); 63 F.R. 65832 (November 30, 1998).

#### **98-68**

Revise the interpretation of the definition of "ACT Eligible Security" in Rule 6110(a) to include all securities designated as PORTAL<sup>SM</sup> securities pursuant to Rule Series 5320 (The PORTAL Market Rules) to the extent transactions in such PORTAL securities are voluntarily submitted to Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) solely for reconciliation, comparison, and/or clearance and settlement. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40424 (September 8, 1998); 63 F.R. 49623 (September 16, 1998). Comment period expired October 16, 1998.

#### **98-67**

Statement of two policies regarding the NASD's oversight of American Stock Exchange LLC (Amex LLC) and the composition of the Board of Governors of Amex LLC. Published for comment by the SEC in Release No. 34-40443 (September 16, 1998); 63 F.R. 51108 (September 24, 1998). Comment period expired October 15, 1998. Approved by the SEC in Release No. 34-40462

(October 30, 1998); 63 F.R. 59819 (November 4, 1998).

#### **98-65**

Amend Rule 7010(l) to extend, through November 30, 1998, the fees charged for the execution of transactions in SelectNet. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40427 (September 10, 1998); 63 F.R. 49724 (September 17, 1998). Comment period expired October 8, 1998.

#### **98-63**

Amend the current fee schedule in Rule 7010(h)(2) for subscribers to the Nasdaq Workstation II<sup>®</sup> (NWII) service who are not NASD members. Amendment No. 1 filed with the SEC September 12, 1998. Amendment No. 2 filed with the SEC November 17, 1998. Published for comment by the SEC in Release No. 34-40521 (October 6, 1998); 63 F.R. 55167 (October 14, 1998). Comment period expired November 14, 1998. Approved by the SEC in Release No. 34-40716 (November 27, 1998); 63 F.R. 66619 (December 2, 1998).

#### **98-62**

Amend Rule 7010(h)(2) relating to NWII and network fees. The proposed rule change is intended to amend the current fee schedule for NWII service for NASD members only. The NASD and Nasdaq are filing a parallel rule filing to effect the same amendments to the NWII fee structure to apply to non-NASD members (See RF 98-63). The NASD and Nasdaq also are eliminating the Digital Interface Service fees as this service is no longer provided by the Association. Effective upon filing. Amendment No. 1 filed with the SEC on September 10, 1998. Published for comment by the SEC in Release No. 34-40434 (September 11, 1998); 63 F.R. 49937 (September 11, 1998). Comment period expired October 9, 1998.

#### **98-53**

Amend Rule 6800 to establish minimum requirements for the inclusion of closed-end mutual funds in Nasdaq's MFQS. Amendment No. 1 filed with the SEC on August 26, 1998. Published for comment by the SEC in Release No. 34-40380 (August 27, 1998); 63 F.R. 47336 (September 4, 1998). Comment period expired September 25, 1998. Approved by the SEC in Release No. 34-40519 (October 5, 1998); 63 F.R. 54740 (October 13, 1998).

#### **98-47**

Amend Rules 4632, 4642, 4652, 5109, 6120, 6140, 6420, 6620, 7010, 11180 to integrate the functionality of the Trade Acceptance and Reconciliation Service<sup>SM</sup> (TARS<sup>SM</sup>) into the ACT and implement certain enhancements to ACT. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40578 (October 23, 1998); 63 F.R. 57342 (October 27, 1998). Comment period expired November 17, 1998.

#### **98-46**

Amend IM-1000-4 to make a technical correction and amend the Plan of Allocations and Functions by NASD to Subsidiaries (Delegation Plan) to clarify NASD Regulation's authority to inspect the books and records of The Nasdaq Stock Market. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40252 (July 23, 1998); 63 F.R. 40759 (July 30, 1998). Comment period expired August 20, 1998.

#### **98-45**

Amend Rules 3010 and 3110 to delay the effective date of the provision in *NtM* 98-11 addressing the review of incoming, non-electronic correspondence until Sept. 30, 1998. The delay will allow NASDR to address the regulatory concerns necessitating the review of

incoming, non-electronic correspondence and at the same time to respond to concerns raised by member firms about the difficulty of conducting such review. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40178 (July 7, 1998); 63 F.R. 37911 (July 14, 1998). Comment period expired August 4, 1998.

#### **98-42**

Amend Rule 10335 to extend the effectiveness of the rule for six months to January 3, 1999. Accelerated approval granted by the SEC in Release No. 34-40124 (June 24, 1998); 63 F.R. 36282 (July 2, 1998). Comment period expired on July 28, 1998.

#### **98-37**

Amend rule 7010(l) to extend through August 31, 1998, the fees currently charged for the execution of transactions in SelectNet. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-40050 (June 1, 1998); 63 F.R. 31254 (June 8, 1998). Comment period expired June 29, 1998.

#### **98-36**

Amend the NASD Regulation By-Laws to permit one or more Industry members of the National Adjudicatory Council (NAC) to serve as at-large Industry members of the NAC, rather than requiring that all Industry members represent a region as is currently provided in the NASD Regulation By-Laws. Amendment No. 1 filed with the SEC on May 19, 1998. Published for comment by the SEC in Release No. 34-40062 (June 3, 1998); 63 F.R. 32033 (June 11, 1998). Comment period expired July 2, 1998. Approved by the SEC in Release No. 34-40213 (July 15, 1998); 63 F.R. 39619 (July 23, 1998).

#### **98-34**

Amend Rule 9514 to permit

members of NASD Regulation Office of Hearing Officers to oversee non-summary proceedings involving membership cancellations and suspensions related to failure to comply with an arbitration award settlement agreement. Amendment No. 1 filed with the SEC on May 4, 1998. Published for comment by the SEC in Release No. 34-39957 (May 1, 1998); 63 F.R. 26238 (May 12, 1998). Comment period expired on May 27, 1998. Approved by the SEC in Release No. 34-40026 (May 26, 1998); 63 F.R. 30789 (June 5, 1998).

#### **98-31**

Amend Rules 3010 and 3110 to implement the effective date of recently-approved amendments to these rules, with the exception of a provision in *NtM* 98-11 regarding the review of incoming correspondence. The amendments allow firms to develop flexible procedures for the review of correspondence with the public. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-39866 (April 14, 1998); 63 F.R. 19778 (April 21, 1998). Comment period expired May 12, 1998.

#### **98-27**

Adopt Interpretive Material (IM) to NASD Rule 4120 to codify, on a two-year pilot basis, the NASD's agreement to halt, upon the request of the SEC, all domestic trading in both the securities listed on Nasdaq and all equity and equity-related securities trading in the OTC market dealing with trading halts. IM-4120-3 replaces NASD IM-4120-2 which expired on December 31, 1997. Accelerated approval granted by the SEC in Release No. 34-39846 (April 9, 1998); 63 F.R. 18477 (April 15, 1998). Comment period expired on May 6, 1998.

#### **98-25**

Amend Rule 7010 to establish an annual, scaled administrative fee,

payable by Nasdaq market data distributors and vendors, for data usage, monitoring costs and other administrative expenses incurred by Nasdaq. Once effective, Nasdaq will suspend indefinitely its current contractual requirement that Nasdaq real-time data distributors and vendors provide an annual accountant-certified list of its subscribers who receive Nasdaq data. Published for comment by the SEC in Release No. 34-40035 (May 27, 1998); 63 F.R. 30276 (June 3, 1998). Comment period expired on June 24, 1998. Approved by the SEC in Release No. 34-40454 (September 22, 1998); 63 F.R. 51980 (September 29, 1998).

#### **98-21**

Amend Rule 4613(a)(1)(C) to permanently allow Market Makers to quote their actual size by reducing the minimum quotation size requirement for Market Makers in all securities listed on Nasdaq to one normal unit of trading (Actual Size Rule). Published by the SEC in Release No. 34-39760 (March 16, 1998); 63 F.R. 13894 (March 23, 1998). Comment period expired April 13, 1998. Approved by the SEC in Release No. 34-40211 (July 15, 1998); 63 F.R. 39322 (July 22, 1998).

#### **98-19**

Postpone the effective date of amendments to IM-8310-2 and Forms U-4 and U-5 to March 16, 1998. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-39371 (March 6, 1998); 63 F.R. 12558 (March 11, 1998). Comment period expired April 3, 1998.

#### **98-15**

Amend Rule 2860(b) to establish that NASD member firms and their customers shall have the same position and exercise limits for FLEX Equity Options as the firms that are

members of the exchange on which such FLEX Equity Options trade. Accelerated approval granted by the SEC in Release No. 34-39668 (February 20, 1998); 63 F.R. 10057 (February 27, 1998). Comment period expired on April 3, 1998.

#### **98-10**

Amend Rules 3010 and 3110 to postpone indefinitely the effective date of recently approved amendments to these rules (See *NtM* 98-11) and to allow the NASDR an opportunity to consider comment letters received from the public. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-39665 (February 13, 1998); 63 F.R. 9032 (February 23, 1998). Comment period expired March 16, 1998.

#### **98-04**

To change the interpretation of the Code of Arbitration Procedure such that claims relating to transactions in exempted securities, including government and municipal securities, may be submitted to the Office of Dispute Resolution for arbitration under the NASD's Code of Arbitration Procedure without limitation. Amendment No. 1 filed with the SEC on February 6, 1998. Amendment No. 2 filed with the SEC on March 30, 1998. Published for comment by the SEC in Release No. 34-39880 (April 16, 1998); 63 F.R. 20232 (April 23, 1998). Comment period expired May 14, 1998. Approved by the SEC in Release No. 34-40103 (June 19, 1998); 63 F.R. 34951 (June 26, 1998).

#### **98-02**

Amend Rule 2860(b)(3)(A)(vii)(c) to extend, until December 31, 1999, the Association's pilot program for exemptions from equity option position limits for certain hedged positions. Amendment No. 1 filed with the SEC on March 23, 1998. Accelerated approval granted by the

SEC in Release No. 34-39865 (April 14, 1998); 63 F.R. 19992 (April 22, 1998). Comment period expired May 13, 1998.

#### **97-96**

Amend Rule 10333(d) to adjust the Hearing Process Fee Schedule so that the amounts in dispute of the lowest brackets in the Rule 10333(d) Hearing Process Fee Schedule are consistent with the dollar amount at which the Pre-hearing Process Fee is imposed. Notice of filing and immediate effectiveness published by the SEC in Release No. 34-30504 (December 31, 1997); 63 F.R. 1134 (January 8, 1998). Comment period expired January 29, 1998.

#### **97-79**

Amend IM-10104, 10205 and 10332 of the Code of Arbitration Procedure to increase the arbitrator honoraria, arbitration filing fees, and hearing session deposits for intra-industry and public investor arbitrations. The proposed rule change will amend the fee schedules to graduate fees further according to the amount in dispute to reflect more closely the costs associated with resolving controversies. Amendment No. 1 filed with the SEC on November 12, 1997. Published for comment by the SEC in Release No. 34-39346 (November 21, 1997); 62 F.R. 63580 (December 1, 1997). Comment period expired December 22, 1997. Amendment No. 2 filed with the SEC on December 18, 1997. Approved by the SEC in Release No. 34-41056 (February 16, 1999); 64 F.R. 10041 (March 1, 1999).

#### **97-20**

Amend Rule 6440 to eliminate restrictions on members to accept stop orders and certain stop limit orders in exchange-listed securities. Published for comment by the SEC in Release No. 34-38429 (March 21, 1997); 62 F.R. 14953 (March 28, 1997). Comment period expired April

18, 1997. Amendment No. 1 filed with the SEC on April 1, 1997. Approved by the SEC in Release No. 34-39857 (April 15, 1998); 63 F.R. 19547 (April 20, 1998). Effective April 14, 1998.

### **Rule Filings That Have Been Withdrawn**

#### **98-83**

Simplification of Corporate Finance filing fees. This filing was withdrawn on January 22, 1999, and replaced by rule filings 99-01 and 98-87.

#### **98-71**

Amend Rule 7010 to establish a pilot proprietary trading data distribution facility accessible to NASD members and qualified institutional buyers through its NasdaqTrader.com Web Site. Under the proposal, NASD member firms will be able to obtain data, verified for accuracy by ACT, regarding their trading volume in securities in which they report volume as well as disseminate some or all of that information to other users of the system. Published for comment by the SEC in Release No. 34-40542 (October 9, 1998), 63 FR 55909 (October 19, 1998). Withdrawn on November 5, 1998. Withdrawal announced by the SEC in Release No. 34-40658 (November 10, 1998); 63 F.R. 64136 (November 18, 1998).

#### **98-50**

Adopt Rules 2315 and 2360 to require members to review current issuer information prior to recommending a transaction to a customer in an OTC equity security and to provide certain disclosure information on the trade confirmation for customer transactions in an OTC equity security. This rule filing was withdrawn on January 13, 1999.

#### **98-41**

Amend Rule 4613(a)(5) to permit Market Makers to decrement their quoted size by the amount of a

preferred SelectNet order if the Market Maker has programmed its trading system to execute automatically such orders upon receipt. This rule filing was withdrawn on July 16, 1998.

**98-30**

Amend Rule 3110 to: (1) change the definition of "institutional account" to include the accounts of investment advisers that, under new rules adopted by the SEC, are now required to register with the states; and (2) exclude certain customer accounts from the requirement to obtain certain tax and employment information from the customer. This rule filing was withdrawn on May 7, 1998.

**98-24**

Amend IM-8310-2 to clarify that NASD Regulation will continue to release information concerning civil

judgments and arbitration decisions in securities and commodities disputes involving public customers and registered persons or member firms. This rule filing was withdrawn on April 6, 1998.

**98-12**

Amend IM-2110-1 and Rules 2710 and 2720 to clarify the definition of a "Public Offering." Accelerated approval requested. This rule filing was withdrawn on April 27, 1998.

**97-80**

Amend Rule 2860(b) to exempt conventional equity option transactions that are intermediated by a member pursuant to Exchange Act Rule 15a-6(a)(3) from options position limits provided that the member reports such transactions to the Association in accordance with the options position reporting requirements. Published for

comment by the SEC in Release No. 34-39417 (December 9, 1997); 62 F.R. 65838 (December 16, 1997). Comment period expired January 6, 1998. This rule filing was withdrawn on July 13, 1998.

**97-67**

Amend Rule 2860 to align the NASD's position limit rules for conventional equity options with the position limit rules for FLEX Equity Options. This filing was withdrawn on February 13, 1998, and replaced by rule filing 98-23.

**Endnote**

<sup>1</sup>For purposes of this service, Nasdaq will rely on the definition of "Qualified Institutional Buyer" found in Rule 144A of the Securities Act of 1933.

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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 15, 1999. The information relating to matters contained in this Notice is current as of the end of February 19, 1999.

### Firm Suspended, Individual Sanctioned

**First Atlanta Securities, L.L.C. (Atlanta, Georgia)** and **James Andrew Steinkirchner (Registered Principal, Marietta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. In addition, the firm was suspended from participating in any contingency offering for 30 days and thereafter until such time as it filed satisfactory revised written supervisory procedures governing the firm's participation in future contingency offerings with the NASD. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Steinkirchner, failed to ensure the establishment of a proper escrow account in connection with its participation in a best efforts contingency offering and conducted a securities business while failing to maintain its required minimum net capital. The findings also stated that the firm, acting through Steinkirchner, participated in sales in the offering in an amount exceeding the maximum specified in the offering documents, and beyond the time period specified in the offering documents, without providing notice to prior investors, reconfirming their purchases or offering them rescission.

The suspension began with the commencement of business on January 30, 1999, and concluded at the close of business on February 28, 1999.

### Firms Fined, Individuals Sanctioned

**Howe, Solomon & Hall, Inc. (Miami, Florida)** and **Christopher John Hall (Registered Principal, Miami, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$25,000, and required to retain an independent consulting firm mutually agreeable to both the firm and the NASD for one year. Hall was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, and barred from association with any NASD member in any principal capacity with no right to reapply. Hall has the right to continue as a passive investor in the firm, even during the term of the suspension. If it is ever determined that the scope of Hall's involvement with the firm during the term of the suspension ever goes beyond that, he shall immediately, and without notice, be permanently barred in all capacities. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm miscalculated its allowable assets thereby causing the firm to have insufficient net capital. The findings also stated that Hall "parked" securities by executing fictitious trades designed to overstate the firm's net capital thereby enabling the firm to continue in business in ostensible compliance with the net capital rule.

**J.J.B. Hilliard, W.L. Lyons, Inc. (Louisville, Kentucky)**, **James Reid Allen (Registered Principal, Louisville, Kentucky)** and **Robert Clinton Oliver, Jr. (Registered Principal, Louisville, Kentucky)** submitted a Letter of Acceptance,

Waiver, and Consent pursuant to which the firm was censured and fined \$25,000; Allen and Oliver were each censured, fined \$7,500, and suspended from association with the NASD in any principal capacity for 10 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm permitted Allen and Oliver to act in the capacity of a general securities principal prior to their properly qualifying and becoming registered in that capacity.

**Keogler, Morgan & Co., Inc. (Atlanta, Georgia), Chris Stuart Guerin (Registered Principal, Marietta, Georgia), Douglas Albert Dyer (Registered Representative, Chattanooga, Tennessee), Craig Robert Smith (Registered Principal, Duluth, Georgia), and James Hugh Brennan, III (Registered Representative, Chattanooga, Tennessee)** submitted Offers of Settlement pursuant to which the firm was censured, fined \$25,000, and required to pay back \$63,264 in excessive profits to public customers. Guerin was censured, fined \$10,000, and suspended from association with any NASD member as a registered principal for six months; Dyer was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 60 days; Smith was censured, fined \$10,000, and suspended from association with any NASD member as a registered principal for six months; and Brennan was censured and fined \$10,000.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Smith and Dyer, effected principal purchases of common stock from public customers at prices that were marked down

excessively. The firm, acting through Smith, failed to report trades within 90 seconds of execution without employing the requisite ".SLD" modifier, incorrectly reported wholesale trades as retail trades, and incorrectly reported the price on trades. Guerin and Brennan failed to supervise adequately the trading in common stock of Smith and Dyer, respectively, and failed to detect that Smith and Dyer were purchasing stock from the firm's retail customers subject to excessive markdowns. Furthermore, the NASD determined that Dyer effected securities transactions in the accounts of his customers without the customers' prior knowledge or authorization.

**Navillus Securities, Inc. (West Conshocken, Pennsylvania) and William Joseph Sullivan, Jr. (Registered Principal, West Conshocken, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the respondents were censured and fined \$60,000, jointly and severally. Sullivan was suspended from association with any NASD member in any principal capacity and from performing any functions that require registration as a principal for four months, except that he is permitted to perform duties as a financial and operations principal for his firm during the period of suspension. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Navillus, acting through Sullivan, allowed trades to be entered through the Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) for accounts belonging to family members of the firm's registered representatives and failed to establish, maintain, and enforce proper supervisory procedures governing the entry of trades through SOES. The findings also stated that Navillus, acting through Sullivan,

conducted a securities business while failing to maintain its minimum required net capital and filed a FOCUS report with the NASD that was inaccurate and misleading in that it included a net capital amount for the firm that was overstated. In addition, Navillus, acting through Sullivan, failed to maintain sufficient records of order entry and execution times for securities transactions; failed to complete a written training plan for its Firm Element training requirement; and failed to conduct and complete its Firm Element training requirement.

### **Firms And Individuals Fined**

**Austin Securities, Inc. (Forest Hills, New York) and Brian R. Mitchell (Registered Principal, Yorktown Heights, 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 required to disgorge \$14,007 in excessive profits to public customers. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Mitchell, entered into municipal bond sale and purchase transactions with public customers. The findings also stated that bond sales and bond purchases were conducted with excessive markups and markdowns, respectively, in light of the circumstances surrounding the transactions. In addition, the firm, acting through Mitchell, failed to establish or maintain an adequate written supervisory procedure pertaining to the pricing of municipal securities.

**Butler Larsen Pierce & Company, Inc. (San Francisco, California), Dane Allan Larsen (Registered Principal, Danville, California), and Eric Hall Zurla (Registered Representative, Glen Ridge, New Jersey)** submitted an Offer of

Settlement pursuant to which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Larsen, permitted individuals to perform the duties of registered persons when their registrations were inactive due to their failure to complete the Regulatory Element of the Continuing Education Program. The findings also stated that Zurla performed, and the firm and Larsen permitted him to perform, the duties of a registered person when Zurla's registration was inactive due to his failure to complete the Regulatory Element of the Continuing Education Program. Furthermore, the NASD determined that the firm, acting through Larsen, failed to establish and implement adequate written supervisory procedures to ensure compliance with the definition of municipal securities principals or representatives pursuant to MSRB Rule G-3.

**Derby Securities, Inc. (New York, New York) and Otto Frederick Grote (Registered Principal, New Castle, New Hampshire)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. In addition, the firm must pay \$18,240 in restitution to the appropriate parties. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Grote, received checks totaling \$18,240 in selling concessions related to the public distribution of shares of stock from a member firm. However, Derby Securities, Inc. was not entitled to such concessions because it did not render any services to the member firm. Furthermore, the NASD determined that Derby Securities, Inc., acting through

Grote, failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Program and failed to maintain written supervisory procedures for compliance with the Regulatory Element of the NASD's Continuing Education requirements. In addition, the NASD found that the firm, acting through Grote, failed to establish, maintain, and enforce proper written supervisory procedures concerning syndication and selling group participation, transactions in U. S. government securities, the conduct of annual compliance meetings, internal inspections to ascertain compliance with firm procedures, telephone solicitations, and insider trading (*i.e.*, Chinese Wall) procedures.

**J. Alexander Securities, Inc. (Los Angeles, California) and James Alexander (Registered Principal, Los Angeles, California)** submitted an Offer of Settlement pursuant to which they were censured and fined \$20,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting under the direction and control of Alexander, allowed an individual to become and remain associated with the firm as a principal when he was barred by the Securities and Exchange Commission (SEC) from acting in the capacity of a securities principal for 14 months and required to apply for reinstatement in that capacity.

