

NASD Notice to Members 01-01

INFORMATIONAL

Options Rule

SEC Approves Proposed Changes To NASD Rule 2860

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

SUGGESTED ROUTING

- Executive Representatives
- Legal & Compliance
- Senior Management
- Trading & Market Making

KEY TOPICS

- Options
- NASD Rule 2860

Executive Summary

On December 13, 2000, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) Rule 2860.¹ The amendments:

- (1) apply the NASD's options position and exercise limits to members that effect trades for non-member brokers and non-member dealers;
- (2) require members to report the options positions that they effect for non-member brokers and non-member dealers where such positions meet the reporting thresholds under NASD rules;
- (3) codify an interpretive position with respect to which firms are required to report standardized options positions under the NASD's options position reporting requirements; and
- (4) clarify that a member may have its clearing firm report options positions to the NASD on the member's behalf.

The amendments become effective on February 15, 2001. The text of the amendments is provided in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to the NASD Regulation, Inc. Office of General Counsel at (202) 728-8071, or Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, NASD RegulationSM, at (202) 728-8104.

Background And Summary

The NASD's options position limits, exercise limits, and reporting requirements, Rules 2860(b)(3), 2860(b)(4) and 2860(b)(5), respectively, apply to any account in which a member, or any partner, officer, director, or employee of the member has an interest, or for the account of any customer. However, because the NASD's definition of "customer"² excludes a broker or dealer, non-member brokers and non-member dealers have been outside the scope of these rules. As a result, conventional options transactions³ of a non-member broker or non-member dealer that are effected by an NASD member are not subject to any position and exercise limits or options reporting.⁴ The new amendments to Rule 2860 will remedy this gap. Under these amendments, options position and exercise limits and reporting requirements will apply to accounts of non-member brokers and non-member dealers.

The amendments also codify certain options position reporting requirements set forth in *NASD Notice to Members 94-46*. Specifically, the amendments state that the reporting requirements are "applicable to all standardized options positions established by 'access' firms or their customers and all conventional options positions established by members or their customers." Access firms are defined as NASD members that conduct a business in exchange-traded options but are not themselves members of the options exchange upon which such options are listed and traded. Limiting reporting of standardized options positions under NASD

NASD Notice to Members 01-01

rules to access firms only avoids imposing duplicative reporting requirements on NASD members that are also members of an options exchange, inasmuch as members of an options exchange (i.e., dual members) are required to report positions on standardized options pursuant to the rules of the options exchange(s) of which they are a member.

Finally, the amendments clarify that, consistent with current practices, a member may report positions directly to the NASD or have such positions reported to the NASD by another firm, such as the

member's clearing firm, on behalf of the member. Members should be aware, however, that the amendment does not eliminate a member's ultimate responsibility to ensure that the firm reporting the positions on the member's behalf makes the necessary filings with the NASD, and that such filings are true, accurate, and complete, and submitted on a timely basis.

Endnotes

1 See Exchange Act Release No. 43718 (File No. SR-NASD-00-36) (December 13, 2000), 65 Federal Register 80969 (December 22, 2000).

2 Rule 0120(g) states that the term "customer" shall not include a broker or dealer.

3 A "conventional option" is any option contract not issued, or subject to issuance, by the Options Clearing Corporation. NASD Rule 2860(b)(2)(N).

4 Standardized options transactions of a non-member are subject to position and exercise limits and reporting requirements of the applicable options exchange(s) on which the member of such exchange(s) effects the transaction. A "standardized option" is any options contract issued, or subject to issuance by, the Options Clearing Corporation that is not a FLEX Equity Option. NASD Rule 2860(b)(2)(WW).

NASD Notice to Members 01-01

ATTACHMENT A

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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, non-member broker, or non-member dealer, 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, non-member broker, or non-member dealer, 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:

(4) Exercise Limits

(A) 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 or person associated with a member shall exer-

cise, for any account in which such member or person associated with a member has an interest, or for the account of any partner, officer, director or employee thereof or for the account of any customer, non-member broker, or non-member dealer, any option contract if as a result thereof such member or partner, officer, director or employee thereof or customer, non-member broker, or non-member dealer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days a number of option contracts of a particular class of options in excess of the limits for options positions in paragraph (b)(3). The Association may institute other limitations concerning the exercise of option contracts from time to time by action of the Association. Reasonable notice shall be given of each new limitation fixed by the Association.

(5) Reporting of Options Positions

(A)(i)a. Conventional Options

Each member shall file or cause to be filed with the Association a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee or such member, and each customer, non-member broker, or non-member dealer account, which has established an aggregate position of 200 or more option 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, combining for purposes of this subparagraph long positions in put options with short positions in call options and short positions in put options with long positions in call options.

b. Standardized Options

Each member that conducts a business in standardized options but is not a member of the options exchange upon which the standardized options are listed and traded shall file or cause to be filed with the Association a report with respect to each account in which the member has an interest, each account of a partner, officer, director or employee of such member, and each customer, non-member broker, or non-member dealer account, which has established an aggregate position of 200 or more option 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, combining for purposes of this subparagraph long positions in put options with short positions in call options and short positions in put options with long positions in call options.