**Pacific Continental Securities Corporation (Beverly Hills, California) and James Albert Allen (Registered Principal, Los Angeles, California)** 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 ordered to undertake to hire sufficient qual-

fied personnel to perform all the duties required to be performed by a financial and operations principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Allen, in contravention of its Restriction Agreement with the NASD, changed its status to that of a fully computing firm subject to the provisions of the SEC Customer Protection Rule 15c3-3, but failed to obtain prior written approval from the NASD and to undertake to comply with the requirements of the Rule. Furthermore, the NASD found that the firm, acting through Allen, held customer funds and failed to establish a Special Reserve Bank Account for the Exclusive Benefit of Customers, and failed to make weekly computations of the amount required to be deposited into the Reserve Account due to inadequate financial and operational personnel to identify the deficiencies.

**Shamrock Partners, Ltd. (Media, Pennsylvania) and James Thomas Kelly (Registered Principal, Newtown Square, Pennsylvania)** were censured; fined \$15,000, jointly and severally; required to pay \$10,053.13 in restitution to customers, jointly and severally; required to demonstrate corrective action with regard to their markup and markdown policy; and to submit to a staff interview. The SEC imposed the sanctions following appeal of an August 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Kelly, effected in a principal capacity purchases of common stock for public customers at prices that were not fair and reasonable in that the markdowns on the purchases exceeded five percent.

**Triumph Securities Corporation (New York, New York) and Aubrey Theodore Stautberg, Jr. (Regis-**

**tered Principal, New York, New York**) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$14,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Stautberg, failed to establish, maintain, and enforce written procedures to supervise the types of business in which it engages, and to supervise the activities of registered representatives, associated persons, and registered principals that are reasonably designed to achieve compliance with applicable securities laws, regulations, the NASD rules, and the Regulatory Element of the Continuing Education requirement. The findings also stated that the firm, acting through Stautberg, maintained the registration for individuals while they were not active in the securities business, and failed to file its annual audit reports on a timely basis.

## Firms Fined

**Capital Resources, Inc. (Washington, D.C.)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$13,500, and required to undertake to review and revise its written supervisory procedures to ensure that procedures are maintained, implemented, and enforced regarding private placements, contingency offerings, trading practices, and continuing education in a manner satisfactory to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it participated in contingency offerings and distributed offering materials that contained misleading information, failed to establish a bank escrow account, and failed to record receipt of customer funds for purchases of interests in contingency offerings on the firm's books and

records. The findings also stated that the firm failed to require all covered employees to complete the Firm Element of the Continuing Education requirement, to maintain records documenting the content of, and completion of, the Firm Element of the Continuing Education requirement, to conduct an annual needs analysis, and to develop a Firm Element Training Plan. Furthermore, the NASD found that the firm failed to indicate the limit order terms and conditions on order tickets to reflect that the customers' limit orders were changed to market orders, to timestamp the order tickets at the time the orders were changed, and to record all the order terms and conditions of customer limit orders. Moreover, the firm failed to execute limit orders within 60 seconds of completing trades in the firm's market making account at prices equal to or better than the customers' protected prices, and failed to establish, maintain, and enforce proper supervisory procedures governing the above violations.

**Dean Witter Reynolds Inc. (New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$15,000, and required to pay \$262.30 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 executed customer transactions without using reasonable diligence to ascertain the best prevailing inter-dealer market for each relevant security so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to provide, where it acted as principal for its own account, written notification to its customer disclosing that it acted as a Market Maker when executing the customer's transaction. Furthermore,

the NASD determined that the firm failed to provide, where it acted as principal for its own account, written notification disclosing the reported price to each of its customers.

**IFC Holdings, Inc. (dba Invest Financial Corporation) (Washington, D.C.)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$75,000, and required to retain an independent consulting firm to conduct a review for one year of the firm's compliance and written supervisory procedures, in particular, but not limited to, procedures relating to conduct of branch office examinations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to address, or failed to address adequately, written supervisory procedures regarding, among other things, insider trading, receipt of customer funds and securities, mutual fund breakpoints, variable annuities and variable life insurance, option customer's background and financial information, municipal securities markups and markdowns, customer complaint reporting, cold calling, sales supervision, and discretionary accounts. Also, the firm's written supervisory procedures failed to designate a principal responsible for the review of mutual funds, variable products, and unit investment trusts. Furthermore, the findings stated that the firm failed to inspect each branch office according to the cycle set forth in its written supervisory procedures. In addition, the firm failed to supervise and enforce its written supervisory procedures concerning daily transactions, mutual fund switches, branch office inspections, advertising and correspondence, and employees' accounts at other broker/dealers. The firm failed to have each registered representative participate in an annual compliance meeting. The findings also stated that the firm

failed to conduct a periodic examination of all customer accounts to detect and prevent irregularities or abuses, failed to report forgery accusations from customers within 10 business days as required by the NASD, and allowed an individual to function as acting chief administrative officer without being properly registered.

**Mesirow Financial, Inc. (Chicago, Illinois)** was fined \$15,000. The sanctions were based on findings that the firm failed to execute contemporaneously member-to-member customer limit orders to sell shares of stock after it sold shares for its own market-making account at a price equal to or better than said orders. Also, the firm failed to establish, maintain, and enforce adequate written supervisory procedures to achieve compliance with the rules and regulations applicable to limit orders.

**PaineWebber Incorporated (Weehawken, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$50,000, and required to review its supervisory procedures regarding registration of personnel and to implement changes necessary to ensure that all persons actively engaged in the firm's investment banking or securities business, or in the management thereof, are properly registered with the NASD. Without admitting or denying the allegations, PaineWebber consented to the described sanctions and to the entry of findings that it failed to ensure that persons actively engaged in the firm's investment banking or securities business, or in the management thereof, were properly registered as general securities representatives or general securities principals with the NASD. PaineWebber also failed to establish, maintain, and enforce written supervisory procedures that would ensure the proper registration of individuals.

**R. J. Steichen & Company (Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) in violation of applicable securities laws and regulations regarding trade reporting. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, ACT reporting, limit orders, books and records, registration, locked and crossed markets, SOES, the order handling rules, anti-competitive practices, and best execution.

**SCA Development, Inc. (Birmingham, Alabama)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to handle customer funds properly in connection with a contingency offering in that it failed to establish a bank escrow account and accepted and forwarded investor checks directly to the issuer, and closed the offering prior to the sale of the requisite number of units. The NASD also determined that the firm failed to timely file a Form U-5 on behalf of an individual, and failed to establish, maintain, and enforce proper supervisory procedures concerning the establishment and use of bank escrow accounts in contingency offerings, the extension of contingency offering periods, proper registration of principals, and timely submissions of Forms U-5 for terminated individuals.

**Smith Barney Inc. (Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to enforce written supervisory procedures, and failed to supervise adequately and properly a registered representative. According to the findings, the firm failed to prevent the registered representative from making numerous sales of securities (hot issues) that traded at a premium in the immediate aftermarket to restricted persons, in contravention of the NASD Board of Governors' Free-Riding and Withholding Interpretation.

### **Individuals Barred Or Suspended**

**Jerald Fred Albin (Registered Representative, Independence, Missouri)** submitted an Offer of Settlement pursuant to which he was censured, fined \$35,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Albin consented to the described sanctions and to the entry of findings that he participated in private securities transactions without prior written notice to, and written approval and/or acknowledgment from, his member firm. The findings also stated that Albin failed to respond truthfully to NASD requests for information in that he provided the NASD with altered bank statements that contained inaccurate, false, and misleading information.

**Brian Douglas Angiuli (Registered Principal, Port Washington, New York)** was censured, fined \$15,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam as a general securities representative. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a Philadel-

phia District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Angiuli executed unauthorized trades in the account of a public customer.

Angiuli has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

**Henderson Basco Berberabe (Registered Representative, West Covina, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Berberabe consented to the described sanctions and to the entry of findings that he converted a total of \$58,000 from public customers through deceptive means. According to the findings, Berberabe obtained the signatures of the customers on blank or incomplete wire authorization forms and later completed the forms, without the knowledge or consent of the customers, in order to facilitate the unauthorized transfer of their funds into a personal brokerage account at a firm other than his employer. The funds were subsequently misused by Berberabe for his own benefit.

**Philip Allen Bowsher (Registered Representative, Wapakoneta, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$235,000, barred from association with any NASD member in any capacity, and required to pay \$45,133.50 in restitution to his member firm. Without admitting or denying the allegations, Bowsher consented to the described sanctions and to the entry of findings that he endorsed checks received from public customers into his own name totaling \$45,133.50 and failed to

remit their proceeds to his member firm, and instead, retained the funds for his own use and benefit.

**Donald Clyde Bozzi (Registered Representative, Basking Ridge, New Jersey)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Bozzi submitted life insurance applications that contained false information to his member firm. Bozzi also provided false information to the NASD.

**Carol Brantley (Associated Person, Akron, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$2,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brantley consented to the described sanctions and to the entry of findings that she submitted a materially false or inaccurate Form U-4 to her firm that failed to disclose a criminal conviction.

**Charles Edward Brown (Associated Person, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Brown consented to the described sanctions and to the entry of findings that he engaged in activities requiring registration as a general securities representative, general securities principal, and municipal securities principal without being registered in those capacities.

**John Barrett Bryant (Registered Representative, Collierville, Tennessee)** submitted an Offer of Settle-

ment pursuant to which he was censured, fined \$15,000, and barred from association with any NASD member in any capacity with the right to reapply in three years. Without admitting or denying the allegations, Bryant consented to the described sanctions and to the entry of findings that he received \$1,000 from a public customer for the purpose of investing in the customer's universal life policy account, failed to invest the funds in the account, and retained possession of the funds until a later date, without the customer's knowledge or consent. The findings also stated that Bryant sent correspondence to the customer that was misleading in that it overstated the funds maintained by the customer in the life insurance account by approximately \$1,000.

**Peter Joseph Cammarano (Registered Principal, The Woodlands, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cammarano consented to the described sanctions and to the entry of findings that he failed to respond to an NASD request to appear and provide testimony.

**Stephen Bruce Carlson (Registered Principal, Denver, Colorado)** was censured, fined \$10,000, jointly and severally, with a member firm and barred from association with any NASD member in any capacity. The SEC imposed the sanctions following appeal of a September 1997 NBCC decision. The sanctions were based on findings that Carlson, acting for himself and on behalf of his firm, attempted to obtain stock at below market prices by means of threats, intimidation, and coercion.

**Joseph Giulio Chiulli (Registered Principal, Lynbrook, New York)**

was censured, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam. The NAC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Chiulli failed to preserve his member firm's books and records and failed to respond to an NASD request for information.

Chiulli has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal.

**Dickie Lynn Connors (Registered Representative, Kansas City, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Connors consented to the described sanctions and to the entry of findings that she withdrew funds totaling \$22,000 from the accounts of public customers without their knowledge or consent and converted the funds to her own use and benefit.

**Eugene Joseph Cordano (Registered Principal, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any capacity, and ordered to pay \$10,000 in restitution to public customers. Without admitting or denying the allegations, Cordano consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without the customers' prior knowledge, authorization, or consent. The findings also stated that Cordano provided false information to the NASD during the course of its investigation.

**Paul Cruz (Registered Representative, Colorado Springs, Colorado) and Lee Thomas Duran (Registered Principal, Colorado Springs, Colorado)** submitted an Offer of Settlement pursuant to which they each were censured, fined \$2,000, and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to respond to NASD requests for information in a timely manner.

**Robert Henry Deighton, III (Registered Representative, Sarasota, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Deighton consented to the described sanctions and to the entry of findings that he sold approximately \$155,000 in chattel mortgages to public customers for which he received commissions totaling \$7,775 without giving prior written notice to, and receiving written approval from, his member firm.

**Joseph Anthony DiMattina (Registered Representative, Glenview, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DiMattina consented to the described sanctions and to the entry of findings that he received a check issued by his member firm to a public customer in the amount of \$432 to refund the customer for an initial premium paid on a life insurance policy that was canceled. The findings also stated that DiMattina signed the customer's name on the back of the check without the customer's knowledge and consent, deposited the check in his personal account, and used the funds for some purpose other than for the benefit of the customer.

**Edward Joseph Dorr (Associated Person, Amityville, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dorr failed to respond to NASD requests for information.

**Kai Fang (Registered Representative, Flushing, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Fang consented to the described sanctions and to the entry of findings that he agreed to reimburse a public customer \$2,798.40 for a loss on a securities trade in the customer's account.

**Daniel Charles Felter (Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Felter consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Frederick Ernest Fischer, Jr. (Registered Representative, Tom's River, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fischer consented to the described

sanctions and to the entry of findings that he failed to respond to NASD requests for information.

**Allen D. Fritz (Registered Representative, Wyandotte, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for two years, and required to pay \$4,889.56 in restitution to his member firm. Without admitting or denying the allegations, Fritz consented to the described sanctions and to the entry of findings that he effected numerous index option transactions in his personal margin account maintained at his member firm without depositing the required margin, which caused margin call notices to be issued by his firm's clearing firm. The NASD determined that Fritz made a practice of meeting margin calls by liquidating positions in his account.

**Daniel Scott Fuchs (Registered Representative, Plainview, New York)** was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Fuchs purchased securities for the account of a public customer without the knowledge, authorization, or consent of the customer, and, in the absence of written or oral authorization to Fuchs, exercised discretion in the account.

**James Michael Gallaer (Registered Representative, Patchogue, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gallaer consented to the described sanctions and to the entry of findings that he

either refused or failed to execute sell orders put in by public customers and made baseless, unreasonable, and specific price predictions to public customers as to speculative securities, often predicting substantial price increases in a specified period of time. The findings also stated that Gallaer bought or sold securities for the accounts of public customers without obtaining the customers' authorization, and required public customers who desired to purchase units in initial public offerings (IPO) to buy common stock and/or warrants of the issuer in order to be permitted to buy IPO units.

**Stephen K. M. Gourlay, Jr. (Registered Principal, Hicksville, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for three months, suspended from acting as a principal or supervisor of a member firm for two years, ordered to pay \$38,646.25 in restitution to public customers, and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, Gourlay consented to the described sanctions and to the entry of findings that he made fraudulent misrepresentations and omitted material facts in recommending the purchase of securities to public customers. The findings also stated that Gourlay effected unauthorized transactions in customer accounts.

**Michael Dylan Gregory (Registered Representative, Scottsdale, Arizona)** was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gregory failed to disclose a reportable misdemeanor charge on Form U-4 applications.

**Kory Evan Guglielminetti (Registered Representative, Staten Island, New York)** was censured, fined \$129,968.47, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Guglielminetti cheated on his Series 7 exam by having an impostor take the Series 7 in his name. Guglielminetti also failed to respond truthfully to questions during an NASD interview.

**Carl John Hagmaier (Registered Representative, San Luis Obispo, California)** submitted an Offer of Settlement pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hagmaier consented to the described sanctions and to the entry of findings that he received checks totaling \$120,000 from public customers for investment, deposited the checks into a bank account that he controlled, and misused the funds himself or permitted others to misuse the funds. In one instance, Hagmaier fabricated an account statement for the customer which falsely stated that her funds had been invested in a cash and stock fund. The findings also state that Hagmaier received contributions totaling approximately \$539,000 for the creation of a defined benefit plan and misused \$68,262.61 of the plan's funds for unrelated business and/or personal expenses. Hagmaier also approached public customers to purchase life insurance, took out loans totaling \$160,000 on the value of the policies, and forged the signatures of the customers on the loan checks without the knowledge or consent of the customers. Hagmaier also failed to respond to NASD requests for information.

**Andrew Fensmark Harris (Registered Representative, Bronx, New York)** was censured, fined \$5,000, suspended from association with any NASD member in any capacity for

six months, and ordered to requalify by exam as a general securities representative. The NAC imposed the sanctions following review of a New York DBCC decision. The sanctions were based on findings that Harris removed a piece of scratch paper on which he had written several exam questions and answers from a Series 7 exam.

**Deborah Wertz Henke (Registered Representative, Newbury Park, California)** was censured, fined \$61,000, barred from association with any NASD member in any capacity, and ordered to pay \$5,200 in restitution to a member firm. The sanctions were based on findings that Henke converted customer securities and failed to respond to NASD requests for information.

**Harold Lee Jenkins (Registered Representative, Bronx, New York)** was censured, fined \$250,000, barred from association with any NASD member in any capacity, and ordered to pay \$28,751.90 in restitution. The sanctions were based on findings that Jenkins solicited public customers to provide funds for investment in mutual funds and/or insurance products and, instead of investing the customers' funds on their behalf, deposited the checks into his own personal money market account. Jenkins also failed to appear for an NASD on-the-record interview.

**Brian Keith Johnston (Registered Representative, Bremen, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$120,222.90, barred from association with any NASD member in any capacity, and ordered to pay \$24,044.58 in restitution to an insurance company. Without admitting or denying the allegations, Johnston consented to the described sanctions and to the entry of findings that he

submitted fictitious annuity applications to an insurance company for people who did not exist and collected \$24,044.58 in advances on commissions to which he was not entitled.

**Michael Andrew Kelleher (Registered Representative, Beverly, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Kelleher consented to the described sanctions and to the entry of findings that he provided inaccurate and misleading account information to a public customer on several occasions.

**Gerald Kurt Kempa (Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for five business days, ordered to disgorge \$67.72 in net commissions to the NASD, required to requalify by exam as a general securities representative, and ordered to make full restitution to a public customer in the amount of \$1,100, representing losses incurred and applicable interest. Failure to make complete restitution within 60 days will result in Kempa being barred from association with any member firm in any capacity until restitution is complete. Without admitting or denying the allegations, Kempa consented to the described sanctions and to the entry of findings that he effected the purchase of securities in a public customer's account without the customer's prior knowledge or consent.

**Kenneth Craig Krull (Registered Principal, Marysville, Washington)** was censured, fined \$20,000, barred

from association with any NASD member in any principal or supervisory capacity, suspended from association with any NASD member in any capacity for one year, ordered to pay \$81,705 in restitution to customers, and required to requalify by exam as a general securities representative. The SEC imposed the sanctions following appeal of a July 1997 NBCC decision. The sanctions were based on findings that Krull recommended unsuitable mutual fund switches in the accounts of public customers without having reasonable grounds for believing that such transactions were suitable for the customers in view of the frequency of the transactions, the type of transaction being recommended, and the customers' financial situations, circumstances, and needs.

On February 3, 1999, the SEC granted a stay of the sanctions for 60 days based upon Krull's stated intent to seek review of the SEC's order in the U.S. Court of Appeals for the Ninth Circuit. The principal and supervisory bars are not included in the stay order. In the event that Krull files a timely appeal, the SEC's order shall be further stayed to that extent pending determination of the appeal to the Court of Appeals.

**Adam Drew Levy (Registered Principal, Old Westbury, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$300,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Levy consented to the described sanctions and to the entry of findings that he caused his firm and its representatives to repurchase securities for the firm's account before the completion of IPO distributions at prices slightly higher than the IPO transactions and to solicit public customers to purchase aftermarket securities while the firm

was still engaged in the distributions. The findings also stated that Levy caused his member firm and its representatives to engage in numerous sales practice abuses including, but not limited to, baseless price predictions or guarantees, failures to execute customer orders, and customer requirements to purchase aftermarket shares as a condition of receiving IPO units, and other high pressure tactics. Levy caused his firm and its registered representatives to manipulate the prices of securities in the aftermarket trading of those securities, which resulted in over \$8 million in illegal profits for the firm. Furthermore, the NASD found that Levy failed to supervise the activities of the firm's registered representatives to ensure compliance with applicable securities laws, regulations, and NASD rules.

**Peter Liounis (Registered Representative, Brooklyn, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Liounis failed to respond to NASD requests for information.

**Dean Joseph LoBrutto (Registered Representative, Rochester, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, LoBrutto consented to the described sanctions and to the entry of findings that he failed to respond, or to respond truthfully, to NASD requests for information.

**Henry Clay Lowry (Registered Representative, Orlando, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, barred from association with any NASD member in any

capacity, and ordered to disgorge \$80,000 to public customers. Without admitting or denying the allegation, Lowry consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to request, or receive, permission from his member firm to engage in such transactions.

**Timothy Earl McGill, Sr. (Registered Representative, Shrewsbury, Pennsylvania)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that McGill failed to respond to NASD requests for information.

**Patrick Thomas McRaith (Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McRaith consented to the described sanctions and to the entry of findings that he received a \$4,100 check from a public customer with instructions to use the funds for a new annuity account. The NASD found that McRaith failed to follow the customer's instructions and used the funds for his own use and benefit by endorsing the check, depositing the funds into his personal bank account, and spending the funds, without the knowledge or consent of the customer.

**David Amin Monawar (Registered Representative, East Hanover, New Jersey)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Monawar failed to respond to NASD requests for information.

**Vincent Michael Nirlino (Registered Representative, New York,**

**New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Nirlino consented to the described sanctions and to the entry of findings that he engaged in an outside business activity by acting as a consultant and by sitting on the Board of Directors of a company in which his wife was a majority shareholder.

**Thomas Andrew O'Malley (Registered Representative, East Grand Rapids, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$193,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, O'Malley consented to the described sanctions and to the entry of findings that he received checks totaling \$31,546.75 from the securities account of a public customer, signed the customer's name to the checks, caused the checks to be deposited in an account in which he had a beneficial interest, and used the funds for some purpose other than the benefit of the customer without the customer's knowledge or consent. The findings also stated that O'Malley failed to respond to NASD requests for information.

**Dennis Ray Owens (Registered Representative, Hamilton, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Owens consented to the described sanctions and to the entry of findings that he failed to respond adequately to NASD requests for information.