(ii) The reports required by this subparagraph [Such report] shall identify the person or persons having an interest in such account and shall identify separately the total number of option contracts of each such class comprising the reportable position in such account. The reports shall be in such form as may be prescribed by the Association and shall be filed no later than the close of business on the

NASD Notice to Members 01-01

next business day following the day on which the transaction or transactions requiring the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this subparagraph, the member filing such shall file with the Association such additional periodic reports with respect to such account as the Association may from time to time prescribe.

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NASD Notice to Members 01-02

ACTION REQUIRED

Broker/Dealer And Agent Renewals

2001 Renewal Rosters And Final Renewal Statements

SUGGESTED ROUTING

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

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

KEY TOPICS

- Registration
- Renewals
- Web CRD

Executive Summary

The 2001 Renewal Program for the National Association of Securities Dealers, Inc. (NASD[®]) broker/dealer and agent registration began its second phase this month. The NASD is issuing this *Notice* to help members review, reconcile, and respond to the Final Renewal Statements and Rosters that are available on Web CRD. The NASD began generating Final Renewal Rosters on January 2, 2001. All rosters will be available no later than January 22, 2001.

Final Renewal Statements became available on January 2, 2001.

Questions/Further Information

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

Final Renewal Statements And Rosters

The NASD began making Final Renewal Statements available, via Web CRD, on January 2, 2001. Final Renewal Rosters will be available to all NASD member firms via Web CRD no later than January 22, 2001. The Final Renewal Statements reflect the year-end 2000 total fees for:

- NASD Personnel Assessments;
- NASD Branch Office Assessments;
- NASD System Processing Fees;
- New York Stock Exchange (NYSE), American Stock Exchange[®] (Amex[®]), Chicago Board Options Exchange (CBOE), Pacific Exchange (PCX), and Philadelphia Stock Exchange (PHLX) Maintenance Fees;

- State Agent Renewal Fees; and
- State Broker/Dealer Renewal Fees.

The statement also reflects payment submitted by an NASD member in response to the Preliminary Renewal Statement which was made available on November 6, 2000. Along with the Final Renewal Statement, the NASD will provide no later than January 22, 2001, via Web CRD, a Firm Renewal Roster that lists each firm's NASD and, if applicable, NYSE-, Amex-, CBOE-, PCX-, and PHLX-registered personnel, as of year-end 2000.

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, 2000, will also receive a Branch Renewal Roster. A member's Final Renewal Statement will reflect an "amount due," a "credit due," or a "zero balance." If a firm's year-end 2000 total of NASD, NYSE, Amex, CBOE, PCX, PHLX, and state renewal fees exceeded the firm's payment submitted in response to the Preliminary Renewal Statement, the NASD paid the jurisdictions the additional renewal fees due at year-end on behalf of the firm and will generate an "amount due" statement to collect that sum from the member firm.

If the firm's Final Renewal Statement reflects an amount due, the NASD requests payment by wire transfer or company check. Wire transfer instructions are located on the NASD Regulation, Inc. (NASD RegulationSM) Web Site (www.nasdr.com). From the NASD Regulation Home Page, click on "Members Check Here," then click on "Central Registration Depository," and view information under the

NASD Notice to Members 01-02

menu selection, "License Renewal Information" and "Wire Transfer Instructions." Firms may also contact the NASD Regulation Finance Department at (240) 386-5294 for detailed wire instructions. Firms should make the check payable to NASD Regulation, Inc., with the firm's CRD Number and the word "Renewals" written on the check, and mail it with the statement (printed from Web CRD). Payments must be received by the NASD no later than March 16, 2001. Firms that fail to pay their 2001 Renewal Fees may have their NASD membership cancelled.

If the firm's payment submitted in response to the Preliminary Renewal Statement exceeds its year-end 2000 total of NASD, NYSE, Amex, CBOE, PCX, PHLX, and state renewal fees, a "credit due" statement will be made available. If the firm's Final Renewal Statement reflects a credit due and the firm would like a refund check, it should print and sign the statement and send it to:

*CRD Accounting -
Renewal Refunds
NASD Regulation, Inc.
9509 Key West Avenue
Rockville, MD 20850*

The statement 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 turnaround 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 Daily Registration 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 16, 2001, CRD Accounting will begin to manually transfer the remaining credit balances to member firms' CRD accounts. This process should be completed by April 6, 2001.

Final Renewal Statements 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 2001. Registrations that were pending approval or were deficient at year-end 2000 were not assessed renewal fees; therefore, they will not be reported on the Renewal Roster. Members should examine their rosters carefully to ensure that all registration approvals and terminations are properly listed.

Branches Renewal Roster

If a firm's review of the Branches Roster finds any discrepancies between its records and those maintained on Web CRD, the discrepancy must be reported in writing, to the User Support-Research Unit in the CRD/PD Department no later than March 19, 2001. Copies of all appropriate documentation should be included.