**Calvin Patterson, III (Registered Representative, Peoria, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Patterson consented to the described sanctions and to the entry of findings that he effected numerous options transactions on a discretionary basis in the accounts of public customers without prior written authorization from the customers and written acceptance from his member firm. The findings also stated that Patterson effected options transactions without the authorization of a public customer after the customer requested Patterson liquidate her account.

**Lawrence Joseph Penna (Registered Principal, Franklin Lakes, New Jersey)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Penna consented to the described sanctions and to the entry of findings that he failed to appear for testimony and failed to respond to NASD requests for information regarding his justification for failing to appear for scheduled testimony in a timely manner.

**Steven Francis Perdie (Registered Principal, Port Jefferson Station, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Perdie failed to respond to NASD requests for information.

**Sean Michael Perry (Registered Representative, Rancho Cucamonga, California)** submitted a Letter of Acceptance, Waiver, and

Consent pursuant to which he was censured, fined \$1,000, and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Perry consented to the described sanctions and to the entry of findings that he failed to disclose misdemeanors involving possession of a false identification and providing false identification to a police officer on his Form U-4 that he submitted to his member firm and the NASD.

**Theodore Lester Pittman III (Registered Representative, McFarland, Wisconsin)** was censured, fined \$20,000, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on finding that Pittman failed to respond to NASD requests for information.

**Michael Ploshnick (Registered Principal, Boca Raton, Florida)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Ploshnick failed to respond to NASD requests for information and to provide testimony.

**Milson Carroll Raver, Jr. (Registered Representative, Sea Girt, New Jersey)** was censured, fined \$350,000, barred from association with any NASD member in any capacity, and ordered to pay \$15,000, plus interest, in restitution to public customers. The sanctions were based on findings that Raver used a fraudulent scheme to sell securities in that he deposited \$15,000 of public customers' monies intended for purchasing securities into a brokerage account he opened and controlled. Furthermore, Raver failed to segregate or hold the monies in an escrow account, used

the account to pay for personal expenses, withdrew all the money, and closed the account, without reimbursing the customers or delivering shares of stock to the customers. Raver also engaged in private securities transactions without giving prior written notice to his member firm and failed to respond to NASD requests for information.

**Nelson Eric Roseland (Registered Representative, Oakland, California)** was censured, fined \$67,500, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Roseland made unsuitable recommendations to a public customer and exercised discretionary trading authority in the account of a public customer without prior written approval from the customer and his member firm. Roseland also failed to respond to NASD requests for information.

**Robert Lowell Shatles (Registered Principal, Fort Salonga, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Shatles consented to the described sanctions and to the entry of findings that he allowed a firm to conduct a securities business by transacting with customers and making markets, while failing to maintain the minimum required net capital. The findings also stated that Shatles failed to record properly the firm's deficit net capital position on its financial books and records. In addition, Shatles failed to transmit notice of the firm's net capital deficiency to the SEC and the NASD and failed to file, and to file on a timely basis, the firm's FOCUS reports.

**Robert Vincent Sherman (Registered Principal, Wheat Ridge, Colorado)** submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Sherman consented to the described sanctions and to the entry of findings that he repeatedly failed to make the required "affirmative determination" that certain securities he sold short would be delivered or available and could be borrowed.

**Jeremy L. Slovik (Registered Representative, Bayshore, New York)** submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Slovik consented to the described sanctions and to the entry of findings that he made material misrepresentations, omitted material information, and made fraudulent price predictions in the offer and sale of securities. The findings also stated that Slovik executed an unauthorized transaction in the account of a public customer.

**Thomas W. Smith (Registered Principal, Portland, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he submitted misleading documentation to his member firm to obtain reimbursements through the petty cash fund in his branch office. The findings also stated that Smith charged these expenses to his firm's corporate account such that the firm was directly billed for these charges in

addition to the payments from petty cash. Smith obtained reimbursement in the amount of \$1,038.47; however, due to the nature of the firm's procedures for reimbursing branch office expenses and its compensation arrangement with Smith, the actual benefit to Smith was \$951.99.

**Timothy Patrick Sullivan (Registered Representative, Owings Mills, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, and barred from membership with any NASD member in any capacity. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that he submitted applications for life insurance on the lives of public customers without their authorization and consent and affixed signatures purporting to be the customers to the applications and to policy delivery receipts. The findings also stated that Sullivan caused an insurance policy on the life of a public customer to be surrendered and its cash value applied to purchase an annuity. In connection with the surrender and purchase, Smith affixed the customer's signature to the application and related documents without the authorization or consent of the customer.

**John Anthony Tabone (Registered Representative, Auburn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tabone consented to the described sanctions and the entry of findings that he changed the addresses of public customers to addresses under his control without the customers' knowledge or consent, took unauthorized loans and other disbursements from variable and non-securities insurance policies

issued by his member firm, and converted the proceeds to his own use and benefit. The findings also stated that Tabone failed to apply funds given to him by public customers for insurance policy premiums, and, without the knowledge or consent of the customers, converted the funds to his own use and benefit. Tabone converted a total of \$253,573, of which \$24,435.28 was converted from non-securities insurance products. In furtherance of the conversion of funds, Tabone altered policy statements to reflect fictitious account values and gave these altered statements to the customers.

**Matthew Lee Towers (Registered Representative, New York, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Towers failed to respond to NASD requests for information.

**Sean Martin Towey (Registered Representative, Union City, New Jersey)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Towey failed to respond to NASD requests for information.

**James Arlie Tyson, Sr. (Registered Representative, Lake Park, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$100,000, barred from association with any NASD member in any capacity, and ordered to pay \$304,399.61 in restitution to public customers. Without admitting or denying the allegations, Tyson consented to the described sanctions and to the entry of findings that a public customer gave him checks totaling \$20,000 for the purchase of shares in a company "if and when" the company went public. The find-

ings stated that Tyson gave the customer a "debenture" which carried an 11 percent interest rate and purportedly gave him the right to convert his investment into shares of stock. Instead of investing the customer's funds, Tyson converted them to his own use and benefit. In addition, Tyson converted a total of \$304,399.61 received from other public customers to his own use and benefit by telling the customers he was investing their funds in securities and evidenced the transactions by providing them with "Certificates of Direct Participation" he created that specified an investment amount, an annual yield, and a maturity date.

**Rocco Anthony Vignola (Registered Representative, Bohemia, New York)** was censured, fined \$15,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Vignola forged a public customer's signature on an application for an insurance policy in the customer's name and submitted the application, without the customer's knowledge or authorization; forged the customer's signature on a check for \$908 which reflected the customer's credit resulting from the cash surrender of a separate insurance policy; and used a portion of the proceeds of that check to pay for the aforementioned unauthorized insurance policy.

**Robert Lee Wallace (Registered Principal, Naples, Florida)** was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 60 days. The SEC affirmed the sanctions following appeal of a January 1998 NAC decision. The sanctions were based on findings that Wallace published an advertisement for viatical settlements in a newspaper that contained misleading, unwarranted, and exaggerated statements and failed to disclose the risks associated

with the product being advertised.

**Mark Jonathan Weisman (Registered Representative, Basking Ridge, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, barred from association with any NASD member in any capacity, and ordered to pay restitution in the amount of \$465,031.70 to his member firms or their insurance company parent organizations. Without admitting or denying the allegations, Weisman consented to the described sanctions and to the entry of findings that he effected the unauthorized withdrawal of \$465,031.70 in loan checks from the policies of policy holders and public customers without their knowledge or consent, and deposited these funds into his personal bank account.

**Kellie Anne Will (Registered Representative, Derby, New York)** submitted an Offer of Settlement pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Will consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information.

**Paul Daniel Willette (Registered Representative, Eden Prairie, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 15 business days, and required to pay \$10,000 in restitution to a public customer. Willette must also submit to additional supervision by his member firm for 365 days following the suspension. Without admitting or denying the allegations, Willette consented to the described sanctions and to the entry of findings that he failed to disclose a

customer complaint and settlement with the customer on a Form U-4. The findings also stated that Willette exercised effective control over customer accounts and recommended to the customers numerous purchases and sales of securities without having reasonable grounds for believing that such recommendations were suitable for the customers in view of the size and frequency of the transactions, and the nature of the customers' accounts.

**Andrew Scott Zeiger (Registered Representative, Fort Lauderdale, Florida)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Zeiger failed to respond to NASD requests for information.

### **Individual Fined**

**David Madden Shehan (Registered Representative, Littleton, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$12,500. Without admitting or denying the allegations, Shehan consented to the described sanctions and to the entry of findings that he sent correspondence to mutual fund wholesalers without prior approval from his member firm. According to the findings, the correspondence solicited funds for a firm-sponsored educational meeting by improperly promising access to mutual fund wholesalers who contributed to the meeting and denying access to those unwilling to contribute.

### **Decision Issued**

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of February 12, 1999. 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*.

**David Charles Baron, Jr. (Registered Principal, Clearwater, Florida)** was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for 45 days. The sanctions were based on findings that Baron failed to supervise a registered representative by allowing the individual to effect transactions in municipal securities without being registered.

Baron has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal.

### 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 John Dalton (Registered Principal, Levittown, New York)** was named as a respondent in an NASD complaint alleging that he charged public customers markups and markdowns above his member firm's contemporaneous cost, totaling approximately \$793,919.97, at prices that were not fair and reasonable, taking into consideration all of the relevant factors. The complaint also alleges that Dalton effected transactions in, or induced the purchase or sale of, securities by means

of manipulative, deceptive, or other fraudulent devices or contrivances. The complaint alleges that Dalton failed to disclose to public customers that the prices at which his member firm was engaging in these transactions with its customers were not reasonably related to the prevailing market price of these securities.

**Robert Louis Giardina (Registered Representative, Staten Island, New York)** was named as a respondent in an NASD complaint alleging that he employed devices to defraud a public customer by making untrue statements of material fact or omitting to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading. The complaint alleges that Giardina made material misrepresentations to a public customer in order to persuade the customer not to sell securities. The complaint also alleges that Giardina failed to respond timely to NASD requests for information and for on-the-record testimony.

**Daniel J. Glass (Registered Principal, Lutz, Florida)** was named as a respondent in an NASD complaint alleging that he effected securities transactions in a public customer's account without the customer's authorization and without discretionary authority over the account, and in response to the customer's complaints, paid the customer a total of \$2,124.99 for the losses incurred in connection with the unauthorized transactions.

**Matthew Christopher Hawley (Registered Principal, Sleepy Hollow, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and failed to disclose material information to public customers in order to induce them to purchase securities. The complaint also alleges that Hawley made fraud-

ulent price predictions in connection with his recommendations and solicitations. The complaint alleges that Hawley effected transactions in public customer accounts without the prior authorization of the customers. The complaint also alleges that Hawley failed to execute a public customer's sell order.

**Ricky Allen Lubinsky (Registered Principal, Fort Lauderdale, Florida)** was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations to a public customer based on the facts the customer disclosed as to her tax status, investment objective, and financial situation and needs. The complaint also alleges that Lubinsky failed to respond to NASD requests for information.

**Machelle Rene May (Registered Principal, San Diego, California)** was named as a respondent in an NASD complaint alleging that she made unauthorized withdrawals from her member firm's bank accounts totaling \$42,208.67 and converted those funds to her own personal use.

**Thomas Robert Sanford (Registered Principal, Dana Point, California)** was named as a respondent in an NASD complaint alleging that he effected unauthorized transactions in the accounts of public customers, and attempted to effect the purchase of securities in the account of another public customer without the customer's knowledge, authorization, or consent. The complaint also alleges that Sanford initiated unauthorized wire transfers totaling \$21,800 from the joint account of public customers, forged the customers' signatures on wire transfer instruction forms, and as a result, caused \$21,800 to be transferred from the customers' joint account to two bank accounts of which the customers had no beneficial or other interest.

**Ronald Franklin Sivak (Registered Representative, Mobile, Alabama)** was named as a respondent in an NASD complaint alleging that he effected a transfer of funds in the amount of \$9,000 from the account of a public customer to the joint account of other public customers, without the knowledge or consent of the first customer. The complaint alleges that in connection with this activity, Sivak forged the signature of the first customer on an "Authorization to Journal Securities or Funds" form, without the customer's knowledge or consent. The complaint also alleges that Sivak failed to respond to NASD requests for information.

**Dale Cochren Trask (Registered Representative, Swampscott, Massachusetts)** was named as a respondent in an NASD complaint alleging that after having been granted power of attorney over the financial affairs of a public customer afflicted with Alzheimer's and Parkinson's disease, he improperly converted \$157,250 of the customer's funds for his own use and benefit.

**James Mitchell Vaughn (Registered Representative, Bellport, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations, omitted to disclose material information, and made fraudulent price predictions in connection with his solicitation of public customers to purchase securities. The complaint also alleges that Vaughn effected a transaction in the account of a public customer without the customer's authorization. The complaint also alleges that Vaughn failed to execute a sale of securities as instructed by a public customer.

### **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 suspensions 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.

**Barry F. Cohen & Company**, Boca Raton, Florida (February 16, 1999)

**Grigsby & Associates**, San Francisco, California (February 4, 1999)

### **Firms Expelled For Failing To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations**

**InterSecurities Limited**, Nassau, Bahamas (February 5, 1999)

**Plumwood Securities Corp.**, Libertyville, Illinois (February 5, 1999)

**Strategic Resource Management, Inc.**, Aurora, Colorado (February 5, 1999)

### **Firm Suspended Pursuant To NASD Rule Series 9510 For Failing To Pay An Arbitration Award**

**Ash & Co., Inc., a/k/a Ash Financial Corp.**, Great Neck, New York (February 4, 1999)

**M.S. Farrell & Company, Inc.**, New York, New York (January 25, 1999 - February 4, 1999)

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

**Catsos, Jr., James E.**, Aventura, Florida (February 5, 1999)

**DeSanto, Joseph F.**, Pompano Beach, Florida (February 5, 1999)

**Mazzei, Frank R.**, Oceanport, New Jersey (January 29, 1999)

**Moler, William A.**, Aurora, Colorado (February 5, 1999)

### **Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Awards**

**Cox, Jeffrey L.**, Lemayne, Pennsylvania (February 1, 1999 - February 10, 1999)

**Katz, Michael Alan**, Bethpage, New York (February 10, 1999)

**Zangara, Frank Jack**, Hicksville, New York (February 17, 1999)

### **NASD Regulation And The New York Stock Exchange Jointly Fine Ragen MacKenzie, Inc. \$125,000**

NASD Regulation and the New York Stock Exchange, Inc., as a result of a coordinated examination and investigation, announced that Ragen MacKenzie, Inc., has been censured and fined \$125,000 for violations arising from the processing of customer orders and has agreed to an appropriate undertaking regarding its procedures. The actions were brought by both self-regulatory organizations and the sanctions are jointly assessed.

The NYSE found that with respect to two securities listed on the Exchange, Ragen MacKenzie aggregated orders for the purchase of securities in customer accounts into blocks, and after shares were obtained, allocated the shares to customers at the average price at which the orders were filled. The NYSE found that the firm did not prepare order tickets to reflect orders, at

or near the time the block orders were entered did not possess documentation reflecting that the firm disclosed to its customers that it intended to aggregate orders, and then to allocate the shares purchased to its customers, after the close of the trading day, at the average price at which the shares were purchased.

NASD Regulation also found that in June and July of 1997, Ragen MacKenzie aggregated certain customer purchase and sale orders in seven Nasdaq stocks and executed such orders as block trades through its trading desk. After the execution of the block trades was completed, the firm's brokers allocated the shares at the average price among selected customer accounts for which the orders were placed. Ragen MacKenzie had no standardized process to prevent disparate allocations among customer accounts. NASD Regulation further found that, in violation of NASD rules and federal securities laws, the firm failed to prepare and maintain records reflecting details of individual customer orders including price and size of orders, and time of receipt and account identification information.

NASD Regulation and the NYSE also found that the firm failed to provide for appropriate supervision designed to prevent these violations.

Ragen MacKenzie, which neither admitted nor denied NASD Regulation's and the NYSE's allegations, has undertaken to have the audit committee of its parent company verify that a review of the firm's procedures has been conducted and that appropriate new procedures have been implemented to ensure compliance with applicable self-regulatory organization rules and the federal securities laws.

## **NASD Regulation Expels Biltmore Securities, Inc., Bars Two Principals For Microcap Fraud, And Obtains Restitution And Funds For Investors**

NASD Regulation announced that it has expelled Biltmore Securities, Inc., of Ft. Lauderdale, Florida, from membership in the NASD, and permanently barred its two principals, Elliot Loewenstein and Richard Bronson, for engaging in fraudulent conduct and obtaining excessive underwriting compensation. The firm and its two principals have agreed to settle, without admitting or denying the allegations, several disciplinary actions involving the underwriting, distribution, or trading of the securities of five different issuers between November 1993 and December 1995.

As part of the settlement, the firm and its principals have agreed to return more than \$6 million to customers of the firm. Of this, \$3.3 million has been earmarked for customers who have recently reached settlements with the firm. An additional \$1.6 million of this money will be used to pay restitution to identified customers. The final \$1.1 million will be used to compensate customers of Biltmore who voluntarily participate in a mediation program specifically designed to mediate their claims against the firm.

Biltmore, Loewenstein, and Bronson will also pay fines of \$600,000, \$300,000, and \$100,000, respectively. NASD Regulation will collect the fines only after all obligations to customers under the settlement have been satisfied.

### **Violations**

The settlement involves the following violations:

**Manipulative Conduct.** Biltmore Securities and Loewenstein

engaged in manipulative activity in connection with the IPOs of CSI Computer Specialists, Inc., and Terrace Holdings, Inc., underwritten by the firm. This activity violated the anti-fraud, anti-manipulation, and other provisions of the federal securities laws and NASD rules.

During both offerings, which took place in 1995, Loewenstein controlled the distribution of the IPOs and placed 31 percent of each offering with investors who he expected would sell the securities back to Biltmore as quickly as possible after trading began. Minutes after open market trading began, these shares were sold or "flipped" back to Biltmore at prices between \$.75 and \$2 above the IPO price. In addition, while the initial offering was still in progress, Biltmore agreed to purchase 725,000 shares from "insiders" of Terrace Holdings, for prices well below the price of the offering.

Once the IPO was completed and after-market trading began in each offering, Biltmore's sales force began an aggressive effort to sell the securities to the firm's retail customers. Biltmore and Loewenstein violated the securities laws and NASD rules by acting as a market maker in the aftermarket for each security before completing a bona-fide distribution of these IPOs. As a result of this misconduct, Biltmore illegally profited by almost \$1.8 million.

**Fraudulently Failing to Disclose Adverse Interests.** In 1993 and 1994, Biltmore awarded bonuses of publicly traded warrants of Health-care Imaging Services, Inc., and United Restaurant, Inc., to Loewenstein, Bronson (in one instance), and other employees of the firm. Warrants entitle the holder to buy during a specified period a proportionate amount of common stock at a price which is usually higher than the market price at the time of issuance of the war-

rants. Shortly after the bonuses were awarded, the vast majority of the warrants were sold back to the firm. At the same time, Biltmore's brokers, acting under the direction of Loewenstein and/or Bronson, aggressively solicited Biltmore's public customers to purchase these warrants. They failed to disclose to those customers, as required by federal securities laws, the materially important fact that certain persons at the firm had a personal financial interest in the warrants being sold. As a result of purchasing these securities, Biltmore's customers suffered losses of more than \$1.6 million, which are being repaid as part of this settlement.

#### **Excessive Underwriting Compensation and Related Misconduct.**

Biltmore made more than \$2.6 million in illicit profits by collecting excessive underwriting compensation in violation of the NASD's Corporate Financing Rule. That Rule regulates the amount of compensation an underwriter can receive in an offering; requires firms to file certain information, including the amount of their proposed compensation, with the NASD prior to the commencement of an offering; and requires that the underwriting compensation be disclosed in the offering materials.

During late March 1994, Biltmore bought more than 7 million shares of

stock of Licon International, Inc., from an entity owned by three principals of Stratton Oakmont, Inc. Subsequently, the firm, acting through Loewenstein and Bronson, engaged in a public distribution of these shares by selling them to its customers. They did not comply with the Corporate Financing Rule under which they would have been entitled to receive \$984,330. Instead, the firm received over \$640,000 more than it should have received. In 1995, Biltmore and Loewenstein again violated the Corporate Financing Rule in connection with the distribution of the Terrace Holdings securities it obtained from "insiders" of the company in 1995 described above. In this case, the firm was entitled to underwriting compensation of \$755,332. Instead, it obtained more than \$2 million in excess of that amount.

#### **Terms Of The Settlement**

In addition to agreeing to the expulsion of Biltmore from the NASD, and permanent bars from the securities industry of Loewenstein and Bronson, they have agreed to give up their illicit profits to pay back some former customers with claims against the firm. Some of those funds will be used to finance a specially designed voluntary mediation program, sponsored by NASD Regulation's Medi-

ation Department. The program may be used by customers with claims against the firm arising within the past six years. Certain limits have been set on the amounts that a particular investor may recover and the number of customers who benefit from the program will depend on the number and size of the claims actually mediated. All customers with existing claims against them will be provided notice of the terms of the mediation program. Customers may still opt to pursue their case in arbitration.

Customers who have questions concerning the details of this mediation program, may call Elizabeth McCoy, Assistant Director of Mediation at 888-NY-MEDI-8 (888-696-3348).

In addition, Biltmore, Loewenstein, and Bronson have agreed to repay customer losses of approximately \$1.6 million to some 150 customers in at least 25 states, who purchased United Restaurant warrants (between November 14-22, 1994 and January 5-20, 1995) or Health-care Imaging warrants (between November 23-December 7, 1993). Customers with questions about this aspect of the settlement should call 888-275-7456.

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# For Your Information

## Amendments To Guidelines Regarding California Arbitration Proceedings

Information in *NASD Notice to Members* 99-10 (February), which applies to NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) arbitration proceedings in California, and governs the activities of non-California attorneys, has been amended **and should be reviewed by anyone participating in a California arbitration proceeding.** The original Guidelines became effective on January 1, 1999.