Firm Renewal Roster (Agent)

If a firm's review of the Agent Roster finds any discrepancies between its records and those maintained on Web CRD, the discrepancy must be reported directly to the appropriate regulatory authority in writing by March 19, 2001.

- Discrepancies—NYSE/Amex/CBOE/PSE/PHLX/States: All

regulators should be contacted directly in writing. The NASD Regulation Web Site, www.nasdr.com, provides a complete listing of regulator addresses.

- Discrepancies—NASD: Contact the CRD/PD Gateway Call Center at (301) 869-6699 in regard to the NASD Roster. Copies of appropriate documentation, such as Web CRD-generated notice of termination, notification of deficient condition, or notice of approval from its Firm Queues, should be readily available.

Billing Code Summary And Detail Reports

The Billing Code Summary Report summarizes all Renewal charges by billing code. The Billing Code Detail Report is grouped by billing code and provides detailed information on agent renewal. The Billing Code Summary and Billing Code Detail Reports are for the firm's internal accounting reconciliation and are NOT an additional billing. It is a report of fees assessed, based on the data supplied by the firm in Item #7, "Branch I.D.," of the Form U-4 application. Any combination of letters and characters is captured as a "billing code." NASD Regulation does not use this data to assess fees.

The November 2000 issue (Vol. 8, No. 2) of the *CRD/PD Bulletin* contains detailed instructions to help members complete the Renewal Process. This publication can also be found on the CRD Web Page of the NASDR Web Site, www.nasdr.com.

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INFORMATIONAL

Sunset Of Large And Complex Cases Rule

SEC Approves Early Expiration Of Large And Complex Cases Rule; Effective Date: December 31, 2000

SUGGESTED ROUTING

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

- Legal & Compliance

KEY TOPICS

- Arbitration
- Large and Complex Cases

Executive Summary

On November 17, 2000, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD®) rules that revise Rule 10334 to accelerate the expiration of the large and complex cases rule from August 1, 2002 to December 31, 2000.¹

Included with this *Notice* is Attachment A, the text of the amendments.

Questions/Further Information

Questions regarding this *Notice* may be directed to George H. Friedman, Senior Vice President and Director, NASD Dispute Resolution, Inc., at (212) 858-4488; or Laura Leedy Gansler, Counsel, NASD Dispute Resolution, Inc., at (202) 728-8275.

Discussion

Rule 10334 of the NASD Code of Arbitration Procedure (Code) establishes certain optional procedures for handling and managing large and complex (LAC) cases, defined as those involving claims of \$1 million or more. Specifically, the rule provides for an administrative conference at the outset of the case, a preliminary hearing before an arbitrator to resolve discovery and other disputes, and the opportunity for parties to select arbitrators through preferential rankings. Use of the rule results in higher filing fees and deposits for claimants than proceeding under the general provisions of the Code.

The rule was adopted for a one-year pilot period in 1995. At that time, the procedures established by the rule were not available in other arbitration cases. In 1997, the NASD amended the rule to make voluntary certain of its

provisions, which had been mandatory. At the same time, the NASD extended the rule for five years to provide enough time to determine whether parties would use the rule more frequently as amended. In its rule filing, the NASD noted that few parties were electing to proceed under the rule. The few parties who did elect to proceed under the rule apparently did so to take advantage of the availability of a list selection procedure for the appointment of arbitrators. The NASD found that parties were deterred from using the rule by the higher fees it required.

Recent changes to the Code and to NASD Dispute Resolution, Inc. practices have extended the most important of the procedures established by Rule 10334 to all cases, including the selection of arbitrators through preferential rankings. The benefits of the administrative conference and the preliminary hearing are available through the Initial Prehearing Conference that is now held in almost all cases. Moreover, the discovery process has been significantly enhanced with the recent adoption of the Discovery Guide.

As a result of these changes, use of the rule has decreased significantly. Through July 31, 2000, parties elected to proceed to the administrative conference phase of the LAC process in only 4 out of 366 eligible cases; in 1999, parties did so in only 6 out of 679 eligible cases. More significantly, in none of these cases did the parties elect to proceed under Rule 10334 past the administrative conference stage to a hearing on the merits. While some of these cases may have settled, it is also probable that once the parties understood that the benefits of the rule are available under the Code without the higher fees required under the rule, they elected not to continue

NASD Notice to Members 01-03

to proceed under the rule. No case has gone past the administrative conference stage of Rule 10334 procedures since 1997.

Even though it is rarely used, the rule requires staff training and resource allocation. It can also be a source of confusion for parties, who may not realize that they can now obtain the principal benefits of the LAC case program without paying the higher fees required under the rule. Therefore, NASD Dispute Resolution determined to allow the rule to expire early. The

expiration was accelerated from its current date of August 1, 2002, to December 31, 2000. The rule change will apply to all cases in which parties had not requested an administrative conference or otherwise agreed to proceed under Rule 10334 by December 31, 2000.

The amendments also delete paragraph (i) of Rule 10205, Schedule of Fees for Industry and Clearing Controversies, and paragraph (h) of Rule 10332, Schedule of Fees in Customer Disputes, which relate

solely to Rule 10334. Because numerous publications refer to the Schedule of Fees as paragraph (k) of Rules 10205 and 10332, deleted paragraphs in those rules have been marked as "reserved" for the present time.

Endnote

¹ Exchange Act Release No. 43535 (Nov. 8, 2000) (File No. SR-NASD-00-65), 65 Federal Register 69592 (Nov. 17, 2000).

NASD Notice to Members 01-03

ATTACHMENT A

Text Of Amendments

*New language is underlined;
deletions are in brackets.*

10000. Code of Arbitration Procedure

10205. Schedule of Fees for Industry and Clearing Controversies

(a) - (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, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over \$10,000,000.] Reserved.

(j) Reserved.

(k) Schedule of Fees

(Remainder unchanged.)

10332. Schedule of Fees for Customer Disputes

(a) - (g) No change.

(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, the fees and deposits for such matter shall be those set forth in the schedule of fees for claims over \$10,000,000.] Reserved.

(i) Reserved.

(j) Reserved.

(k) Schedule of Fees

(Remainder unchanged.)

10334. Procedures for Large and Complex Cases

(a) - (g) No change.

(h) Temporary Effectiveness

This Rule shall remain in effect until [August 1, 2002] December 31, 2000, unless modified or extended prior thereto by the Board of Governors.

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INFORMATIONAL

Rules For Arbitrator Challenges

SEC Approves Amendments To Director's Authority To Remove Arbitrators For Cause; **Effective Date: February 12, 2001**

SUGGESTED ROUTING

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

- Legal & Compliance
- Registered Representatives

KEY TOPICS

- Arbitration
- Arbitrator Challenges

Executive Summary

On December 8, 2000, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD[®]) Rules 10308 and 10312 to provide authority for the Director of Arbitration (Director) to remove arbitrators for cause after hearings have begun.¹ The Code of Arbitration Procedure (Code) presently provides that the authority of the Director to remove an arbitrator for cause ceases after the earlier of the first pre-hearing conference or the first hearing. The amendments eliminate this restriction, and allow the Director or the President of NASD Dispute Resolution, Inc. (NASD Dispute Resolution) non-delegable authority to remove an arbitrator for cause² at any time and, if the challenge is raised after the initial pre-hearing or hearing session, to require that it be based on information not known to the parties when the arbitrator was appointed.

Included with this *Notice* is Attachment A, the text of the amendments that will become effective on February 12, 2001.

Questions/Further Information

Questions regarding this *Notice* may be directed to George H. Friedman, Senior Vice President and Director, NASD Dispute Resolution, Inc., at (212) 858-4488; or Jean I. Feeney, Special Advisor to the President, NASD Dispute Resolution, Inc., at (202) 728-6959.

Discussion

Background

In order to protect the integrity of the arbitration process and to ensure the impartiality of arbitrators, Rule 10312(a) requires that arbitrators make full disclosure of certain enumerated interests,

relationships, and circumstances, as well as "any circumstances which might preclude such arbitrator from rendering an objective and impartial determination." Under the current list selection method for choosing arbitrators, Rule 10308(b)(6) requires the Director to send the parties the employment history and other background information about the arbitrators on their lists. The parties may request additional information. Then, as provided in Rule 10308(c), they may strike any number of arbitrators from the list for any reason, and rank those who remain. The Director or his staff³ consolidates the parties' lists in ranking order and, if the number of arbitrators available to serve from the consolidated list is not sufficient to fill a panel, the Director uses the Neutral List Selection System (NLSS) to extend the list and appoints one or more additional arbitrators to complete the panel. Parties receive information about any arbitrators appointed by extending the list, and have the right to raise for-cause challenges as provided in Rule 10308(d)(1).

Rule 10308(c)(4)(A) provides that the Director appoints arbitrators "subject to availability and disqualification." "Availability" refers to the arbitrator's ability to serve on the case in the desired location during the relevant time period. "Disqualification" could occur either (i) when a disqualifying fact is revealed to the Director after the parties have completed the striking and ranking process, or (ii) when the Director consults with a ranked arbitrator candidate just prior to appointment and the candidate, upon hearing more case-specific information, reveals information that the Director determines is a basis for disqualification. In the latter case, the Director would either drop the arbitrator, or disclose the information to the parties and invite their views on whether the arbitrator should serve.

NASD Notice to Members 01-04

Under Rule 10312(c), an arbitrator's disclosure obligation continues throughout the arbitration. If a disqualifying fact comes to light after a panel has been appointed, Rules 10308(d) and 10312(d) permit the Director to remove an arbitrator based on such information before the earlier of the first pre-hearing conference or the first hearing. Once one of these events occurs, Rules 10308(d)(2) and 10312(f) currently state that the Director's authority to remove an arbitrator ceases.