Effective February 5, 1999, the NASD Regulation Office of Dispute Resolution (ODR) amended its Guidelines for non-California attorneys seeking to represent parties in arbitration proceedings in California. Non-California attorneys now must fulfill their obligations under the Guidelines, that is, associate with California counsel and file a Certification Form, **no later than 20 days before the first scheduled hearing on the merits.** The prior deadline was 45 days after service of the Statement of Claim. This means that non-California attorneys may participate fully in the arbitration proceeding without associating with local counsel or filing the Certification Form until 20 days before the first scheduled hearing on the merits, when they must comply with the Guidelines or be barred from representing their clients in the arbitration case. This change is consistent with Cal. Civ. Proc. Code § 1282.4.

Questions concerning this communication or *Notice to Members* 99-10 may be addressed to Terri L. Reichert, Assistant General Counsel, Office of General Counsel, National Association of Securities Dealers, Inc. (NASD<sup>®</sup>), at (202) 728-8967, or by e-mail at [reichert@nasd.com](mailto:reichert@nasd.com)

## Misprint In 1998 Edition Of *NASD Sanction Guidelines*

The hard-copy, paper version of *NASD Sanction Guidelines* contains a misprint in the guideline for **Communications with the Public — Late Filing; Failing to File; Failing to Comply with Rule Standards or Use of Misleading Communications** (page 75, Sales Practices section of the 1998 edition of the *NASD Sanction Guidelines*). The Internet version, on the NASDR Web Site ([www.nasdr.com](http://www.nasdr.com)) is correct.

Under the column titled "Suspension, Bar, or Other Sanctions," for "Failure to File," the second paragraph should read: "Also consider suspending the responsible individual in any or all capacities for up to **10 business days**." The current version inaccurately states "**five** business days."

Under the column titled "Suspension, Bar, or Other Sanctions," for "Late Filing," the second paragraph should read: "Also consider suspending the responsible individual in any or all capacities for up to **five** business days." The current version inaccurately states "**10** business days."

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# Notices to Members

# YEAR 2000 UPDATE



April 1999

## How Broker/Dealers Can Address Customer Concerns About The Year 2000

Investors are aware of the potential problems caused by the coming century change. As a result, they may consider changing their investing habits and strategies leading to more frequent questioning of their brokerage firms about the Year 2000 issue.

Leading up to the new year, it is important that broker/dealers communicate accurate and complete information to customers about their Year 2000 readiness. Some messages a broker/dealer might communicate to customers include:

- ◆ *Year 2000 Readiness—Discuss your firm's participation in Year 2000 testing, particularly industry-wide testing; contingency plans; and other preparedness activities.*
- ◆ *Industry Preparedness—Inform customers that the securities industry is coordinating efforts on Year 2000 readiness in order to protect investors. According to the U.S. Senate Year 2000 Committee's February 24, 1999 report on the Impact of the Year 2000 Problem, "As a result of early attention to the problem and significant regulatory and Congressional oversight, the financial services sector ranks ahead of virtually all other industries in its remediation and testing efforts."*
- ◆ *Industry-Wide Testing—Discuss the Year 2000 industry-wide testing being conducted during March and April with over 400 market participants to assess trading and settlement cycles.*
- ◆ *Good Recordkeeping—Indicate that, as always, customers should keep track of their regular account statements. In the event that Year 2000 computer glitches create incorrect information in personal account records, encourage customers to keep copies of personal records such as bank statements, investment account statements, Social Security records, medical records, bill payment records, and others. Good recordkeeping makes sense at any time.*

Broker/dealers can communicate these and other relevant messages in a variety of ways, including:

- ◆ *phone calls;*
- ◆ *recorded messages;*
- ◆ *personal letters;*
- ◆ *newsletters/brochures;*
- ◆ *informal Year 2000 forums conducted in your office or other location; and*
- ◆ *Web sites.*

It is important to educate all employees that deal with customers about the firm's Year 2000 readiness to ensure that accurate and complete information is conveyed.

In addition to providing useful information to customers about the overall readiness of the firm and the industry, broker/dealers should review disclosure by public companies about their Year 2000 readiness and the effect their compliance may have on their bottom line before making buy and sell recommendations.

The NASD Year 2000 Program Office has instituted an Investor Communications Program, which provides educational materials and guidance to investors, as well as to NASD member firms that need assistance in communicating effectively with their customers. The NASD Year 2000 Investor Communications Program is measuring awareness and investor confidence levels to help provide effective support to its varied constituents.

Just as the securities industry has coordinated efforts on Year 2000 preparedness, successfully informing customers and investors will help achieve a "business as usual" environment when the Year 2000 transition occurs.

# **Year 2000 Education And Events**

## **Virtual Workshops**

The NASD Year 2000 Program Office is continuing to offer Virtual Workshops—conference call-in sessions. The NASD strongly encourages registration for these sessions by calling (888) 567-0578. After placing the call, listen to the greeting, and provide the following information when prompted: firm name, Broker/Dealer #, and workshop date. On the day of the session, call (800) 857-7323 and indicate the password and confirmation number provided for the specific workshop. See below for a list of these specific workshops organized by date of session, as well as a brief summary of the issues to be discussed.

<b>April 20</b> <b>Contingency Planning</b> Password: Contingency Conf #: 3112165  <i>Issues to be covered:</i> <ul style="list-style-type: none"><li>◆ Step-by-step guide</li><li>◆ Timeline/impact if no contingency - a case study</li><li>◆ External/internal contingency planning</li><li>◆ Global view</li></ul>	<b>May 6</b> <b>Audit, Agreed Upon Procedures, and Examination</b> Password: Audit Conf #: 3111848  <i>Issues to be covered:</i> <ul style="list-style-type: none"><li>◆ Differences between audit and agreed upon procedures</li><li>◆ Purpose of examination</li><li>◆ Records retention and documentation</li><li>◆ Sources of information to retain (e-mails, letters, etc.)</li></ul>	<b>June 8</b> <b>Peer Review of Best Practices I</b> Password: Practices Conf #: 3111792  <i>Issues to be covered:</i> <ul style="list-style-type: none"><li>◆ Records retention</li><li>◆ Third-party vendors</li><li>◆ Testing/internal within firms</li></ul>
<b>April 27</b> <b>Utilities and Critical Services</b> Password: Services Conf #: 3111865  <i>Issues to be covered:</i> <ul style="list-style-type: none"><li>◆ State of utilities and recent guidelines</li><li>◆ Other critical services</li><li>◆ How these critical services affect broker/dealer's preparedness</li><li>◆ Best practices in dealing with uncertainty</li></ul>	<b>May 13</b> <b>Investor Communication "Best Practices"</b> Password: Communication Conf #: 3111736  <i>Issues to be covered:</i> <ul style="list-style-type: none"><li>◆ Frequent problems</li><li>◆ Disclosure issues</li><li>◆ Best practices</li></ul>	<b>June 15</b> <b>Exchanges and Utilities Update</b> Password: Practices Conf #: 3117326  <i>Issues to be covered:</i> <ul style="list-style-type: none"><li>◆ State of exchange &amp; utilities</li><li>◆ Upcoming developments</li><li>◆ Related broker/dealer developments</li></ul>
	<b>May 20</b> <b>Utilities and Critical Services</b> Password: Services Conf #: 3113760  <i>Issues to be covered:</i> <ul style="list-style-type: none"><li>◆ State of utilities and recent guidelines</li><li>◆ Other critical services</li><li>◆ How these critical services affect broker/dealer's preparedness</li><li>◆ Best practices in dealing with uncertainty</li></ul>	<b>June 29</b> <b>Risk Management</b> Password: Risk Conf #: 3116085  <i>Issues to be covered:</i> <ul style="list-style-type: none"><li>◆ Key principles in risk management</li><li>◆ What the NASD is doing</li><li>◆ What clearing firms and introducing firms can do</li><li>◆ Event horizon strategies</li></ul>

# Year 2000 Education And Events

## NASDR Spring Securities Conference

As mentioned in the last issue of *Notices to Members*, Year 2000 issues will be featured as part of the 1999 NASD Regulation annual Spring Securities Conference to be held in New Orleans on May 20-21. A conference brochure has been mailed to NASD members and is available on the NASD Regulation Web Site at [www.nasdr.com](http://www.nasdr.com).

## NASD Year 2000 Event Calendar

Topic	Location	Date	Time
Contingency Planning	Virtual	April 20	11:00 a.m., ET
Utilities and Critical Services	Virtual	April 27	11:00 a.m., ET
Audit, Agreed Upon Procedures, and Examination	Virtual	May 6	11:00 a.m., ET
Investor Communication "Best Practices"	Virtual	May 13	11:00 a.m., ET
NASD Regulation Spring Securities Conference	New Orleans	May 20-21	
Utilities and Critical Services	Virtual	May 20	11:00 a.m., ET
Peer Review of Best Practices I	Virtual	June 8	11:00 a.m., ET
Exchanges and Utilities Update	Virtual	June 15	11:00 a.m., ET
Risk Management	Virtual	June 29	11:00 a.m., ET

### Form BD-Y2K Information

#### • SEC Interpretation Of BD-Y2K Filing Requirements For Subsidiary Firms

Following is an interpretation of Securities and Exchange Commission (SEC) Rule 17a-5 regarding filings for subsidiary firms. According to this interpretation, subsidiary firms are allowed to report on the overall entity's Year 2000 progress when applicable.

"A broker/dealer controlled by an entity for which an enterprise-wide assessment of Year 2000 compliance has been prepared may rely on the controlling entity's assessment when completing Form BD-Y2K to the extent that an assessment by the broker/dealer standing alone would not otherwise differ from the enterprise-wide assessment, if discussed appropriately."

### More Information/Questions

#### NASD Year 2000 Program Office

e-mail: [y2k@nasd.com](mailto:y2k@nasd.com)  
phone: (888) 227-1330

# NASD Notice to Members 99-26

**NASD Will Terminate Form 211 Applications If Applicants Do Not Respond To NASD Deficiency Letters Within 180 Calendar Days**

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

The purpose of this *Notice to Members* is to advise member firms that Form 211 applications, submitted by member firms to demonstrate compliance with Securities and Exchange Commission (SEC) Rule 15c2-11 and National Association of Securities Dealers, Inc. (NASD® or Association) Rule 6740, will be treated as abandoned and the Association will close its files on the matter if a submitting member firm has not responded to a deficiency letter sent to it by the Market Regulation Department staff within 180 calendar days of the date of the deficiency letters.<sup>1</sup>

Questions concerning this *Notice* may be directed to Ken Worm, Assistant Director, Market Regulation Department, NASD Regulation, Inc. (NASD Regulation™) at (301) 208-2862.

## Background

Pursuant to Rule 6740, prior to initiating or resuming quotation of a non-Nasdaq® security in any quotation medium, a member firm must submit a Form 211 application to the Market Regulation Department for its review and a determination that the member firm has demonstrated compliance with SEC Rule 15c2-11. Within three days of the receipt of the Form 211 application, the staff will either clear the application, allowing the member firm to initiate or resume quotations of the non-Nasdaq security in the specified quotation medium, or send the member firm a deficiency letter explaining that it cannot clear the application because of certain specified deficiencies and setting forth what the firm must do to address those specified concerns.

While a member firm is provided an opportunity to cure any deficiencies in

the Form 211 application by providing additional explanation and/or information that addresses those concerns, member firms frequently fail to respond to the letter in any manner. As a result of a member firm's failure to respond, the information relied upon by the member firm in making its application becomes stale and it is no longer possible to approve the application under Rule 6740.

In order to address the lack of current information in these circumstances, as of the date of the publication of this *Notice to Members*, any Form 211 application for which the member firm has not addressed a deficiency letter within 180 calendar days of the date of that letter will be treated as withdrawn and the applicant's file will be closed.<sup>2</sup> If the member firm still desires to initiate or resume quotations of the subject non-Nasdaq security after the file is closed, it must file a new Form 211 application along with current issuer information.

## Endnotes

<sup>1</sup>Six months is the longest period of time that an application can remain current without being supplemented with more timely documents. See SEC Rule 15c2-11(g).

<sup>2</sup>All Form 211 applications currently maintained in the staff's files for which member firms have failed to respond to deficiency letters for 180 calendar days or longer will be closed. All Form 211 applications currently maintained in the staff's files for which this 180-calendar day period has not yet run and all Form 211 applications received subsequent to the publication of this *Notice to Members* will be processed according to this procedure.

# NASD Notice to Members 99-27

Order Audit Trail System  
Phase 2 Firms Required  
To Register; Firms  
Should Register By  
April 1, 1999

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

In accordance with National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rules 6950 through 6957 (the OATS Rules), the NASD has established a registration process for member firms and third parties that will begin reporting to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) in Phase 2 (August 1, 1999) and Phase 3 (July 31, 2000). In Phase 2, NASD member firms are required to report all electronic orders for Nasdaq<sup>®</sup> securities. All manual orders for Nasdaq securities must be reported by Phase 3.

*Organizations reporting to OATS should complete registration approximately 120 days before they are required to report (April 1, 1999, for Phase 2; April 1, 2000, for Phase 3) in order to allow sufficient time for familiarization and testing.* NASD member firms that handle orders in Nasdaq securities and fail to complete and return the OATS *Subscriber Initiation and Registration Form* or fail to perform all required registration activities will not be able to report OATS data to the NASD; failure to report order information by the specified OATS implementation date is a violation of NASD Rules 6955 and 3110.

Registration for Phase 1 (March 1, 1999) began in September 1998. Parties registered for Phase 1 have begun reporting order data to OATS. (See *NASD Notices to Members* 98-33, 98-73, and 99-04 for a complete description of the OATS Rules, OATS Registration process for Phase 1, and OATS Rules amendments.)

For Phase 2 and Phase 3 registration, the NASD has revised the existing *OATS Subscriber Initiation and Registration Form*. The form is available at [www.nasdr.com/3370.htm](http://www.nasdr.com/3370.htm). Member firms and third parties that will be transmitting to OATS directly or via

another entity during Phases 2 and 3 are required to complete Sections 1 through 4 of the revised registration form and return it to the NASD prior to the date when they intend to begin reporting.

The completed form must be accompanied by a request for an initial user account. The request must be on letterhead, and contain the organization's name, address, broker/dealer number (if appropriate), and the user's name, telephone number, and fax number.

All member firms and third parties that will report to OATS in Phase 2 or 3, including those that have previously registered but do not intend to report to OATS in Phase 1, should refer to the Registration Activity Checklist contained in the registration form to ensure that they have performed all required registration activities, including requesting an initial user account. **Any party that intends to use the OATS private network to report to OATS by Phase 2 via File Transfer Protocol (FTP) or CONNECT:Direct, formerly known as Network Data Mover or NDM, must complete a contract with MCIWorldCom by April 1, 1999.**

Questions regarding OATS or the *OATS Subscriber Initiation and Registration Form* may be directed to NASD Business and Technology Support Services via phone at (800) 321-NASD, via fax at (888) 345-6275, or via e-mail at [supportservices@nasd.com](mailto:supportservices@nasd.com). Business Support is available from 8 a.m. to 6 p.m. Monday through Friday, Eastern Time (ET). Technical Support is available from 8 a.m. Monday through 7:30 a.m. Saturday, ET. Information about OATS and copies of the revised registration form and other OATS-related publications are available on the NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) Web Site ([www.nasdr.com](http://www.nasdr.com)).

## Background

The OATS Rules were approved by the Securities and Exchange Commission (SEC) in March 1998 and amended in July 1998. The OATS Rules require that all electronic orders for Nasdaq securities, including SmallCap<sup>SM</sup> and Nasdaq National Market<sup>®</sup> securities, and convertible bonds, received at the trading desk by Market Makers and Electronic Communication Networks (ECNs) be reported to OATS by March 1, 1999 (Phase 1); all electronic orders for Nasdaq securities received by member firms be reported to OATS by August 1, 1999 (Phase 2); and all non-electronic, or manual, orders for Nasdaq securities received by member firms be reported to OATS by July 31, 2000 (Phase 3).

## Discussion

### Registration For OATS Reporting

Information requested on the *OATS Subscriber Initiation and Registration Form* is necessary to register member firms and non-member third parties to report order information to OATS. NASD member firms that fail to complete and return this form or fail to perform all required registration activities will not be able to report OATS data to the NASD; failure to report order information by the specified OATS implementation date is a violation of NASD Rules 6955 and 3110. Organizations reporting to OATS should complete registration approximately 120 days before they are required to report in order to allow sufficient time for familiarization and testing.

The registration form includes a question regarding the Phase when the member firm is required to report to OATS or the non-member entity will begin transmitting to OATS and a question regarding the mechanism

that the member firm or non-member third party will use to transmit directly to OATS. The available mechanisms include FTP, CONNECT:Direct, e-mail, and the OATS Web interface. Member firms that will not be transmitting directly to OATS are asked to identify the third parties that will be reporting on their behalf and the Phase when reporting will begin.

The registration form also contains a Registration Activity Checklist, which should be used to ensure that the organization has completed all of the steps required to begin reporting to OATS. (Firms should already have used the *OATS Reporting Technical Specifications*, *OATS Subscriber Manual*, and OATS Frequently Asked Questions to prepare a system to report order information to OATS. Alternatively, they should have contracted with one or more third parties to provide this service. No member firm or third party may begin transmitting data to the OATS production environment on its implementation date unless it has already successfully transmitted to the OATS testing environment.)

Registration activities include returning the completed registration form, accompanied by a request for an initial user account, to the NASD. The request for an initial user account must be on letterhead, and contain the organization's name, address, broker/dealer number (if appropriate), the name of the user who is requesting the account, and that user's telephone number and fax number. The initial user account will provide the organization access to the OATS Web interface, which can be used to create and update OATS contact information, view the status of submitted files, view reporting statistics, view and repair record rejections, submit new records, and request additional user accounts.

The completed form and the request for initial user account should be mailed or faxed to:

NASD Regulation, Inc.  
Business & Technology Support Services  
ATTN: OATS Registration  
9513 Key West Avenue  
Rockville, MD 20850  
Fax: (888) 345-6275

Other registration activities include obtaining from the NASD an Order Sending Organization ID, a Reporting Date to begin transmitting to OATS, and the initial User ID and Password; using the OATS Web interface to create and update OATS contact information for an OSO Administrator, Technical Contact, and Compliance Contact; ordering a connection to the OATS private network (if submitting to OATS via FTP or CONNECT:Direct); and reporting to the OATS production environment.

Organizations that intend to transmit to OATS using either FTP or CONNECT:Direct must submit to MCI-WorldCom a completed order for a connection to the OATS private network. **The completed circuit orders are due by April 1, 1999, for organizations that must transmit to the OATS production environment by August 1, 1999 (Phase 2) and by April 1, 2000, for organizations that must transmit to the OATS production environment by July 31, 2000 (Phase 3).** This deadline provides time for testing. Any delay may limit the amount of time available for testing via the private network. *No member firm or third party will be allowed to transmit data to the OATS production environment until it has successfully transmitted to the OATS testing environment.* For information about obtaining a connection to the private network or an OATS Service Order Package, contact

MCIWorldCom at (800) 825-9196. Organizations that will be submitting to OATS via e-mail, the OATS Web interface, or one or more third parties, and will not use FTP or CON-

NECT:Direct, should not obtain a connection to the private network.

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# NASD Notice to Members 99-28

## NASD Reminds Members Of Obligations Relating To The Short- Sale Rule

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

This *Notice to Members* supersedes *Notice to Members* 98-65, restates the views of NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) and The Nasdaq Stock Market<sup>®</sup> (Nasdaq<sup>®</sup>) concerning National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 3350 (Short-Sale Rule) that were discussed in *Notice to Members* 98-65, and corrects a statement concerning the use of cross-guaranteed accounts for Regulation T purposes.

In 1994, the Short-Sale Rule was adopted to stop market-destabilizing speculative short sales in Nasdaq National Market<sup>®</sup> (NNM) securities. To prevent this conduct, the Short-Sale Rule prohibits member firms from executing customer short sales and non-Market Maker proprietary short sales in an NNM security at or below the current inside bid when the current inside bid is lower than the previous inside bid.

It has come to the attention of NASD Regulation and Nasdaq that certain NASD members may be assisting customers in the circumvention of this Rule. Specifically, these members are failing to net security positions of accounts for customers who maintain accounts in their name and exercise control over, or operate in concert with, other accounts with a strategy designed to circumvent the Short-Sale Rule. The failure to net these positions has permitted these customers, who operate the two accounts with a single investment strategy, to avoid application of the Short-Sale Rule. Members are expected to establish and maintain supervisory procedures to detect and deter this improper trading activity.

The purpose of this *Notice* is to highlight for members that, depending on the facts and circumstances, they may be required to net positions for accounts that are

related or under common control to determine whether a sale is long or short and subject to the Short-Sale Rule requirements. NASD Regulation is committed to ensuring strict adherence to the Short-Sale Rule and will carefully review whether firms have engaged in the conduct described in this *Notice* in examinations and investigations. Violations of the Short-Sale Rule will be vigorously pursued.

Questions concerning this *Notice* should be directed to the Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8294; or the Legal Section, Market Regulation, NASD Regulation, at (301) 590-6410.

### Overview

The NASD adopted the Short-Sale Rule to prevent speculative short selling in NNM securities from accelerating a decline in the price of a security and to stop a form of manipulation known as "bear raiding" or "piling on." Bear raiding or piling on occurs when short sellers exert pressure on a stock's price, forcing the price to drop precipitously, frequently within a single trading day. The Short-Sale Rule prohibits member firms from executing customer short sales and non-Market Maker proprietary short sales in an NNM security at or below the current inside bid when the current inside bid is lower than the previous inside bid.<sup>1</sup>

To determine whether a sale is long or short, members must look to the definition of a "short sale" contained in Securities and Exchange Commission (SEC) Rule 3b-3, which is incorporated into the NASD's Short-Sale Rule as Rule 3350(k)(1). Under SEC Rule 3b-3 and NASD Rule 3350, the term "short sale" means any sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller.