Nevertheless, current Rule 10312(f) requires the Director to inform the parties of any potentially disqualifying information disclosed after the first pre-hearing or hearing session. At that point, however, a party can no longer use a challenge for cause to remove the arbitrator. Therefore, when a for-cause objection is raised after the first pre-hearing or hearing session, the arbitrator can only be removed where he or she agrees to step down or all the parties agree that the arbitrator should be removed. Failing that, an aggrieved party's only recourse is to seek judicial intervention, which increases the party's legal expenses, causes delays, and reduces confidence in the fairness and efficiency of the arbitration process.

NASD Dispute Resolution believes that an alternative dispute resolution forum should be able to resolve all issues relating to an arbitration without forcing the parties to go to court. Accordingly, NASD Dispute Resolution has amended the Code to permit the Director to remove an arbitrator for cause at any time and, if the challenge is raised after the initial pre-hearing or hearing session, to require that it be based on information not known to the parties when the arbitrator was appointed. In addition, certain

minor language changes have been made to clarify that both relationships and circumstances must be disclosed if they fit within the criteria of Rule 10312, and that the Rule is not limited to personal relationships and circumstances of the arbitrator, as described in more detail below.

Some users of the arbitration forum may be concerned about the ability of the staff to remove arbitrators who were selected by the parties, based on one party's objection. To address that concern, the amendments provide that the only persons who can remove arbitrators after the first pre-hearing or hearing session are the Director and the President of NASD Dispute Resolution. This authority cannot be delegated. In addition, as discussed above, removal after the first pre-hearing or hearing session can only be based on information: (1) that was required to be disclosed pursuant to Rule 10312; and (2) that was not known to the parties at the time the arbitrator was appointed.

Description Of Amendments

NASD Dispute Resolution has amended Rule 10308, the list selection rule, to provide that the authority of the Director to disqualify or remove arbitrators does not end when the first pre-hearing or hearing session begins. Rather, amended 10308(d)(2) provides that, after that first session, the Director may remove an arbitrator from an arbitration panel based on information that is required to be disclosed pursuant to Rule 10312 and that was not previously disclosed.

Rule 10312, the arbitrator disclosure rule, has been amended in several places. Rule 10312(a)(2) has been amended to include disclosure of existing or past financial, business, professional, family, social, or other relation-

ships or circumstances that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. The word "personally" has been deleted from the second sentence of Rule 10312(a)(2), as it might be read too narrowly, and the phrase "or circumstances" has been added to paragraphs (b) and (e) of Rule 10312. This clarifies that the arbitrator is required to disclose *any* relationships or circumstances that might fit under Rule 10312.

NASD Dispute Resolution also has amended Rule 10312 to provide, as in Rule 10308, that the Director's authority to remove arbitrators does not cease with the first pre-hearing or hearing session. There are two restrictions on the exercise of this authority, however, once such sessions have begun. Amended Rule 10312(d)(2) provides that, after the earlier of the first pre-hearing conference or the first hearing, the Director may remove an arbitrator based only on information not known to the parties when the arbitrator was selected. This provision is intended to prevent parties from raising challenges late in the process that could have been raised at the outset. Amended Rule 10312(d)(2) also provides that the Director's authority under this subparagraph may only be exercised by the Director or by the President of NASD Dispute Resolution.

Rule 10312(e) has been amended to be consistent with the above changes, and Rule 10312(f) is deleted as no longer necessary in light of the preceding changes.

Effective Date

The amended rule will apply to arbitrators appointed on or after February 12, 2001.

NASD Notice to Members 01-04

Endnotes

1 Exchange Act Release No. 43695 (Dec. 8, 2000) (File No. SR-NASD-00-34), 65 Federal Register 78520 (Dec. 15, 2000).

2 The standard for circumstances that would be considered "for cause" would be the same as the general disclosure standard contained in Rule 10312: "any circumstances which might preclude such arbitrator from rendering an objective and impartial determination."

3 Rules 10103 provides that the duties and functions of the Director may be delegated, as appropriate (but see revised Rule 10312(d)(2), contained in the Attachment, which prohibits delegation in certain circumstances).

NASD Notice to Members 01-04

ATTACHMENT A

Text Of Amendments

*New language is underlined;
deletions are in brackets.*

10000. Code Of Arbitration Procedure

10308. Selection of Arbitrators

(a) - (c) Unchanged.

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

(1) Disqualification by Director
After the appointment of an arbitrator and prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if the Director or a party objects to the continued service of the arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director sends a notice to the parties that the arbitrator shall be disqualified, the arbitrator will be disqualified unless the parties unanimously agree otherwise in writing and notify the Director not later than 15 days after the Director sent the notice.

(2) [Authority of Director to Disqualify Ceases] Removal by Director

After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director[~~'s authority to~~] may remove an arbitrator from an arbitration panel [~~ceases~~] based on information that is required to be disclosed pursuant to Rule 10312 and that was not

previously disclosed.

(3) Unchanged.

(e) Unchanged.

10312. Disclosures Required of Arbitrators and Director's Authority to Disqualify

(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any existing or past financial, business, professional, family, [or] social, or other relationships or circumstances that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships or circumstances that they [personally] have with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship or circumstances involving members of their families or their current employers, partners, or business associates.