To determine whether the seller is long or short overall, the seller must net all positions in the security. This includes netting positions held in accounts that are under common control or traded with a single investment strategy.

## Rule Prohibits Circumvention

The Short-Sale Rule also prohibits a member from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of circumventing the rule.<sup>2</sup> With this *Notice*, NASD Regulation and Nasdaq are clarifying that the following would be a violation of the Short-Sale Rule if a member and its associated persons were found to have assisted customers in the following manner:

- A customer maintains one account (a "long account") that is used to buy and sell various securities several times in a single day. The long account typically begins and ends each day with a long position of 1,000 shares in each security held in that account. The customer also cross guarantees for margin purposes a second account (a "short account"), usually held by a family member or related person.<sup>3</sup> That account holds offsetting short positions of 1,000 shares in the same securities that are held in the long account. In contrast to the long account, the short account generally does not change positions in the securities. At the beginning and end of each day, the combined positions in both accounts for each of the securities are flat. During the trading day, the customer buys and sells securities out of the long account, creating the false appearance of alternating long

and flat positions in the securities in the long account. When the two accounts are appropriately combined and treated as one, short sales occur on a regular basis and often result in transactions occurring on down-bids in violation of the NASD's Short-Sale Rule.

NASD Regulation will conduct a facts and circumstances analysis in making a determination as to whether customer accounts should be netted for purpose of compliance with the Short-Sale Rule. When conducting such analysis, NASD Regulation will, among other things, consider:

- (1) whether a single person exercises discretion over both accounts;
- (2) whether the accounts are cross guaranteed for margin purposes;
- (3) whether the accounts belong to a family member or related person or were opened contemporaneously (e.g., on the same day); or
- (4) whether a similar pattern is occurring in other customer accounts at a firm. This analysis will consider all the facts and circumstances concerning the establishment, maintenance, and trading of these accounts.

The presence or absence of any single factor reflected above does not necessarily lead to the conclusion that such accounts should, or should not, be netted.

NASD Regulation will closely watch for the above-described conduct and for similar schemes that attempt to circumvent application of the Rule.

Members must take steps to develop compliance procedures to guard against such abusive trading practices. Members should also instruct their associated persons not to accept orders for execution where customers are operating two or more accounts in order to circumvent the Rule. A finding of such abuses may result in the imposition of NASD disciplinary action against the member and its associated persons and a referral of such trading conduct by persons outside the jurisdiction of the NASD to other appropriate regulatory authorities.

## Endnotes

<sup>1</sup>NASD Rule 3350(a).

<sup>2</sup>NASD Rule 3350(e).

<sup>3</sup>Cross-guaranteed accounts refer to an agreement where one account is guaranteed by another account to enable their consolidation for the purpose of allowing the margin that must be maintained in those accounts to be determined on the net positions of both accounts. Such a guarantee must be in writing and permit the member carrying the account to use the money and securities in the guaranteeing account to carry the guaranteed account or to pay any deficit therein. See NASD Rule 2520(f)(4) and *Notice to Members 98-102* (December 1998). *Notice to Members 98-65* may have led members to believe that margin accounts may be cross guaranteed to satisfy Regulation T requirements. This is an incorrect statement. Regulation T provides, in pertinent part, "*Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part." Reg. T, Section 220.3(d).

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# NASD Notice to Members 99-29

SEC Approves Changes  
To Clearly Erroneous  
Trade Adjudication  
Procedures; Changes  
Effective April 26, 1999

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

On March 17, 1999, the Securities and Exchange Commission (SEC) approved changes to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 11890 regarding the handling of clearly erroneous transactions.

NASD Rule 11890, as now amended, limits the time period to request an adjudication of an erroneous transaction to 30 minutes for transactions that occur prior to 9:30 a.m. For erroneous transactions that occur between 9:30 a.m. and 9:59 a.m., market participants will still have up to one hour – until 10:30 a.m. – to request adjudication of erroneous transactions. The NASD and The Nasdaq Stock Market<sup>®</sup> (Nasdaq<sup>®</sup>) believe that the process for resolving erroneous transaction complaints will become more fair, efficient, and timely, thereby promoting the maintenance of fair and orderly markets and exposing the parties to an allegedly erroneous transaction to less market risk. This *Notice* is being issued to alert members to the changes involved, which will become effective on April 26, 1999.<sup>1</sup>

Questions concerning this *Notice* may be directed to Richard Bush, Associate Director, Nasdaq Market Operations, at (203) 385-6242; or John Malitzis, Assistant General Counsel, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8245.

## Background

NASD Rule 11890 (Rule) sets forth the process through which Nasdaq may review certain transactions and declare them null and void or otherwise modify their terms. In early 1998, the SEC approved changes to the Rule to make the adjudication process more efficient and fair.<sup>2</sup> Among other things, the Rule was amended to shorten the time period

to submit erroneous transaction complaints. Under the 1998 rule changes, market participants were given 30 minutes to request adjudication of erroneous transactions occurring at or after 10:00 a.m. Because of the volume commencing at the 9:30 a.m. opening, however, Nasdaq provided additional time – up to an hour – to submit adjudication requests for trades that occurring prior to 10:00 a.m. Thus, Nasdaq market participants have until 10:30 a.m. to request adjudication for trades that occur between 9:30 a.m. and 9:59 a.m. The language of the 1998 Rule amendments, however, only made reference to trades that occur at or before 10:00 a.m., and did not separately address trades that occur before the 9:30 a.m. opening. As a consequence, a literal reading of the Rule unintentionally accords additional time to all trades that occur before 10:00 a.m., including those trades that occur prior to 9:30 a.m.

After some experience with the Rule, Nasdaq determined it would be appropriate to amend NASD Rule 11890 to limit to 30 minutes the time to request adjudication for trades occurring before 9:30 a.m., as well as those trades occurring at or after 10:00 a.m. Nasdaq is concerned that there are potential abuses and risks associated with affording market participants additional time to file a clearly erroneous appeal when there is no compelling reason (such as heavy volume) for doing so. In particular, for trades occurring prior to 9:30 a.m., market participants have the opportunity to observe the direction of the market at the opening and for an extended period of time thereafter, and then determine whether to file an erroneous trade appeal by 10:30 a.m. While Nasdaq still believes that it is appropriate to provide additional time to request an adjudication for trades that occur immediately following the opening,

based on the concerns outlined above, Nasdaq does not believe members should be provided with this additional time for pre-opening transactions.

Accordingly, on March 17, 1999, the SEC approved a proposal to limit the time period to appeal an erroneous transaction to 30 minutes for transactions that occur prior to 9:30 a.m., as well as those that occur at or after 10:00 a.m.<sup>3</sup> Under the SEC-approved proposal, market participants will still have until 10:30 a.m. to request adjudication of trades that occur between 9:30 a.m. and 9:59 a.m.

Finally, the changes to the Rule announced in this *Notice* will become effective on April 26, 1999.

## Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

### 11890. Clearly Erroneous Transactions

(a) No Change

(b) Procedures for Reviewing Transactions

(1) Any member or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof, shall submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:

(A) for transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10:00 a.m., Eastern Time,

complaints must be submitted by 10:30 a.m., Eastern Time; and

(B) for transactions occurring [on ] prior to 9:30 a.m., Eastern Time and those occurring at or after 10:00 a.m., Eastern Time, complaints must be submitted within thirty minutes.

## Endnotes

<sup>1</sup>See Exchange Act Release No. 34-41180 (Mar. 17, 1999)(Order approving SR-NASD-98-94).

<sup>2</sup>See Exchange Act Release No. 39550 (January 14, 1998)(Order approving SR-NASD-96-51).

<sup>3</sup>See Exchange Act Release No. 34-41180 (Mar. 17, 1999)(Order approving SR-NASD-98-94).

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# NASD Notice to Members 99-30

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of February 19, 1999

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of February 19, 1999, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
AAIF.GA	AAI Fostergrant Inc.	10.750	07/15/06
ACPI.GA	Allied Corp.	0.000	08/01/09
ADLA.GM	Adephia Communications Corp.	7.750	01/15/04
ADLA.GN	Adephia Communications Corp.	7.750	01/15/09
AHYC.GA	Anthony Crane rental LP Series B	10.375	08/01/08
AIFT.GA	Aircraft Service Intl Group Inc.	11.000	08/15/05
AKNI.GA	AKI Inc.	10.500	07/01/08
AMHG.GA	AMM Holdings Inc.	13.500	07/01/09
APGR.GB	Arch Communication Group Inc.	12.750	07/01/07
AQCH.GA	Aqua Chemical Inc.	11.250	07/01/08
AS.GH	Armco Inc.	8.875	12/01/08
AWAS.GB	Allied Waste North America Inc.	7.375	01/01/04
AWAS.GC	Allied Waste North America Inc.	7.875	01/01/09
BEP.A.GC	BE Aerospace Inc.	9.500	11/01/08
CDIU.GA	Canandaigua Brands Inc.	8.500	03/01/09
CLMU.GA	Columbia Healthcare Corp.	6.125	12/15/00
CLMU.GB	Columbia Healthcare Corp.	7.500	12/15/23
COL.GB	Columbia/HCA Healthcare Corp.	7.150	03/30/04
COL.GC	Columbia/HCA Healthcare Corp.	8.360	04/15/24
COL.GD	Columbia/HCA Healthcare Corp.	7.190	11/15/15
COL.GE	Columbia/HCA Healthcare Corp.	7.050	12/01/27
COL.GF	Columbia/HCA Healthcare Corp.	7.250	05/20/08
COL.GG	Columbia/HCA Healthcare Corp.	7.000	07/01/07
CXLC.GA	Coaxial LLC/Finl Corp.	12.875	08/15/08
CXPX.GA	Coaxial Comm/Phoenix Assoc.	10.000	08/15/00
DSUO.GC	Doe Run Resources Corp.	11.250	03/15/05
EGCS.GA	Empire Gas Corp.	7.000	07/15/04
ESCR.GB	Echostar DBS Corp.	9.250	02/01/06
ESCR.GC	Echostar DBS Corp.	9.375	02/01/09
GPI.GA	Group I Automotive Inc.	10.875	03/01/09
HPH.GA	Harnischfeger Industry Inc.	8.900	03/01/22
HPH.GB	Harnischfeger Industry Inc.	7.250	12/15/25
HPH.GC	Harnischfeger Industry Inc.	6.875	02/15/27
HPH.GD	Harnischfeger Indus Inc.	8.700	06/15/22
HTHO.GA	Health Trust Inc. The Hospital Co.	8.750	03/15/05
HTHO.GB	Health Trust Inc. The Hospital Co.	10.250	04/15/04
HXL.GA	Hexcel Corp.	9.750	01/15/09
IEE.GA	Integrated Electrical Svcs Inc.	9.375	02/01/09
IFOU.GA	Infousa Inc.	9.500	06/15/08
KING.GA	King Pharmaceuticals Inc.	10.750	02/15/09
KNE.GA	KN Energy Inc.	9.950	04/01/20
KNE.GB	KN Energy Inc.	9.625	08/01/21
KNE.GC	KN Energy Inc.	8.350	09/15/22
KNE.GD	KN Energy Inc.	7.850	09/01/22
KNE.GE	KN Energy Inc.	8.750	10/15/24
KNE.GF	KN Energy Inc.	6.500	09/01/13
KNE.GG	KN Energy Inc.	7.350	08/01/26
KNE.GH	KN Energy Inc.	6.670	11/01/27
KNE.GI	KN Energy Inc.	6.450	03/01/03

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
KNE.GJ	KN Energy Inc.	6.650	03/01/05
KNE.GK	KN Energy Inc.	6.800	03/01/08
KNE.GL	KN Energy Inc.	7.250	03/01/28
KNE.GM	KN Energy Inc.	6.300	03/01/21
LCMU.GA	Loral Space & Communication Ltd.	9.500	01/15/06
LTHR.GC	L-3 Communications Corp.	8.000	08/01/08
MAK.GA	Group Maintenance Amer Corp.	9.750	01/15/09
MCLD.GD	McLeod USA Inc.	9.500	11/01/08
MIDU.GA	Moll Industries Inc.	10.500	07/01/08
MPTC.GA	Mid-Penn Telephone Corp.	7.750	03/15/02
MTLI.GA	MTL Inc.	10.000	06/15/06
PNHI.GA	Penhall International Corp.	12.000	08/01/06
PPP.GB	Pogo Producing Co.	10.375	02/15/09
REGL.GC	Regal Cinemas Inc.	8.875	12/15/10
RMCR.GA	Romacorp Inc.	12.000	07/01/06
RRIC.GA	Renters Choice Inc.	11.000	08/15/08
RSLU.GC	RSL Communications Plc	10.500	11/15/08
SFP.GA	Salton Inc.	10.750	12/15/05
TEX.GB	Terex Corp.	8.875	04/01/08
TLLP.GF	Toll Corp.	9.500	03/15/03
UH.GF	US Home Corp.	8.875	02/15/09
URI.GC	United Rentals Inc. Series B	8.800	08/15/08
WLWH.GA	Woolworth Corp.	7.000	06/01/00

As of February 19, 1999, the following bonds were deleted from FIPS.

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
AES.GA	AES Corp.	9.750	06/15/00
AILT.GA	Atlas Air Inc.	12.250	12/01/02
AKS.GA	AK Steel Corp.	10.750	04/01/04
ALLA.GA	All-American Bottling Corp.	13.000	08/15/01
AS.GF	Armco Inc.	9.375	11/01/00
AWAS.GA	Allied Waste North America Inc.	10.250	12/01/06
AWIN.GA	Allied Waste Industries Inc.	12.000	02/01/04
AWIN.GB	Allied Waste Industries Inc.	11.300	06/01/07
BCC.GA	Boise Cascade Corp.	9.875	02/15/01
BCEG.GE	Bank of New England Corp.	8.850	03/01/99
BS.GA	Bethlehem Steel Corp.	6.875	03/01/99
CLKS.GA	Clark-Schwebel Inc.	10.500	04/15/06
CWBI.GA	Clark-Schwebel Inc.	12.500	07/15/07
DRBH.GA	Dr. Pepper Bottling Hldgs Inc.	11.625	02/15/03
FLT.W.GA	Florist Transworld Del Inc.	14.000	12/15/01
FOHO.GA	Fort Howard Corp.	9.000	02/01/06
GNFC.GA	GNF Corp.	10.625	04/01/03
HHI.GA	Home Holdings Inc.	8.625	12/15/03
HTHO.GA	Healthtrust Inc. The Hospital Co.	8.750	03/15/05
ISPT.GA	ISP Chem/ISP Tech	9.000	03/01/99
MACA.GB	Macandrews & Forbes Hldgs Inc.	13.000	03/01/99
MALR.GA	Malrite Communication Group Inc.	15.250	02/15/99
MLWL.GA	Mail-Well Corp.	10.500	02/15/04

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
MPTC.GA	Mid-Penn Telephone Corp.	7.750	03/15/02
NMK.GI	Niagara Mohawk Power Corp.	8.770	01/01/18
PARA.GC	Paramount Communications Inc.	7.500	01/15/02
PARA.GD	Paramount Communications Inc.	8.250	08/01/22
PARA.GE	Paramount Communications Inc.	5.875	07/15/00
PARA.GF	Paramount Communications Inc.	7.500	07/15/23
PLNT.GA	Plantronics Inc.	10.000	01/15/01
RAPA.GI	Rapid American Corp. Del	0.000	03/01/99
SPF.GA	Standard Pacific Corp.	10.500	03/01/00
TCOM.GA	Telecommunications Inc.	11.125	10/01/03
TRAM.GA	Transamerican Refining Corp.	18.500	02/15/02
TRAM.GB	Transamerican Refining Corp.	16.500	02/15/02
UIS.GB	Unisys Corp.	9.750	09/15/16
VLIN.GC	Valassis Inserts Inc.	9.375	03/15/99
WMAS.GD	Western Mass Electric Co.	6.250	03/01/99
WSFS.GA	WSFS Financial Corp.	11.000	12/31/05
WX.GB	Westinghouse Electric Corp.	8.875	06/01/01
WX.GC	Westinghouse Electric Corp.	8.375	06/15/02
WX.GD	Westinghouse Electric Corp.	8.625	08/01/12
WX.GE	Westinghouse Electric Corp.	6.875	09/01/03
WX.GF	Westinghouse Electric Corp.	7.875	09/01/23

As of February 19, 1999 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>
EMRE.GA	EGCS.GB	Empire Inc.	9.000	12/31/07
FST.GB	FOIL.GB	Forest Oil Corp.	11.250	09/01/03
FST.GC	FOIL.GC	Forest Oil Corp.	10.500	01/15/06
PNFT.GB	PNF.GB	Penn Traffic Co. New	10.375	10/01/04
PNFT.GC	PNF.GC	Penn Traffic Co. New	9.625	04/15/05
PNFT.GD	PNF.GD	Penn Traffic Co. New	8.625	12/15/03
PNFT.GF	PNF.GF	Penn Traffic Co. New	10.250	02/15/02
PNFT.GG	PNF.GG	Penn Traffic Co. New	11.500	04/15/06
PNFT.GH	PNF.GH	Penn Traffic Co. New	10.650	11/01/04

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation<sup>SM</sup>, at (301) 590-6451.

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 99-31

## Memorial Day: 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 31, 1999, 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 25	May 28	June 2
26	June 1	3
27	2	4
28	3	7
31	Markets Closed	—
June 1	4	8

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

\*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 19, 1999. The information relating to matters contained in this Notice is current as of the end of March 22, 1999.

### Firms And Individuals Barred Or Suspended

**L.H. Alton & Company (San Francisco, California)** and Lewis Hunt Alton (Registered Principal, San Francisco, California) were censured and fined \$40,000, jointly and severally. In addition, the firm was suspended from participation in underwriting activities for 30 business days, and ordered to hire an independent consultant to audit the firm's compliance and written supervisory policies, procedures, and practices and to comply with the requirements in the consultant's written report. Alton was suspended from association with any NASD member in any principal capacity for 30 days, and ordered to comply with the consultant's recommendations before acting again in any principal capacity. Alton must also requalify by examination before acting in any principal capacity. The Securities and Exchange Commission (SEC) affirmed the sanctions following the appeal of a December 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Alton, conducted a securities business while maintaining insufficient net capital, filed false and inaccurate FOCUS Parts I and II Reports, and permitted an unregistered person to act as a representative and principal of the firm.

Furthermore, the respondents participated in the underwriting of several "hot issues" without obtaining required information from the purchasers of the hot issues, and failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Requirements. In addition, the firm, acting through Alton, failed to maintain written supervisory procedures relating to the customer complaint reporting requirement.

L.H. Alton & Company and Alton have appealed this action to the U.S. Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

**La Jolla Capital Corporation (San Diego, California), Harold Bailey Gallison (Registered Principal, Las Vegas, Nevada), Christopher S. Knight (Registered Principal, Forest Hills, New York), and Gregory Karl Mehlmann (Registered Principal, Englewood, Colorado).**

The firm and Gallison were censured, barred from engaging in penny stock transactions in any capacity, fined \$297,380, jointly and severally, and fined \$50,000 each individually, and required to present proof of restitution or rescission to their damaged customers, jointly and severally. Gallison was also barred in all principal and supervisory capacities, and suspended in all capacities for 30 days. Knight was censured, fined \$95,854.55, barred in all principal and supervisory capacities, barred from engaging in penny stock transactions in any capacity, and suspended in all capacities for 15 days. Mehlmann was censured, fined \$10,000, suspended in all principal and supervisory capacities for 10 days, and required to requalify as a general securities principal.

The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a Los Angeles District

Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, Gallison, and Knight violated the SEC's penny stock rules by failing to make adequate disclosure to their customers who purchased penny stocks. In addition, the firm, Gallison, Mehlmann, and Knight failed to establish, maintain, and enforce procedures reasonably designed to detect and prevent violations of the penny stock rules. Knight also permitted unregistered personnel to engage in the securities business at the firm's New York office while he managed that office.

La Jolla Capital Corporation and Gallison have appealed this action to the SEC and the sanctions, other than their bars, are not in effect pending consideration of the appeal.

**Strategic Resources Management, Inc. (Aurora, Colorado) and William Arthur Moler (Registered Principal, Aurora, Colorado)** submitted an Offer of Settlement pursuant to which they were censured and fined \$7,500, jointly and severally, and both the firm and Moler were suspended from membership in the NASD for six months. In addition, Moler must requalify as a Series 24 general securities principal prior to resuming duties that require registration as a principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Moler failed to file an amended Form U-5 for an individual to disclose the filing of an arbitration claim against the individual.

### **Firms Fined, Individuals Sanctioned**

**Royal Alliance Associates, Inc. (New York, New York) and Kathryn Travis (Registered Principal, Lattintown, New York)** submitted a

Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$25,000; Travis was censured, fined \$10,000, and barred from association with any NASD member in a supervisory capacity with a right to re-apply after one year. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Travis failed to supervise adequately the activities of a registered representative resulting in the individual engaging in unsuitable and excessive trading, including excessive mutual fund and annuity switching activity in the accounts of public customers.

**Sturdivant & Co., Inc. (Clementon, New Jersey), Harvey Richard DeKrafft (Registered Principal, Mount Laurel, New Jersey), and Albert Anzael Sturdivant (Registered Principal, West Orange, New Jersey).** The firm and Sturdivant were censured and fined \$7,500, jointly and severally, and the firm was fined \$3,500, individually. Sturdivant was suspended from acting in the capacity of general securities principal for 30 days, and DeKrafft was censured, fined \$10,000, and suspended from acting in his capacity as a principal for 60 days. Sturdivant's and DeKrafft's suspensions will be served consecutively. The sanctions were based on findings that DeKrafft operated as a principal at the firm without being properly registered. In addition, the firm conducted a general securities business while only having one registered general securities principal when a minimum of two was required. The firm and Sturdivant failed to conduct a training needs analysis and failed to provide the firm's registered persons with the required Firm Element training. In addition, the firm failed to file MSRB Form G-37 in a timely manner.