(b) Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests, [or] relationships or circumstances described in paragraph (a) above.

(c) The obligation to disclose interests, relationships, or circumstances that might preclude

an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

(d) Removal by Director

[Prior to the commencement of the earlier of (1) the first pre-hearing conference or (2) the first hearing, the]

(1) The Director may remove an arbitrator based on information that is required to be disclosed pursuant to this Rule.

(2) After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator based only on information not known to the parties when the arbitrator was selected. The Director's authority under this subparagraph (2) may be exercised only by the Director or the President of NASD Dispute Resolution.

(e) [Prior to the commencement of the earlier of (1) the first pre-hearing conference or (2) the first hearing, t]The Director shall inform the parties to an arbitration proceeding of any information disclosed to the Director under this Rule unless either the arbitrator who disclosed the information withdraws voluntarily as soon as the arbitrator learns of any interest, [or] relationship, or circumstances described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director removes the arbitrator.

NASD Notice to Members 01-04

[(f) After the commencement of the earlier of (1) the first pre-hearing conference or (2) the first hearing, the Director's authority to remove an arbitrator from an arbitration panel ceases. During this period, the Director shall inform the parties of any information disclosed by an arbitrator under this Rule.]

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NASD Notice to Members 01-05

INFORMATIONAL

Decimalization Testing

Nasdaq Announces Additional Decimalization Testing Dates

SUGGESTED ROUTING

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

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

KEY TOPICS

- Decimalization

Executive Summary

Recently the National Association of Securities Dealers, Inc. (NASD®) announced that selected NASD member firms must participate in decimalization testing. Mandated firms have until February 24, 2001 to satisfy this requirement. (Note: A list of mandated firms is posted on the NASD Decimalization Web Pages at <http://www.nasd.com/news/Decimalization/testing.html>.) In this *NASD Notice to Members*, Nasdaq® announces additional testing opportunities for NASD member firms, and provides details about the tests. Also, a summary of the industry-critical dates is provided.

Questions/Further Information

Questions regarding this *Notice* may be directed to the NASD Decimalization Program Management Office (DPMO) toll free at: (888) 227-1330 or via e-mail at decimals@nasd.com.

For the most recent decimalization news and developments, visit the NASD Web Site (www.nasd.com) and click on the decimalization link. Additional decimalization information is available on the Securities Industry Association's (SIA) Web Site located at www.sia.com.

Decimalization Testing

The Decimal Pricing Test Program is designed to fulfill the NASD mission of investor protection and market integrity, and to mitigate the risk of market disruptions after conversion to decimal pricing. Testing has been mandated for certain, selected NASD member firms. Those member firms that are not mandated to conduct testing may do so on a voluntary basis. All firms are encouraged to test with Nasdaq, and any firms

wishing to test on a voluntary basis should complete the registration process.

Successful completion of either Point-to-Point or Extended Point-to-Point Testing will satisfy the mandate (NASD Rule 3420). Mandated testing should be completed on or before February 24, 2001. Any firms failing to comply with the mandate may be subject to fines and/or disciplinary action.

Nasdaq Decimalization Testing

New Testing Dates - Nasdaq has added more opportunities for member firms to test decimalization changes. One additional Production test has been scheduled for February 17, 2001. One additional Extended Point-to-Point test has been scheduled for February 24, 2001. Specific times for each test are noted below.

Testing Registration - Registration is required for Point-to-Point, Extended Point-to-Point, and Saturday Production testing. A registration form can be found by visiting the NASD Web Site (www.nasd.com), clicking on the decimalization link, and then the testing button. This form is also included in the Nasdaq Decimalization Guidelines found on the Nasdaq Trader Web Site (<http://www.nasdaqtrader.com/trader/hottopics/decimalguidelines.pdf>). Firms must register at least 48 hours in advance of the date they wish to test on Nasdaq's Customer Subscriber Test (CST) facility.

Point-To-Point - Full Point-to-Point testing began January 2, 2001, and will continue through April 6, 2001, via the Customer Subscriber Test (CST) facility for CTCI and API/NWII participants. Testing of decimal-priced securities in both penny and nickel minimum price variations (MPVs), as well as fractional-priced securities, will

NASD Notice to Members 01-05

occur. A *Head Trader Alert* was issued by Nasdaq and can be found on the Nasdaq Trader Web Site under Hot Topics, Decimalization.

Extended Point-to-Point - Testing will take place the mornings of January 27, February 10 and 24, 2001, and will be scripted. Systems will be available at approximately 9:00 a.m., Eastern Time (ET). The simulated open will be approximately 10:00 a.m., ET, with the test running until 12:00 p.m., ET. Nasdaq will confirm the testing times in an *Alert* closer to the dates of the tests.

Test scripts have been posted and are available on the NASD Web Site, (www.nasd.com) click on the decimalization page, and then the testing page; on the Nasdaq-Trader Web Site (www.nasdaq-trader.com), click on Hot Topics, and then decimalization; as well as on the Securities Industry Association (SIA) Decimalization Web Site (www.sia.com).