Sturdivant's suspension will commence April 19, 1999, and will conclude at the close of business on May 18, 1999. DeKrafft's suspension will commence May 19, 1999, and will conclude at the close of business on July 16, 1999.

### **Firms And Individuals Fined**

**Auerbach, Pollak & Richardson, Inc. (Stamford, Connecticut) and Harry Nathaniel Bloch II (Registered Principal, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$17,500, jointly and severally, and the firm was fined an additional \$1,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm split a customer's 4,000-share order for a single security into four separate 1,000-share orders for entry into the Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>). In addition, the NASD found that the firm, acting through Bloch, failed to report to the NASD statistical and summary information regarding customer complaints, and the firm failed to report customer complaints. The findings also stated that the firm, acting through Bloch, failed to report, in a timely manner, the settlement of a customer's claim against one of its registered representatives, failed to develop a written training plan for continuing education, failed to maintain records documenting the implementation and completion of its continuing education plan, and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws, regulations, and NASD rules relating to continuing education and the reporting of customer complaints.

**Pond Securities Corp. (Brooklyn, New York) and Ezra Yehuda Birnbaum (Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally, and the firm was fined an additional \$7,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm reported transactions in Nasdaq National Market® (NNM), Nasdaq SmallCap™, OTC equity securities, listed securities executed over-the-counter, and in the Automated Confirmation Transaction Service™ (ACT™), in violation of applicable securities laws and regulations regarding trade reporting. The finding also stated that the firm failed to prepare written supervisory procedures which adequately covered the firm's trade reporting requirements, in that they did not specify the procedures that a qualified principal of the firm would follow to ensure compliance with all relevant rules. Furthermore, the NASD determined that the firm effected transactions in municipal securities without paying an initial fee to the MSRB, effected transactions in municipal securities without qualifying an individual at the firm as a municipal securities principal, and failed to abide by the terms and conditions agreed to in the firm's restrictive agreement with the NASD. The firm also failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Program.

## Firms Fined

**ABN-AMRO Incorporated (Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$13,500. Without admitting or denying the allegations,

the firm consented to the described sanctions and to the entry of findings that it failed to provide, in connection with transactions where the firm acted as principal, written notification to its customer of the reported trade price of the transaction. The findings also stated that the firm failed to report the correct price to ACT in transactions in NNM securities, and failed to report the correct price to ACT in one transaction in Nasdaq SmallCap securities. The NASD also determined 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 relating to the designation of supervisory personnel, trade reporting, best execution, the Limit Order Protection Interpretation, the Order Handling Rules, the registration of persons with the NASD, the use of SOES, and anti-competitive practices.

**Barron Chase Securities, Inc. (Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which the firm was censured and fined \$40,743.76. 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 function as a general securities representative and execute transactions on behalf of public customers when the individual was not registered as a general securities representative.

**Everen Securities, Inc. (Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$13,000, and required to pay restitution and interest to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to preserve for a period of not less than three years memoranda of brokerage

orders that showed the time of receipt of the order. The firm also failed to use reasonable diligence to ascertain the best inter-dealer market for the subject securities and failed to buy and sell in such market so that the resultant prices to the customers were as favorable as possible under the prevailing market conditions. The findings also stated that the firm failed to contemporaneously execute customer limit orders after it traded each subject security for its own market-making account at a price that would satisfy each customer limit order and failed to immediately 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.

**GVR Company, Inc. (Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. In addition, NASD determined that the firm failed to immediately 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 minimis* charge in relation to the size associated with the firm's bid or offer in each security. The findings also stated that the firm failed to establish and maintain written supervisory procedures relating to the SEC Order Execution Rules, best execution, books and records,

the Limit Order Protection Interpretation, trade reporting rules, and locked and crossed markets.

**Wien Securities Corporation (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$23,500, and ordered to pay \$356.25 in restitution plus interest to the public customers whose orders did not receive best execution. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT, in violation of applicable securities laws and regulations. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, ACT reporting, books and records, locked and crossed markets, SOES, the order handling rules, anti-competitive practices, and best execution.

## Individuals Barred Or Suspended

**Gary Leroy Armstrong (Registered Representative, Binghamton, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Armstrong consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm or numerous public customers, Armstrong fraudulently effected mutual funds transactions at a time when any exchanges between two firms were to be done at net asset value with no sales charge and customers who made redemptions or received distributions were allowed to reinvest the funds at net asset to

another fund of the same class. Armstrong utilized new account applications that generated sales charges of at least \$103,661 of which he was paid commissions totaling approximately \$71,076, in lieu of submitting exchanges at net asset value with no sales charges.

**James Edward Bickle (Registered Representative, Freeport, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bickle consented to the described sanctions and to the entry of findings that he participated, for compensation, in private securities transactions by participating in the sale of promissory notes to public customers, and failed to give written notice of his intention to, and receive written approval from, his member firm prior to engaging in such activities.

**Ronald Tolbert Braswell (Registered Representative, Winter-springs, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$60,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Braswell consented to the described sanctions and to the entry of findings that he misused and mishandled a public customer's funds by holding \$10,000 of the customer's funds for over two months and failing to timely purchase mutual funds as requested by the customer.

**Michael Howard Carstens (Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in

any capacity. Without admitting or denying the allegations, Carstens consented to the described sanctions and to the entry of findings that he participated in private securities transactions by selling limited partnership interests without giving written notice to, and receiving written approval from, his member firms with which he was registered at the time.

**Jeffrey Michael DeForest (Registered Representative, Medway, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, DeForest consented to the described sanctions, and to the entry of findings that he recommended and sold securities to a public customer without having reasonable grounds for determining this activity to be suitable for his customer.

**Robert Alan Denton (Registered Principal, Parkland, Florida), Lee Michael Rough (Registered Principal, Aventura, Florida), and Marc David Siden (Registered Principal, New York, New York)** submitted Offers of Settlement pursuant to which Denton was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Rough was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 45 days; and Siden was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Denton, Rough, and Siden consented to the described sanctions and to the entry of findings that they solicited public customers to purchase warrants while knowingly or recklessly failing to disclose to the customers that they were selling warrants from

their personal accounts, or accounts which they controlled, at or about the same time as they were making recommendations to public customers.

**Joseph Vincent Detrano (Registered Representative, Nesconset, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam as a Series 6 investment company and variable contract representative. Without admitting or denying the allegations, Detrano consented to the described sanctions and to the entry of findings that, during the sale of an insurance product to a policyholder, Detrano commingled the policyholder's check in the amount of \$14,000 with his own personal funds.

**Daniel Joseph DiPoalo (Registered Representative, Matawan, New Jersey)** was censured, fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DiPoalo received \$144,850.58 in funds from public customers for investment purposes, and contrary to the customers' instructions, deposited their checks in his own bank account or otherwise diverted their funds. DiPoalo also failed to respond to NASD requests for information.

**Dale Andrew Diskant (Registered Representative, Huntington Beach, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Diskant consented to the described sanctions and to the entry of findings that he participated in outside business activities for which he

received compensation, and failed to provide his member firm with prompt written notification of these activities.

**Jawahar Keshavlal Doshi (Registered Principal, Bayside, New York)** was censured, fined \$22,500, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Doshi guaranteed a customer against loss and gave untruthful testimony during an on-the-record interview conducted by the NASD.

**Paul Ian Dratel (Registered Representative, Flushing, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dratel consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization to exercise discretion in the customer's account.

**Gale Lynne Fairbrother (Registered Representative, Novato, California)** submitted an Offer of Settlement pursuant to which she was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fairbrother consented to the described sanctions and to the entry of findings that she participated in private securities transactions without providing prior written notification to her member firm. Fairbrother also provided false testimony to the NASD.

**Mark Joseph Federowicz (Registered Representative,**

**Williamsville, New York)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Federowicz failed to respond to NASD requests for information.

**Sandy Charles Giglio (Registered Representative, Palm Coast, Florida)** was censured, fined \$20,000, suspended from association with any NASD member in any capacity for five days, and required to requalify by taking and passing the Series 7 exam. The sanctions were based on findings that Giglio forged the signatures of public customers on forms to move their accounts from his former member firm to his current member firm.

**Kenneth Edward Grant (Registered Representative, Oxford, Michigan)** submitted an Offer of Settlement pursuant to which he was censured, fined \$11,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grant consented to the described sanctions and to the entry of findings that he received checks totaling \$2,622 made payable to insurance customers which included the repayments for insurance policies canceled by the customers, but also included a mistaken overpayment for insurance policies purchased for the customers. According to the findings, Grant endorsed the checks by writing the customers' names on the checks, without the customers' knowledge or consent, cashed the checks, and used \$2,185 for some purpose other than the benefit of his member firm or the customers, and later paid his firm \$2,165.

**Maximo Justo Guevara (Registered Representative, Philadelphia, Pennsylvania)** was censured, fined \$100,000, barred from association with any NASD member in any

capacity, and ordered to pay \$13,992, plus interest, in restitution to a public customer. The NAC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Guevara made unsuitable recommendations in connection with sales of partnership interests to retail customers. Guevara also engaged in private securities transactions outside the regular course or scope of his employment without providing written notice to his member firm.

Guevara has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Matthew Edward Haggerty (Registered Principal, Overland Park, Kansas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$60,000, barred from association with any NASD member in any capacity, and required to pay \$4,000, plus interest, in restitution to entitled parties. Without admitting or denying the allegations, Haggerty consented to the described sanctions and to the entry of findings that he requested checks totaling \$10,000 from the securities accounts of public customers, and converted the funds to his own use and benefit by endorsing the checks and depositing them into his personal bank account, without the knowledge or consent of the customers. Furthermore, the NASD determined that Haggerty did not return any portion of the funds until he journalized \$6,000 of funds from his personal securities account to one of the customer's securities account.

**Daniel Richard Hillard (Registered Representative, White River Junction, Vermont)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from asso-

ciation with any NASD member in any capacity. Without admitting or denying the allegations, Hillard consented to the described sanctions and to the entry of findings that he improperly converted at least \$65,000 belonging to a client for his own use and benefit.

**Brett Elliot Hirsch (Registered Representative, New York, New York), Richard Paul Simone (Registered Representative, New York, New York), William Patrick Rosemond (Registered Representative, New York, New York), Jack Jay Wolynez (Registered Principal, Jericho, New York), John James McAndris (Registered Principal, Montvale, New Jersey), and Frank Michael Lucia, Jr. (Registered Representative, Robbinsville, New Jersey)** submitted Offers of Settlement pursuant to which Hirsch was censured, fined \$110,000, and barred from association with any NASD member in any capacity. Simone was censured, fined \$104,000, and barred from association with any NASD member in any capacity, and Rosemond was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Wolynez was censured, fined \$100,000, and barred from association with any NASD member in any capacity, and McAndris was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Lucia was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Hirsch, Simone, Rosemond, and Lucia engaged in unauthorized transactions in the accounts of public customers and in the absence of written or oral authorization to exercise discretion in the

accounts. Hirsch also purchased securities for the account of a limited partnership without the knowledge or consent of the partnership or its agent. The findings also stated that Hirsch purchased shares of securities from his firm but failed to pay for the securities, Simone failed to follow a customer's instructions to sell securities, and Wolynez and McAndris failed to establish, maintain, or enforce written supervisory procedures or to otherwise supervise Hirsch, Rosemond, Simone, and Lucia properly to prevent the occurrence of such violations.

The NASD also determined that Wolynez and McAndris participated in an initial public offering (IPO) of common stock and warrants to the public on a best efforts, minimum/maximum basis, and induced the purchase of stocks by means of manipulative, deceptive, and/or other fraudulent devices or contrivances. Moreover, the findings stated that Wolynez and McAndris continued to receive investor funds, and failed to return promptly to public customers \$9 million in excess of the stated maximum for the offering, and commenced trading securities in the secondary market, without the consent of the customers.

**Richard Dean Holloway (Registered Representative, Tulsa, Oklahoma)** was censured, fined \$85,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Holloway received insurance refund checks issued by his member firm totaling \$1,991.65 payable to public customers, failed to deliver the refund checks to the customers, and instead, converted the funds to his own use and benefit by forging endorsements on the checks without the public customers' knowledge or consent. In addition, Holloway failed to respond to NASD requests for information.

**Frank John Ingersoll (Registered Principal, San Antonio, Texas)** submitted an Offer of Settlement pursuant to which he was censured, fined \$388,535, barred from association with any NASD member in any capacity, and ordered to pay \$301,088 in restitution to public customers. The NAC imposed the sanctions following a review of a Dallas DBCC decision. Without admitting or denying the allegations, Ingersoll consented to the described sanctions and to the entry of findings that he effected transactions in securities through an entity without providing prior written notice to his member firm, and acted as an unregistered broker/dealer by failing to register either himself or the entity as a securities broker/dealer with the SEC or the NASD. The findings also stated that Ingersoll caused misleading sales literature in the form of research reports to be distributed to the public, and failed to disclose a material adverse interest in connection with the sale of securities. Furthermore, the NASD determined that Ingersoll effected sales of shares of stock, and failed to disclose to customers and to his member firm the total remuneration he received in connection with those sales.

**Lawrence Ralph Kassl (Registered Representative, Danville, Illinois)** submitted an Offer of Settlement pursuant to which he was censured, fined \$53,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kassl consented to the described sanctions and to the entry of findings that he received checks totaling \$10,500 with instructions to deposit the funds in a variable annuity and, contrary to the customer's instructions, and without the customer's knowledge or consent, Kassl deposited the checks in a bank account in which he either had an interest or controlled, and used the funds for some purpose

other than the benefit of the customer until he returned the funds to her with interest.

**Michael Andrew Maher (Registered Representative, Portland, Oregon)** submitted an Offer of Settlement pursuant to which he was censured, fined \$60,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Maher consented to the described sanctions and to the entry of findings that he withdrew at least \$12,097.97 from a scholarship fund operated by employees of his member firm, without the knowledge or approval of the scholarship fund board of directors, and used the funds for his own personal use and benefit.

**Jerri Marlene Masley (Registered Representative, Killeen, Texas)** submitted an Offer of Settlement pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Masley consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information and to provide documentation.

**Gerald Cash McNeil (Registered Representative, North Bergen, New Jersey)** was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, ordered to pay restitution in the amount of \$3,712.50 plus interest, and required to requalify by examination in all capacities prior to associating with a member firm. The NAC imposed the sanctions following appeal and review of a New York DBCC decision. The sanctions were based on findings that McNeil executed transactions in the accounts of public customers without their prior authorization or consent.

**Warren Benjamin Minton, Jr. (Registered Representative, Helmetta, New Jersey)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Minton failed to respond to NASD requests for information.

**Keith Laurence Mohn (Registered Representative, West Bloomfield, Michigan)** was censured, fined \$52,222, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Mohn participated in private securities transactions without giving written notice of his intention to engage in such activities to his member firm and receiving prior written approval from his member firm.

Mohn has filed an appeal to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Siva Kumar Pemmaraju (Registered Representative, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$55,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pemmaraju consented to the described sanctions and to the entry of findings that he transferred funds from public customer accounts into accounts that he controlled, and converted \$9,015.92 to his own use and benefit, without the knowledge or consent of the customers.

**Michael John Price (Registered Principal, Atlanta, Georgia)** submitted an Offer of Settlement pursuant to which he was censured, fined \$22,500, suspended from associa-

tion with any NASD member in any capacity for 30 days, and barred from association with any NASD member in any proprietary, principal and/or supervisory capacity. Without admitting or denying the allegations, Price consented to the described sanctions and to the entry of findings that he gave false or misleading statements to an NASD examiner as to the whereabouts of an individual, and failed to disclose that the individual had resigned. The findings also stated that Price failed to establish, implement, and enforce reasonable supervisory procedures designed to ensure compliance with NASD rules and federal securities laws.

**David Irving Proctor, Jr. (Registered Principal, Indianapolis, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Proctor consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give written notice to, and receive written approval from, his member firm prior to engaging in such activities. The findings also stated that Proctor engaged in outside business activities and failed to give prompt written notice of his engagement in such activities to his member firm.

**Michel Andre Rebonati (Registered Representative, Kilchberg, Switzerland)** submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rebonati consented to the described sanctions and to the entry of findings that he falsified a client instruction letter that authorized the sale of bonds belonging to a public cus-

tomer and requested the proceeds totaling \$950,331.25 be wired to a nominee account. The findings also stated that Rebonati failed to respond to NASD requests for information.

**John Joseph Rogers (Associated Person, Rochester, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rogers consented to the described sanctions and to the entry of findings that, while taking the Series 7 exam, he brought unauthorized study materials into the testing area, despite being informed that unauthorized materials were prohibited, and referred to those materials during the exam.

**Freddie Joe Royer, Jr. (Registered Principal, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity with a right to reapply after two years. Without admitting or denying the allegations, Royer consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and business activities outside the scope of his employment without giving his member firm prior written notice of his activities, and he failed to notify his member firm of securities accounts he maintained or established at other member firms for a non-member firm. The findings also stated that Royer failed to notify the firms holding the accounts of his association with his member firm. In addition, Royer opened a securities brokerage account with an NASD member, omitted to disclose that he was associated with a member firm, and purchased shares in an IPO that traded at an immediate premium in

the secondary market and was considered a "hot issue" for purposes of the NASD's Free-Riding and Withholding Interpretation. Furthermore, the NASD determined that Royer co-signed a membership agreement for another member firm, held a 40 percent ownership stake in the firm, and during the first and only examination of the firm, the NASD discovered that the firm had failed to comply with the membership agreement, with two of the noted violations attributable to Royer.

**Daniel Charles Sanders (Registered Representative, Martinez, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sanders consented to the described sanctions and to the entry of findings that he failed to appear for an NASD on-the-record interview.

**Tobin Joseph Senefeld (Registered Principal, Crestwood, Kentucky)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any principal capacity for 20 days. Without admitting or denying the allegations, Senefeld consented to the described sanctions and to the entry of findings that, as branch manager, he failed to take appropriate action that was reasonably designed to supervise a registered representative and prevent unsuitably excessive trading in a customer's account by the individual.

**Ronald Adam Stewart (Registered Representative, Mahopac, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and barred from association with any NASD

member in any capacity. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry of findings that he forged contract withdrawal forms requesting partial liquidations from a public customer's annuity contracts and then converted the \$19,500 in proceeds to his personal use. The findings also stated that Stewart caused \$10,108 to be withdrawn from customers' accounts and converted the proceeds to his own use. Stewart converted a total of \$29,608 from public customers without their knowledge or consent.

**Igor Eric Stolyar (Registered Representative, Brooklyn, New York)** was censured, fined \$35,000, suspended until he pays an arbitration settlement, plus an additional 30 business days, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stolyar failed to execute an order from a public customer to sell certain securities in the customer's account. Stolyar also failed to pay a \$10,300 arbitration settlement, and failed to respond to an NASD request for information and to appear for an interview.

**Dale Cochren Trask (Registered Representative, Swampscott, Massachusetts)** submitted an Offer of Settlement pursuant to which he was censured, fined \$250,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Trask consented to the described sanctions and to the entry of findings that he improperly converted \$157,250 of customer funds for his own use and benefit.

**Stephen James Wilson (Registered Representative, Grand Haven, Michigan)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, suspended from association with any

NASD member in any capacity for 90 days, and required to requalify by exam as a representative. Without admitting or denying the allegations, Wilson consented to the described sanctions and to the entry of findings that he purchased securities for the accounts of a public customer, in which he had a beneficial interest, in violation of the Board of Governors' Free-Riding and Withholding Interpretation.

**Richard Allan Yaksic (Registered Representative, Pitcairn, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$925,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Yaksic consented to the described sanctions and to the entry of findings that he caused a total of \$142,348.52 to be withdrawn from policies and mutual fund accounts owned by public customers and converted the funds to his own use and benefit. The findings also stated that Yaksic failed to remit approximately \$10,425 in premiums received from public customers, retaining them for his own use and benefit, and improperly caused a total of \$6,439.17 to be withdrawn from their policies and converted the monies to his own use and benefit. In addition, the NASD found that Yaksic failed to remit \$5,642.49 in premiums received from a public customer and converted such monies to his own use and benefit. Yaksic also converted to his own use and benefit \$1,081.48 of a public customer's funds intended to be used for the purchase of an annuity by the customer.

**Jay Alan Yeggy (Registered Representative, Boise, Idaho)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any

NASD member in any capacity. Without admitting or denying the allegations, Yeggy consented to the described sanctions and to the entry of findings that he submitted a falsified application for insurance for a public customer and a falsified delivery receipt for the insurance policy for this customer to his member firm. The findings also stated that Yeggy transmitted to a client falsified Common Remitter Billing Notices that overstated amounts due and owing on the client's insurance policies and, submitted a falsified insurance application for another public customer to his member firm.

## Individuals Fined

**Nicholas Robert Marino (Registered Principal, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured and fined \$15,000. Without admitting or denying the allegations, Marino consented to the described sanctions and to the entry of findings that a member firm, acting through Marino, effected, as principal, sales of warrants to public customers at prices that were unfair and unreasonable taking into consideration all relevant circumstances in that the prices charged to customers were not reasonably related to the prevailing market price.

**David Carmichael Montano (Registered Principal, Orange, California)** was censured, fined \$10,000, and ordered to requalify by exam as a general securities principal. The NAC affirmed the sanctions following a July 1998 SEC decision remanding the matter to the NASD. The sanctions were based on findings that Montano appeared on a television program and made recommendations regarding a stock while failing to provide a sound basis for evaluating the stock's financial prospects or his recommendation to sell the stock short. Montano also failed to

describe market conditions while highlighting the success of past recommendations. The findings also stated that Montano made exaggerated and unwarranted claims; made improper comparisons by referring to previous specific recommendations and implied comparable future results for his current recommendation; and made specific predictions and projections concerning future investment results.

## 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.

**David Alvarado (Registered Principal, Commack, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted to disclose material information to public customers. The complaint also alleges that in connection with his solicitation of customers to purchase securities, Alvarado made future price predictions of securities when he knew, or should have known, that he did not have a reasonable basis for his predictions. The complaint also alleges that Alvarado effected transactions in the accounts of public customers without the customers' prior authorization. The complaint alleges that Alvarado also failed to execute a public customer's sell order.

**Alberto Enrique Argomaniz (Registered Representative, Miami,**

**Florida)** was named as a respondent in an NASD complaint alleging that he forged a public customer's signature on an insurance policy refund check for \$7,500, deposited the customer's refund check into his personal account, and used at least a portion of the funds for his own use and benefit, all without the knowledge or authorization of the customer. The complaint alleges that after the customer contacted Argomaniz several times questioning the whereabouts of the refund check, Argomaniz wired \$7,500 from his personal bank account to the customer's bank account.

**Bradford Lee Brinton (Registered Representative, St. Joseph, Missouri)** was named as a respondent in an NASD complaint alleging that he forged the signature of a public customer on a dividend check payable to the customer, in the amount of \$1,695.23, without the customer's knowledge or consent. The complaint alleges that Brinton then deposited the \$1,695.23 check into a bank account he controlled, and converted the funds to his own use and benefit, without the customer's knowledge or consent.

**Emanuele Robert Cardaci (Registered Principal, Farmingville, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted to disclose material information to public customers, and, in connection with his solicitation of customers to purchase securities, Cardaci made future price predictions when he knew, or should have known, that he did not have a reasonable basis for his predictions. The complaint also alleges that Cardaci effected transactions in the accounts of public customers without the customers' prior authorization, and failed to execute a public customer's sell order. The complaint also alleges that Cardaci conditioned the pur-

chase of IPO securities upon an agreement to purchase additional securities in the secondary market when it commenced, which resulted in an economic detriment to the public customer and an economic benefit to Cardaci.

**John Mike Dabal (Registered Principal, Smithtown, New York)** was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations to public customers. The complaint alleges that Dabal made statements that were materially false, misleading or exaggerated, and/or made statements for which there was no reasonable basis in fact, and failed to disclose material facts to public customers. The complaint also alleges that Dabal effected transactions in the accounts of public customers without the customers' knowledge or authorization and without having been granted discretionary authority, orally or in writing, to effect transactions.

**Charles John Distefano (Registered Representative, Medford, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and failed to disclose material information to public customers in connection with his solicitation of customers to purchase securities. The complaint also alleges that Distefano failed to execute a public customer's sell order, and effected transactions in public customer accounts without the prior authorization of the customers. The complaint also alleges that Distefano failed to appear for an on-the-record interview with the NASD.

**Averell Golub (Registered Representative, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that in connection with inducements for the offer, sale, and purchases of securi-

ties, Golub employed devices, schemes, contrivances, and artifices to defraud. The complaint alleges that Golub made material misrepresentations and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in acts, practices, or courses of business that operated as a fraud or deceit upon public customers.

**Mark Edwin Gort (Registered Principal, Wyoming, Michigan)** was named as a respondent in an NASD complaint alleging that he executed transactions in the account of a public customer without the knowledge or consent of the customer, and in the absence of written or oral authorization to exercise discretion in the account. The complaint also alleges that Gort failed to respond to NASD requests for information.

**Patrice Roberto Harris (Registered Representative, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that he executed transactions in the accounts of public customers without the knowledge or consent of the customers, and in the absence of written or oral authorization to exercise discretion in the accounts.

**Dean Llewellyn Kroenke (Registered Representative, Rochester, Minnesota)** was named as a respondent in an NASD complaint alleging that he received a check in the amount of \$1,440 from a public customer for the purpose of investing in a variable life insurance policy, and without the knowledge or consent of the customer, cashed or deposited the check in a bank account he controlled, and converted the funds to his own use and benefit. The complaint also alleges that Kroenke failed to respond to NASD requests for information.

**Landmark International Equities, Inc. (Westbury, New York), Howard Brett Berger (Registered Principal, Roslyn Heights, New York), Eric Jay Aronson (Registered Representative, Muttontown, New York), and William Nunziato (Registered Principal, Fresh Meadows, New York)** were named as respondents in an NASD complaint alleging the firm, acting through Aronson, a controlling person of the firm, and through its registered representatives, engaged in the preselling of the aftermarket by soliciting customers to purchase securities in aftermarket trading as a requirement to purchase in the IPO and failed to inform the firm's customers that the IPO was not a *bona fide* public distribution. The complaint also alleges that the firm, acting through Berger and Aronson, entered into prearranged agreements with their customers to sell units of the IPO back to the firm in the immediate aftermarket trading of the security (flipping) and should have been aware that these "flippers" did not have *bona fide* investment intent and did not constitute the investing public for purposes of completing a *bona fide* public distribution. The firm acted as a Market Maker in the securities while units were redistributed, and attempted to induce other persons to purchase such securities before the initial distribution was completed. The firm, acting through Berger and Aronson, failed to tell its non-flipping customers that the IPO was not a *bona fide* public distribution and engaged in a secondary distribution using special selling efforts and selling methods. Furthermore, the complaint alleges the firm, acting through Berger, Aronson, and Nunziato, purchased common stock from former affiliates at a purchase price that was below the firm's contemporaneous sales of common stock to its customers and engaged in a secondary distribution using special efforts and selling methods and failed to tell its

customers that their interests would be diluted by the secondary distribution and that the IPO was not a *bona fide* public distribution. In addition, the complaint alleges that the firm, acting through Nunziato, failed to supervise Aronson adequately and properly with respect to the flipper transactions described above and failed to take any steps to discharge his supervisory responsibilities with respect to these transactions, and the firm, acting through Berger, failed to establish and maintain adequate written supervisory procedures to prevent the above violations and to address compliance with the securities laws and regulations relating to the underwriting and distribution of securities. Also, the complaint alleges that the firm, acting through Berger, allowed unregistered representatives to enter aftermarket trades while not registered and failed to supervise adequately the registration of its representatives. Furthermore, Aronson and Nunziato each failed to respond to an NASD request to appear for an on-the-record interview.

**Edwin Leslie Lawrence, Jr. (Registered Representative, Dix Hills, New York)** was named as a respondent in an NASD complaint alleging that he executed securities transactions in the accounts of public customers without the knowledge or consent of the customers, and in the absence of written or oral authorization to exercise discretion in the accounts.

**Mario J. Liriano (Registered Principal, Bronx, New York)** was named as a respondent in an NASD complaint alleging that he improperly used and converted \$5,000 he received from public customers to invest in mutual funds. The complaint alleges that, instead of submitting the check to his firm, he presented the check for payment to a third party, converted the funds to his own use,

used some of the money to pay his personal expenses, and deposited the remainder into his personal bank account. The complaint alleges that Liriano attempted to conceal his conversion from his member firm by sending his firm the customers' application and his own personal check that was dated the same day he received the funds from the customers, and thereby attempted to mislead his employer into believing that the customers' funds were submitted contemporaneously with the investment application and not improperly used by Liriano. The complaint also alleges that Liriano presented his member firm with a personal check that was rejected for "insufficient funds," when he knew, or should have known, that he did not have the funds in his account to cover his personal check at the time it was presented to his firm.

**Jeffrey Tod Marshall (Registered Representative, Atlanta, Georgia)** was named as a respondent in an NASD complaint alleging that he received an application from an individual to become associated with Marshall's member firm, as well as a personal check made out to Marshall for \$150 to cover her licensing fees, and rather than submitting the application and check to his firm, Marshall cashed the applicant's check and converted the proceeds to his own use and benefit. The complaint also alleges that Marshall failed to respond to NASD requests for information.

**Scott Jason Siegel (Registered Representative, Dix Hills, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted to disclose material information to public customers, and made future price predictions of securities when he knew, or should

have known, he did not have a reasonable basis for his predictions. The complaint also alleges that Siegel failed to execute a public customer's sell order.

**Andrew Frank Soldo, Jr. (Registered Representative, East Islip, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted to disclose material information to public customers, and made future price predictions of securities to public customers when he knew, or should have known, that he did not have a reasonable basis for his predictions. The complaint also alleges that Soldo effected transactions in the accounts of public customers without the prior authorization of the customers. The complaint alleges that when a public customer informed Soldo that he would not pay for a transaction because it had not been authorized by the customer, Soldo represented to the customer that other securities in the customer's account would be sold to pay for the transaction and that a judgment would be entered against the customer that would ruin his credit rating if he did not pay for the transaction. As a result of these alleged representations, the customer borrowed funds from a bank to pay for the transaction.

### **Firms Suspended/Canceled**

The following firms were suspended/canceled 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 suspensions/cancellations 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.

**Brownstone Capital Corp., New York, New York** (March 8, 1999)

**Greig Middleton, Inc., Boston, Massachusetts** (March 8, 1999)

**Kronos Investments Limited, Oklahoma City, Oklahoma** (March 8, 1999)

**Parker Bromley Ltd., Garden City, New York** (March 8, 1999)

**Pellett Investments, Inc., Missoula, Montana** (March 8, 1999)

### **Firms Expelled For Failing To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations**

**Biltmore Securities, Inc., Ft. Lauderdale, Florida** (March 1, 1999)

**H.J. Meyers & Co., Inc., Rochester, New York** (March 1, 1999)

**Hunter International Securities, Ft. Lauderdale, Florida** (February 26, 1999)

**Kentucky Eagle Financial Group, Inc., Louisville, Kentucky** (March 1, 1999)

**Westhagen & Westhagen, Inc., Ripon, Wisconsin** (March 11, 1999)

### **Suspension Lifted**

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

**Barry F. Cohen & Company, Inc., Boca Raton, Florida** (March 1, 1999)

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

**Beasley, Jr., Jere L.**, Montgomery, Alabama (March 1, 1999)

**Clark, William H.**, Staten Island, New York (March 1, 1999)

**Curran, Gregory J.**, Springfield, Illinois (March 1, 1999)

**Dabo, Jr., Mitchell J.**, Hollister, California (February 26, 1999)

**Hannan, Joseph P.**, Newport Beach, California (March 1, 1999)

**Lerner, Bernice L.**, New York, New York (February 26, 1999)

**McAdoo, Duane S.**, Yonkers, New York (February 26, 1999 - March 16, 1999)

**Nizza, Jr., Louis N.**, Deerfield Beach, Florida (February 26, 1999)

**Schulz, Marc W.**, Rockford, Illinois (February 26, 1999)

**Westhagen, Eric P.**, Ripon, Wisconsin (March 11, 1999)

## **NASD Regulation Fines PaineWebber for Registration Violations**

NASD Regulation announced that it has censured and fined PaineWebber, Inc., \$50,000 in connection with violations of NASD rules requiring registration of individuals engaged in the securities business.

An examination of PaineWebber by NASD Regulation's District staff in New Orleans revealed that the firm failed to ensure that certain employees held all the proper registrations required for the functions they per-

formed. At various times from June 1989 to August 1998, those employees acted as general securities principals or representatives and were not properly registered as such. NASD Regulation also found that PaineWebber failed to establish, maintain, and enforce written supervisory procedures to ensure the proper registration of certain persons.

Under NASD rules, individuals engaged in the investment banking or securities business as representatives must pass a qualifications test and be registered with the member firm. Individuals who are actively engaged in the management of a firm's investment banking or securities business, including supervisory activities, must be appropriately registered as "principals" of the firm.

As part of its settlement, PaineWebber, which neither admitted nor denied the allegations, agreed to conduct a review of its supervisory procedures regarding registration of personnel within 90 days. After completion of the review, PaineWebber will implement changes necessary to ensure that all persons engaged in the firm's investment banking or securities business, or in the management thereof, are properly registered, and will submit a report to the staff detailing its review procedures and any revised supervisory procedures.

## **NASD Regulation Bars Pacific Cortez Securities, Formerly La Jolla Capital Corp., From Penny Stock Transactions**

### **Firm Ordered to Pay Fines and Restitution in Excess of \$900,000**

NASD Regulation announced that it has censured and barred San Diego-based Pacific Cortez Securities, formerly known as La Jolla Capital

Corp., from selling penny stocks. In addition, three of its senior officials have been sanctioned for violating federal securities laws governing the trading of penny stocks. Penny stocks are unlisted securities that trade over-the-counter and are typically priced under \$5 per share.

The decision was issued by NASD Regulation's NAC following an appeal of an earlier decision by its Los Angeles DBCC.

The NAC upheld the earlier decision that Pacific Cortez President Harold B.J. Gallison, and Branch Manager Christopher S. Knight be permanently barred from the penny stock industry for participating in a 17 month-long scheme promoting unlawful sales of penny stocks to unsuspecting investors. They were also ordered to pay fines of more than \$500,000. Separately, the firm and Gallison are jointly responsible for repaying more than 100 investors throughout the country almost \$400,000.

The NAC also found that Pacific Cortez Securities implemented a system to circumvent the SEC penny stock rules designed to ensure that investors receive honest and candid information about risk disclosure and suitability issues before they invest. The firm had investors sign a misleading document that purported to exempt the transactions from the rules' requirements. The letters were portrayed to investors as a "formality," and in some cases investors' signatures were forged. Pacific Cortez also was found to have implemented deficient supervisory policies and procedures designed to foster the improper claim of this exemption.

The sales practice abuses at Pacific Cortez were uncovered after a lengthy investigation by NASD Regulation's District Offices in Los Angeles, San Francisco, and Denver. The

NAC found that from January 1994 through May 1995, Pacific Cortez and certain of its senior officials circumvented investor protection laws in approximately 140 transactions involving 15 separate securities. All of the transactions involve penny stocks. The violations occurred at the firm's offices in San Diego, CA; New York, NY; Las Vegas, NV; and Bethesda, MD.

The following senior officials were sanctioned:

- Harold B.J. Gallison, President, and Pacific Cortez Securities were fined a total of \$397,380, plus costs (\$8,260.75). Gallison was also suspended in all capacities for 30 days; permanently barred from participating in penny stock transactions; permanently barred from acting as a supervisor; and censured.
- Gregory K. Mehlmann, National Branch Compliance Officer, was fined \$10,000 plus costs (\$3,500); suspended as a supervisor for 10 business days; ordered to retake the qualifying examination to become a supervisor; and censured.
- Christopher S. Knight, Branch Manager, was fined \$95,854, plus costs (\$6,500.00); permanently barred from acting as a supervisor; permanently barred from participating in penny stock transactions; suspended in all capacities for 15 days; and censured.

The NAC dismissed all charges against Robert C. Weaver, Chief Legal Counsel and Gerald J.R. Budke, Branch Manager. The firm has appealed the decision to the SEC. As a result, the findings may be modified or reversed. Gallison is still employed by Pacific Cortez Securities.

In related disciplinary actions between February 1996 and October 1996, 22 other Pacific Cortez brokers and supervisors, without admitting or denying liability, were fined and disciplined in connection with this case. Pacific Cortez Securities employs 53 brokers in six offices in California, New York, Georgia, and Nevada.

### **NASD Regulation Sanctions And Fines 10 Sterling Foster Brokers For Fraudulent "Boiler Room" Sales Practices; Orders \$1.1 Million Restitution**

NASD Regulation announced that the use of "abusive" "high-pressure" "boiler room" sales practices designed to defraud investors were among the grounds for a disciplinary action that resulted in seven brokers being barred from the industry and suspensions for three others. The 10 former brokers of Sterling Foster & Co., Inc., a defunct Melville, New York broker/dealer, were ordered to pay investors a total of \$1,138,517 in restitution and fined a total of \$837,500. The violations of NASD rules and federal securities laws related to the sales of the securities of Advanced Voice Technologies, Inc.

This brings the total number of Sterling Foster brokers disciplined by the NASD in the past year to 31 and increases the total amount of fines and restitution imposed to \$4,256,393. Several more cases are pending.

According to the findings issued by the NASD Market Regulation Committee, the Sterling Foster brokers used a variety of high-pressure sales tactics, including: aggressive cold-calling, fraudulent misrepresentations, and baseless predictions of dramatic price increases. In many instances, customers requested, but were never sent, copies of the Advanced Voice offering prospectus. Customers were sometimes told that

the firm had simply "run out" of them. On those occasions when prospectuses were delivered, the brokers actively discouraged customers from reading them.

The Committee further found that, instead of revealing the true financial condition of the company, brokers at Sterling Foster sold Advanced Voice securities by representing to customers that the IPO was "oversold" or "oversubscribed" and that there would be a huge, unsatisfied demand for the stock once trading began, causing the price to soar. Customers frequently were urged to "act immediately or else [they] would miss out on this incredible opportunity to get rich." In some instances, brokers told customers that "it didn't matter if the company made screen doors for submarines." Brokers also, at times, misrepresented to customers that they were privy to inside information about the company.

Although Advanced Voice began trading at a substantial premium, rising as high as \$18.00 per share, the stock never came close to matching the brokers' unsubstantiated predictions. The NASD also found that the Sterling Foster brokers effected numerous unauthorized transactions in customer accounts, buying many more shares than the customers had authorized or could afford.

The Market Regulation Committee also noted that, for the most part, the customers who purchased Advanced Voice securities comprised a relatively sophisticated group. Many had previous experience investing, almost all were well-educated, and a surprising number were owners of their own successful businesses. Yet, they still succumbed to the Sterling Foster brokers' combination of relentless tactics and outlandish promises.

The NASD also found that, as a group, the Sterling Foster brokers embraced the firm's stated philosophy of "Buy or Die," meaning "never take 'no' for an answer" when selling securities to a customer. Each broker was expected to make hundreds of calls per day. Once a sale was made, however, the brokers simply ignored their customers' calls and frequently refused to accept sell orders. One customer-witness who had placed approximately 25 calls to the firm, testified that these were the "most evasive people I ever saw." In another instance, a customer who tried repeatedly to sell his shares, was told that the firm's "legal department" first had to approve the sale because the customer "had a short history with the firm." A former Sterling Foster broker who testified at the hearing, corroborated the customer-witnesses' accounts, and stated that when customers could not be dissuaded from selling, the order tickets would sometimes disappear, unexecuted, into the sales manager's "magic drawer."

The names of the 10 brokers disciplined by the NASD, and the sanctions imposed against them, are as follows:

Vincent Vaccaro - Censure; Permanent Bar; \$100,000 Fine; \$161,624 Restitution;

Vincent Carella - Censure; Permanent Bar; \$100,000 Fine; \$135,983 Restitution;

William Scuteri - Censure; Permanent Bar; \$100,000 Fine; \$223,200 Restitution;

Robert Paulson - Censure; Permanent Bar; \$100,000 Fine; \$82,006 Restitution;

Brian Kearney - Censure; Permanent Bar; \$100,000 Fine; \$64,410 Restitution;

Timothy Matthews - Censure; Permanent Bar; \$100,000 Fine; \$135,706 Restitution;

Michael Cohn - Censure; Permanent Bar; \$100,000 Fine; \$94,341 Restitution;

Diana Coblin - Censure; Two-Year Suspension; \$100,000 Fine; \$152,347 Restitution;

Joseph Ferrante - Censure; Six-Month Suspension; \$25,000 Fine; \$75,577 Restitution;

Claudia Silver - Censure; 30-Day Suspension; \$12,500 Fine; \$13,323 Restitution.

days, unless the matter is appealed to the NAC, or called for review by the NAC. The sanctions are not effective during this period. If the decision is appealed or called for review, the sanctions against Vacarro or Carella may be increased, decreased, modified, or reversed. The decisions and sanctions imposed against the remaining eight brokers are the result of settlements submitted and approved after the disciplinary hearing was completed, and as such, they are now final.

This matter was investigated and prosecuted by NASD Regulation's Denver District Office and Enforcement Department in Washington, D.C. Assistance was also provided by NASD Regulation's Corporate Finance Department. NASD Regulation wishes to express its appreciation to the U.S. Attorney's Office for the Southern District of New York and the Northeast Regional Office of the SEC for their cooperation and assistance in this matter.

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The Committee's decision regarding Vaccaro and Carella is final after 45

# For Your Information

## **Member Firms Now May Submit EDGAR Documents On Computer Disks To Meet The Information Requirements Of SEC Rule 15c2-11 And NASD Marketplace Rule 6740**

Member firms may now demonstrate compliance with Securities and Exchange Commission (SEC) Rule 15c2-11 and National Association of Securities Dealers, Inc. (NASD®) Marketplace Rule 6740 by submitting one copy of EDGAR documents on

computer disk, in lieu of two paper copies of the EDGAR documents. EDGAR documents should be provided on 3.5 inch computer disks and should be in .TXT format. When documents containing the required information are not available through EDGAR, the member firm must continue to provide two paper copies of the requisite documents.

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# Special NASD Notice to Members 99-32

NASD Regulation Requests  
Comment On Proposed Rules  
Regarding Approval  
Procedures For Day-Trading  
Accounts, Including  
Appropriateness  
Determinations, And  
Disclosure Of Risks Of Day-  
Trading Activities; Comment  
Period Expires May 31, 1999

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

NASD Regulation, Inc. (NASD Regulation®) is requesting comment from members and other interested parties on proposed rules that would require a firm that has recommended a day-trading strategy to an individual to approve the individual's account for day trading. As part of the account approval process, the firm would be required to determine that the strategy is appropriate for the customer and to provide a disclosure statement to the customer discussing the risks of day trading.

A companion *Special Notice to Members* issued today, *Special Notice to Members 99-33*, discusses current margin requirements and steps that firms are taking to increase maintenance margin requirements for certain volatile stocks. *Special Notice to Members 99-33* also solicits comment on the use of margin during volatile market conditions, as well as the use of margin by individuals engaging in day-trading activities.