In order to complete some of the testing scenarios, firms will be required to coordinate testing with another firm (a "buddy"). See the table below for partner requirements by product.

Nasdaq Production Tests - Testing will take place the afternoons of January 27 and February 10, 2001 from approximately 1:00 p.m.-3:00 p.m., ET, and will be unscripted. Production testing will also be available Saturday, February 17, 2001, from approximately 10:00 a.m.-2:00 p.m., ET. Nasdaq will confirm the testing times in an *Alert* closer to the dates of the tests.

Proxy Testing And Exemptions - The NASD is accepting proxy testing where feasible for firms that rely on service providers or software purchased from vendors. Your firm's specific testing requirements, stated on the NASD Web Site, or in the NASD letter mandated firms received, will show where proxy testing is acceptable.

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. 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 mandated firms is to conduct all testing and preparations necessary to transition its business to decimal pricing, 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:

- Proxy tests are conducted using the same version of decimal-ready software that will be 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.
- A firm also should test systems and interfaces under its direct control and those functions not

Nasdaq quotation system	A testing partner is not required to test market making, quote update functionality.
ACES Pass Thru SM	A partner is required for order routing. Firms will need to ensure that the partner that they will route to is participating in the same test.
ACT SM	For open order submission, no partner is required, although a contra party must be identified. However, for clearing and settlement acceptance, a partner with an established clearing arrangement will be required.
SelectNet [®]	In order to receive an execution on a directed order, a partner will be required.
SOES SM /SuperSOES	For auto-execution partners will not be required. However, a prior relationship needs to have been established in order to preference a SmallCap order.

NASD Notice to Members 01-05

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.

Testing Strategy - During full Point-to-Point testing, Extended Point-to-Point testing, and Production testing, Nasdaq will establish a list of securities for decimal testing with either an MPV of \$0.05 or \$0.01. The list of the Nasdaq 100 after the 2000 year-end re-ranking will be divided into two groups. The first 50, alphabetically, will be

set to an MPV = \$0.01 and the remaining 50 securities will be set to an MPV = \$0.05. Nasdaq has released a list of the test securities with their associated MPVs which can be found on the Nasdaq Trader Web Site, under Hot Topics, Decimalization. Due to the possibility of additions and deletions, there is no guarantee that this list will remain static, and that all of these securities will be available for testing. If one of these securities is no longer available, it will not be replaced. Nasdaq is confident that such changes will be

minimal and that a majority of these securities will be available.

Requests for exemptions from the NASD testing mandate should have been made in writing and forwarded to the NASD Decimalization Program Management Office at 9513 Key West Avenue, Rockville, MD 20850 by January 10, 2000. The request must have been signed by an officer of the organization. The NASD Decimalization Program Management Office will review all requests and reply to each firm.

Key Dates For Industry Implementation

Checkpoint/Phase	Action	Date
Checkpoint I	Pre-Implementation Evaluation	August 15, 2000
Phase I	Limited Exchange-Listed Issues and Options	August 28, 2000
Checkpoint II	Determine Readiness for Additional Exchange-Listed Issues and Options	September 19, 2000
Phase IIA	Additional Exchange-Listed Issues and Options	September 25, 2000
Checkpoint III	Determine Readiness for Full Implementation of Exchange-Listed Issues and/or All Options	November 1, 2000
Phase IIA-2 ¹	Additional NYSE Equities and Associated Options	December 4, 2000
Phase IIB	Full Conversion Exchange-Listed Issues and Associated Options	January 29, 2001
Checkpoint IV	Limited Nasdaq Issues and Associated Options	March 5, 2001
Phase III	Limited Nasdaq Issues and Associated Options	On or Before March 12, 2001
Checkpoint V	Determine Readiness for All Markets, Full Implementation	April 2, 2001
Phase IV	All Markets, Full Implementation	On or Before April 9, 2001

To view the complete Exchange Committee Implementation Plan submitted to the Securities and Exchange Commission (SEC), visit the SEC Web Site located at <http://www.sec.gov/rules/other/decimalp.htm>. The SEC has not given final approval to the plan.

¹ Phase IIA-2 was not part of the original submission to the SEC. At Checkpoint III, held November 1, 2000, a decision was made to begin trading additional New York Stock Exchange equities and their associated options in decimals.

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NASD Notice to Members 01-06—Request For Comment

**ACTION REQUESTED BY
FEBRUARY 12, 2001**

Member Facilitation Of Lending Between Customers

NASD Regulation
Requests Comment On
Member Facilitation Of
Lending Between
Customers; **Comment
Period Expires
February 12, 2001**

SUGGESTED ROUTING

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

- Individual Investor
- Legal & Compliance
- Registered Representatives
- Senior Management

KEY TOPICS

- Lending Arrangements
- Margin

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) requests comment from National Association of Securities Dealers, Inc. (NASD[®]) members, investors, and other interested parties on whether member facilitation of lending between customers should be substantially restricted or prohibited. As an alternative, NASD Regulation also is soliciting comment on whether specific risk disclosures should be provided to customers participating in these types of lending activities.