Questions concerning this *Special Notice* may be directed to Patrice M. Gliniecki, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8014.

## Discussion

The increased popularity of day trading by individuals poses unique investor protection concerns. Individuals engaging in day-trading activities often trade their accounts aggressively, hoping to profit from intra-day price movements in securities. However, the ability to engage effectively in day trading requires not only sufficient capital, but also a sophisticated understanding of securities markets and trading techniques. Even sophisticated investors engaging in day-trading activities should be aware that the risk of loss of capital can be very high. For persons

without this sophistication, the risk of loss can be even higher.

To address these concerns, NASD Regulation is soliciting comment on two proposed rules that would clarify and enhance the responsibilities of members that recommend day trading to individuals. The text of the proposed rules follows this *Special Notice*.

## Proposed Approval Procedures For Day-Trading Accounts

The proposed rules would require a member that has recommended an "intra-day trading strategy" to a customer who is a natural person to approve that customer's account for day trading prior to effecting an initial day-trading transaction for the customer. The proposed rules would define an "intra-day trading strategy" as "an overall trading strategy characterized by the regular transmission by a customer of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities." The account approval would be required to be in a written document, which would be subject to the National Association of Securities Dealers, Inc. (NASD® or Association) general recordkeeping requirements.

To approve a customer's account for day trading, the member would be required to determine that an intra-day trading strategy is appropriate for the customer. In making this determination, the member would be required to "exercise diligence to ascertain the essential facts relative to the customer." This would expressly include a review of the customer's financial situation, investment experience, and investment objectives. For purposes of the proposed rules, day trading generally would not be appropriate for someone of limited resources and investment or trading experience, and low risk tolerance.

## **Proposed Risk Disclosure Statement**

The proposed account approval procedures also would require the member, prior to effecting an initial day-trading transaction, to provide a disclosure statement to the customer discussing the unique risks posed by this activity. The disclosure statement would include several points that a customer should consider before engaging in day trading, including that the customer should be prepared to lose all of the funds that he or she uses for day trading and that day trading on margin may result in losses beyond the initial investment. The proposed rules also would allow a firm to develop an alternative risk disclosure statement, provided that the alternative statement was substantially similar to the mandated disclosure statement and was filed with, and approved by, the NASD's Advertising Department.

The proposed rules do not define the term "recommendation" in the context of day-trading activities. In general, a member would be recommending a day-trading strategy for purposes of the proposed rules if it affirmatively promoted day trading through advertising, training seminars, or direct outreach programs, and an individual engaged in day trading in response to these solicitations. The fact that customers of a firm generally were engaged in day trading would reinforce a determination that the firm had promoted itself in this way. However, merely providing general investment research or having a Web site that allows the multiple entry of intra-day purchases and sales of the same securities would not constitute a recommendation under the proposal.

## **Alternative Approaches**

NASD Regulation is interested in receiving views as to alternative approaches to addressing the investor protection concerns raised by individuals engaging in day-trading activities. For example, the proposal could be revised to apply to a broader range of firms. In particular, the proposed requirements could apply to any firm that promotes day trading in any manner, rather than be limited to those firms that have "recommended" an intra-day trading strategy to an individual.

In addition, the proposal could be revised to reach additional categories of customers, such as any customer that indicates an intent to engage in day-trading activities. The scope of the proposal also could be restricted to reach only those persons that a firm individually solicits to engage in a day-trading strategy. Moreover, an alternative to the proposal would be to require that risk disclosure statements be provided to every individual who opens an on-line trading account.

## **Request For Comment**

NASD Regulation encourages members and other interested parties to comment on all aspects of the proposed rules. We also specifically solicit comment on the following issues:

1. Do the proposed rules target the appropriate activity given that they are directed at firms that recommend, through general advertisements, seminars, etc., day-trading strategies to individuals? To what extent are individuals engaging in day trading as a result of efforts by firms to promote this activity? By what other means are individuals being persuaded, or otherwise electing, to engage in day trading?

2. Should the proposed rules address a broader scope of firm activities? For example, should all firms that advertise or promote day trading in any manner be subject to the proposal, regardless of whether a particular individual engages in day trading in response to the firm's actions?

3. Should the proposed rules require that any representations as to the profitability of an intra-day trading strategy be reasonably based on actual prior historical results?

4. Should the proposed rules reach a broader range of individuals? For example, should any individual that expresses an intent to engage in day trading be covered by the rules?

5. Should the proposed rules (or similar rules) apply only to new customers? How should existing customers be treated?

6. Should the proposed rules set forth a definition of "recommendation"? If so, what types of activities should constitute a recommendation in the context of day trading?

7. Is the proposed definition of an "intra-day trading strategy" appropriate?

8. Should the proposed rules prescribe with greater specificity the actions that a firm needs to take in order to fulfill its obligations under the rules? Are there additional elements that a firm should consider in order to assess the appropriateness of a day-trading strategy for an individual? For example, should a member be required to determine the source of funds that an individual intends to use for day-trading activities?

9. Are there additional issues that should be addressed in the proposed risk disclosure statement? Should customers be required to sign or

otherwise acknowledge receipt of the risk disclosure statement? Should the proposed rules permit a firm to prepare its own disclosure statement regarding the risks of day trading?

10. Are there other alternative approaches that would achieve the regulatory goal of addressing the investor protection concerns raised by day trading?

Comments should be mailed to:

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

or e-mailed to:  
[pubcom@nasd.com](mailto:pubcom@nasd.com)

**Important Note:** The only comments that will be considered are those submitted in writing or via e-mail.

Comments must be received by **May 31, 1999**. Before becoming effective, any rule change must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission.

## Text Of Proposed Rules

### Rule 2360. Approval Procedures for Intra-Day Trading Accounts

(a) No member that has recommended an intra-day trading strategy to a customer who is a natural person shall effect a transaction for or on behalf of such customer for this purpose, unless, prior to effecting the first of such transactions, the member has:

(1) approved the customer's account for an intra-day trading strategy in accordance with the

procedures set forth in paragraph (b); and

(2) provided the customer with a copy of the disclosure statement required by Rule 2361.

(b) In order to approve a customer's account for an intra-day trading strategy, a member shall determine that the intra-day trading strategy is appropriate for the customer. In making this determination, the member shall exercise diligence to ascertain the essential facts relative to the customer, including his or her financial situation, investment experience, and investment objectives.

(c) Each member subject to this rule shall make a record setting forth the basis on which the member approves the customer's account under paragraph (a) and shall preserve such record in accordance with Rule 3110(a).

(d) For purposes of this rule, the term "intra-day trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities.

### Rule 2361. Intra-Day Trading Strategy Disclosure Statement

(a) Except as provided in paragraph (b), no member that has recommended an intra-day trading strategy to a customer who is a natural person shall effect a transaction for or on behalf of such customer for this purpose, unless, prior to effecting the first of such transactions, the member has provided to the customer, in writing or electronically, the following disclosure statement:

You should consider the following points before engaging in day

trading activities. For purposes of this notice, "day trading" means the transmission by you of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities.

• **Day trading is extremely risky.** You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day trading activities with retirement savings, student loans, second mortgages, emergency funds, funds set aside for purposes such as education or home ownership, or funds required for current income to meet your living expenses.

• **Be cautious of claims of large profits from day trading.** You should be wary of advertisements or other statements that emphasize the potential for large profits in day trading. Day trading can also lead to large and immediate financial losses.

• **Day trading requires knowledge of securities markets.** Day trading requires in-depth knowledge of the securities markets and trading techniques and strategies. In attempting to profit through day trading, you must compete with professional, licensed traders employed by securities firms. You should have appropriate experience before engaging in day trading.

• **Day trading requires knowledge of a firm's operations.** You should be familiar with a securities firm's business practices, including the operation of the firm's order execution systems and procedures. You should confirm that a firm has adequate systems capacity to permit customers to engage in day trading activities.

**• Day trading may result in your paying large commissions.** Day trading may require you to trade your account aggressively, and you may pay commissions on each trade. The total daily commissions that you pay on your trades may add to your losses or significantly reduce your earnings.

**• Day trading on margin or short selling may result in losses beyond your initial investment.** When you day trade with funds borrowed from a firm or someone else, you can lose more than the funds you originally placed at risk. A decline in the value of the securities that are purchased may require you to provide additional funds to the firm to avoid the forced sale of those securities or other securities in your account. Short selling as part of your day trading strategy also may lead to extraordinary losses, because

you may have to purchase a stock at a very high price in order to cover a short position.

(b) In lieu of providing the disclosure statement specified in paragraph (a), a member that has recommended an intra-day trading strategy to a customer who is a natural person may provide to the customer, in writing or electronically, prior to effecting the first of such transactions, an alternative disclosure statement, provided that:

(1) The alternative disclosure statement shall be substantially similar to the disclosure statement specified in paragraph (a); and

(2) The alternative disclosure statement shall be filed with the Association's Advertising Department (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 changes are recommended by the Association, shall be withheld from use until any changes specified by the Association have been made or, if expressly disapproved, until the alternative disclosure statement has been refiled for, and has received, Association approval. The member must provide with each filing the anticipated date of first use.

(c) For purposes of this rule, the term "intra-day trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities.

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**NOTE: As of January 1999, there has been a change in *Notices to Members* distribution:** Members no longer receive complimentary copies of *Notices to Members*. Each Executive Representative is entitled to one annual subscription at cost (\$15 per year). Additional annual subscriptions are available for \$225; single issues cost \$25. Send a check or money order (payable to the National Association of Securities Dealers, Inc.) to NASD MediaSource, P.O. Box 9403, Gaithersburg, MD 20898-9403, or to phone in an order using American Express, MasterCard, or Visa charge, call (301) 590-6142, Monday to Friday, 9 a.m. to 5 p.m., Eastern Time. Back issues may be ordered by calling MediaSource at (301) 590-6142.

*NASD Notices to Members* (December 1996 to current) are also available on the Internet at [www.nasd.com](http://www.nasd.com).

# Special NASD Notice to Members 99-33

NASD Regulation Advises  
Members About  
Maintenance Margin  
Requirements For Certain  
Volatile Stocks And Solicits  
Comment On Margin  
Practices; **Comment Period**  
**Expires May 31, 1999**

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

During the past several months, many stocks, particularly of companies that sell products or services via the Internet (Internet issuers), have experienced sharp increases in both price volatility and trading volume. These extreme market conditions raise concerns regarding the use of margin accounts by individuals to trade volatile stocks. NASD Regulation, Inc. (NASD Regulation®) is issuing this *Special Notice* to provide members, as well as investors, with information about current margin requirements and steps taken by the industry to increase maintenance margin requirements for certain volatile stocks. This *Special Notice* also solicits comment from members and other interested parties on issues relating to the use of margin during volatile market conditions, as well as the use of margin by individuals engaging in day-trading activities.

In a companion *Special Notice to Members* issued today, *Special Notice to Members* 99-32, NASD Regulation solicits comment on two proposed rules that would require a member that has recommended a day-trading strategy to an individual to approve the individual's account for day trading, including determining that the strategy is appropriate for the individual, and to deliver a disclosure statement on the risks of day trading.

Questions concerning this *Special Notice* may be directed to Patrice M. Gliniecki, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8014.

## Discussion

In recent months, there has been a sharp increase in the price volatility of many stocks, particularly those of Internet issuers. This volatility in price has been coupled with record trading volumes in many of these stocks. While many factors have contributed

to the development of these market conditions, one significant factor is the role played by rapid advances in technology, which have provided customers with easier and less costly access to the securities markets. Customers are now able to trade their accounts far more actively than in the past, and members are often flooded with customer orders for certain individual stocks or groups of stocks (e.g., stocks of Internet issuers).

To address concerns raised by current market conditions, NASD Regulation recently issued *Notice to Members* 99-11, which suggests disclosures that firms can make to educate customers about the risk of price and volume volatility, and discusses steps that have been taken by some firms to respond to this volatility.<sup>1</sup> In a companion *Notice to Members*, *Notice to Members* 99-12, NASD Regulation provided guidance to firms on the operation of their order execution systems and procedures during extreme market conditions.<sup>2</sup>

As volatile market conditions continue, questions are raised regarding the risks posed to firms and to investors, and the relationship of margin to those risks. A sudden change in the market value of a security may result in an unexpected margin call, and a customer's failure to meet the call may cause the firm to liquidate the securities in the account. The financial consequences of a margin call or an account liquidation may be most severe to customers with small accounts, and small accounts may be more likely to be subject to liquidation. In addition, the forced sale of securities in margin accounts may further contribute to volatility.

Questions regarding investor protection and disclosure practices also arise as firms become involved

in the extension of credit between customers. In some instances, customers are making loans to other customers to finance securities trades, and some customers are guaranteeing each other's margin accounts. Member firms sometimes arrange for these loans or guarantees between customers or arrange loans for customers from other sources. Customers incur additional finance charges when credit is arranged, and they face additional credit risks when they extend credit to other customers.

Discussions with firms about their responses to volatility indicate that many firms have adopted special procedures with respect to margin. For instance, as further detailed below, many firms have increased maintenance margin requirements for selected groups of highly volatile stocks.<sup>3</sup> However, with markets at historically high levels, concerns remain with the amount of funds that customers are borrowing to trade securities, and the manner in which credit is being extended by various sources. Accordingly, this *Special Notice* discusses current margin requirements and certain firm practices when extending credit to customers, and solicits comment on these important issues.<sup>4</sup>

## Current Margin Requirements

Federal Reserve Board Regulation T governs the extension of credit to customers by broker/dealers and includes provisions concerning the initial margin requirements for most types of securities transactions. In general, Regulation T requires 50 percent initial margin for long purchases of marginable equity securities. In addition, Regulation T requires 150 percent margin for short sales of equity securities, of which 100 percent can be from sales proceeds.

National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 2520 imposes additional margin requirements on customer accounts.<sup>5</sup> Rule 2520 generally requires maintenance margin of 25 percent of the current market value for all long positions in marginable equity securities, meaning that the equity must not fall below 25 percent of the current market value of the securities in the account. For a short securities position where the stock sells at \$5 per share or above, Rule 2520 requires maintenance margin of \$5 per share or 30 percent of the current market value of the stock, whichever amount is greater. In addition, for a short securities position where the stock sells at less than \$5 per share, a customer must maintain margin of \$2.50 per share or 100 percent of the current market value, whichever amount is greater. Where the same security is carried long and short by the same customer, Rule 2520 permits maintenance margin of five percent of the current market value of the long security.

Rule 2520 also permits customers to guarantee each other's accounts for maintenance margin purposes.<sup>6</sup> In cross-guaranteed accounts, the amount of maintenance margin excess in one account may be used to offset a maintenance margin deficit in the other cross-guaranteed account. In addition, if the cross-guaranteed accounts are long and short the same securities, including the same number of shares, the maintenance margin requirement on the combined positions is five percent. Day trading is also recognized by Rule 2520 through the definitions of "day-trading," "day-trader," and certain specified margin requirements.<sup>7</sup> Under these provisions, a day trader may need to deposit additional equity in his or her account to satisfy a day-trade margin call.

Members also may establish their own margin requirements (referred to as "house" requirements), provided that they are at least as stringent as the requirements under Regulation T and Rule 2520. Members also may temporarily raise their margin requirements in response to market conditions.

## Increased Maintenance Margin

In light of current market conditions, some members have elected to increase their maintenance margin requirements for certain volatile stocks to help ensure that the equity in each customer account is sufficient to cover the large swings in the price of the stocks. In general, the firms have increased the amount of equity that must be maintained in margin accounts for long positions in these stocks to between 40 percent and 100 percent. In addition, the firms often have raised their maintenance margin requirements on short positions to an even greater degree than on long positions.

## Identifying Stocks For Increased Maintenance Margin

Firms have considered a variety of parameters in identifying the stocks that will be subject to increased maintenance margin requirements. A particularly useful approach is to calculate the volatility of the stock and impose more stringent requirements on stocks that are highly volatile. In this context, one appropriate way to measure volatility is to calculate the standard deviation of the relative daily return of a given stock over a specified time period, such as three months (which would capture an entire quarterly earnings cycle).<sup>8</sup>

Firms also may identify stocks for more stringent maintenance margin requirements by reviewing customer accounts to assess trading activity in a particular stock, as well as the firm's aggregate risk exposure to the

stock. This type of analysis should be performed in conjunction with calculating the volatility of the stock. Other factors firms may consider in reviewing their margin requirements during extraordinary market conditions include price fluctuations (such as a recent sharp rise or decline in price), the degree to which trading in a stock is concentrated in a small number of Market Makers, or an issuer's market capitalization or industrial code classification. Firms also have indicated that they regularly review and, where appropriate, revise the lists of stocks that are subject to increased maintenance margin requirements.

NASD Regulation believes that increasing the maintenance margin requirements to be applied to certain stocks is an appropriate response to extreme volatility in those stocks. Discussions with firms have indicated that customers generally have not been transferring their accounts to other firms in response to increased margin requirements for volatile stocks. In this regard, NASD Regulation believes that a firm's decision to adopt such measures should not be influenced by the possible short-term competitive effects. Moreover, NASD Regulation will continue to monitor actions taken by members to adjust maintenance margin requirements in response to market volatility, and the effects of those actions, to determine whether changes to NASD rules may be warranted.

## Disclosure Of Credit Terms To Customers

In reviewing margin procedures, firms also should confirm that they are providing appropriate disclosure of credit terms to customers with margin accounts. Under the federal securities laws, brokers that extend

credit to customers to finance securities transactions are required to furnish, in writing, specified information regarding the terms of the loan.<sup>9</sup>

These disclosures must be made on both an initial and periodic basis. For instance, at the time a customer opens a margin account, a broker must provide the customer with a written statement disclosing, among other things, the annual rate of interest, the method of computing interest, and what other credit charges may be imposed. These initial disclosures help to ensure that the customer understands the terms and conditions of the margin loan and allow the customer to compare available credit terms.<sup>10</sup> A firm also is required to provide periodic (at least quarterly) written statements to the customer, which disclose such information as opening and closing balances, total interest charges, and other charges resulting from the extension of credit.

## Request For Comment

NASD Regulation encourages members and other interested parties to comment on the issues discussed in this *Special Notice*, including whether adjusting NASD margin requirements for certain stocks is an appropriate means of addressing volatility in the securities markets. In addition, we seek comment on the following issues:

1. Should margin requirements applicable to a securities transaction or account differ based on the size of a customer's account? In particular, should margin requirements be more stringent for small accounts, given that the financial consequences of a margin call to the holder of a small account may be more severe? If so, should there be any exemptions to

such a heightened margin requirement for small accounts? What would be an appropriate definition of "small account"?  
2. Should margin requirements be linked to volatility? If so, how should this approach work?  
3. Should the ability of customers to guarantee each other's accounts for maintenance margin purposes be eliminated or restricted? For instance, should rules require that cross-guaranteed accounts be owned or controlled by the same customer in order to receive special maintenance margin treatment? What would be the effect of any such revisions? Should the five percent maintenance margin treatment for perfectly offsetting long and short positions between cross-guaranteed accounts be eliminated or revised?

4. How important is margin to day-trading activities? Are the current margin requirements applicable to day-trading accounts appropriate? If not, how should the current requirements be revised?

5. Should customers be required to make margin deposits during the day in order to account for intra-day risk exposure? If so, what should those margin requirements be, and should margin deposits be made prior to additional trading taking place?

6. Are customers receiving adequate disclosure of the credit terms of margin transactions? When a firm arranges loans for customers from other sources, are customers receiving adequate disclosure of the credit terms of the loans? Are the persons or entities making the loans receiving adequate disclosure of the risks and terms of the loans?

Comments should be mailed to:

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

or e-mailed to:  
[pubcom@nasd.com](mailto:pubcom@nasd.com)

**Important Note:** The only comments that will be considered are those submitted in writing or via e-mail.

Comments must be received no later than **May 31, 1999**. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission.

## Endnotes

<sup>1</sup>*NASD Notice to Members 99-11, NASD Regulation Issues Guidance Regarding Stock Volatility* (Feb. 1999).

<sup>2</sup>*NASD Notice to Members 99-12, NASD Regulation Issues Guidance Concerning The Operation Of Automated Order Execution Systems During Turbulent Market Conditions* (Feb. 1999).

<sup>3</sup>See *NASD Notice to Members 99-11* (Feb. 1999) for additional discussion of margin requirements for volatile stocks.

<sup>4</sup>NASD Regulation also recently issued investor guidance on the use of margin accounts and the risks involved with trading securities on margin. See NASD Regulation's Web Site at [www.nasdr.com](http://www.nasdr.com).

<sup>5</sup>While often thought of as a "maintenance" margin rule, Rule 2520 also contains initial margin requirements. Initial margin is the greater of the amount specified in Regulation T or the maintenance margin specified in Rule 2520.

<sup>6</sup>See *NASD Notice to Members 98-102, Calculating Margin For Day-Trading And Cross-Guaranteed Accounts* (Dec. 1998), for further discussion of margin requirements for cross-guaranteed accounts. When calculating Regulation T margin, cross guarantees have no effect.

<sup>7</sup>See *id.* for further discussion of margin requirements for day-trading accounts.

<sup>8</sup>The relative daily return of a stock can be derived from the closing price (or the bid-ask mid-point) of an issue each day during the specified time period. Using the closing price, the daily relative return would be the percent price change between the most recent closing price and the previous day's closing price. For example, a stock that closes at \$10 on Monday and at \$11 on Tuesday has a relative daily return for Tuesday of 10 percent. Once this daily relative return has been calculated for each of the trading days during the specified time period, a firm can calculate the standard deviation (or dispersion) of these returns to determine the volatility of the issue.

<sup>9</sup>See Rule 10b-16 under the Securities Exchange Act of 1934. Brokers also are subject to the general anti-fraud provisions of the federal securities laws.

<sup>10</sup>See Securities Exchange Act Release No. 8773 (Dec. 8, 1969) (adopting Rule 10b-16).

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