Included with this *Notice* is Attachment A—specific questions on which NASD Regulation requests comments from members and interested parties.

Request For Comment

NASD Regulation is soliciting comment on whether members should be prohibited or restricted from arranging for or facilitating the lending of funds between customers, and/or whether specific disclosure to customers participating in such loans should be required. NASD Regulation encourages all members, investors and interested parties to submit comments. For your convenience, we have provided a checklist (see Attachment A) so that in a minimum amount of time you can provide NASD Regulation with your general comments.

Comments must be received by **February 12, 2001**. Members and interested parties can submit their comments using the following methods:

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

If you decide to send comments using both the checklist and one of the other methods listed above, please let us know.

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

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

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

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

NASD Notice to Members 01-06—Request For Comment

Questions/Further Information

As noted, written comments should be submitted to Joan C. Conley. Questions concerning the substance of this *Notice* may be directed to Stephanie M. Dumont, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8176.

Background

Certain firms may arrange for and/or facilitate loans between customers that are used to finance securities trading and/or meet margin requirements. Customers borrowing funds may incur additional finance charges when credit is arranged by the member, and customers lending funds may face additional, and perhaps undisclosed, credit risks when they extend credit to other customers. NASD Regulation believes that questions arise regarding investor protection and disclosure practices when members become involved in the extension of credit between customers. In addition, such lending activities can result in a conflict of interest between the customer and the member, particularly when such lending activities allow customers to continue to trade when they would not otherwise be in a financial position to do so, thereby generating more commission income to the member.

Such inter-customer lending practices have raised concerns, particularly in the area of day trading.¹ Specifically, certain members that facilitate lending between day traders may arrange for the loans by identifying those day traders that have outstanding margin calls

and matching those individuals with customers that have excess equity. Alternatively, a member may have one customer who is the primary lender to the member's other customers.

The member may facilitate the lending activity by journaling the funds and interest payments between the two customer accounts, often pursuant to Letters of Authorization (LOA) and other preexisting agreements signed by the customers. Customers that agree to certain types of LOAs may give authority to the member to journal funds in and out of the customers' accounts as frequently as needed in order to facilitate these types of lending activities. Customers may be unaware of the extent of lending activity resulting from LOAs, and in some cases, there may be minimal or no disclosure provided to customers of the credit or other risks associated with such lending activities. Absent the receipt of these loans, many of the customers would be unable to continue to trade.

The Permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the U.S. Senate (Subcommittee) issued a Staff Memorandum (Memorandum) on day trading, which described the Subcommittee's investigation and findings relating to day trading.² The Memorandum cited several examples of day-trading firms that allowed, or even encouraged, customers to trade beyond their means by arranging loans for customers to satisfy margin calls. The Memorandum indicated that in many instances, the borrowing customer paid an "exorbitant fee" to the lending customer

for the use of the funds. In addition, customers loaned money to other customers without any information regarding the borrower's creditworthiness, and in some instances, without knowing the borrowing customer's name.

Although Rule 15c2-5 of the Securities Exchange Act of 1934 (Exchange Act) generally would not apply to the types of lending activities described above, NASD Regulation is considering whether the requirements of Rule 15c2-5 may provide a model for an NASD proposal in this area. Rule 15c2-5 generally requires that before any purchase, loan, or other related element of an applicable transaction is entered into, the broker/dealer deliver to the customer a written statement setting forth the exact nature and extent of the following:

- the customer's obligations under the particular loan arrangement, including among other things, the specific charges that the customer will incur under such loan in each period during which the loan may continue or be extended;
- the risks and disadvantages that the customer will incur in the entire transaction, including the loan arrangement; and
- all commissions, discounts, and other remuneration received and to be received in connection with the entire transaction including the loan arrangement, by the broker/dealer, by any person controlling, controlled by, or under common control with the broker/dealer, and by any other person participating in the transaction.

NASD Notice to Members 01-06—Request For Comment

Rule 15c2-5 also requires that under certain circumstances, the broker/dealer obtain from the customer information concerning his/her financial situation and needs, and that the broker/dealer reasonably determine that the entire transaction, including the loan arrangement, is suitable for the customer. In such instances, Rule 15c2-5 also would require the broker/dealer to retain in its files a written statement setting forth the basis upon which it made such determination.

Endnotes

- 1 Another related area of concern involves lending to customers by associated persons to meet Regulation T and NASD margin requirements. Because the definition of "creditor" under Regulation T extends to associated persons of broker/dealers, associated persons generally should not make loans to customers unless they separately comply with the provisions of Regulation T.
- 2 See Staff Memorandum of Permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the United States Senate, "Day Trading: Everyone Gambles but the House," (February 24, 2000).

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NASD Notice to Members 01-06—Request For Comment

ATTACHMENT A

Request For Comment Checklist

The following list of questions provides a quick and easy means to comment on some of the issues described in the *Notice*. This list of questions does not cover all of the issues contained in the *Notice*; therefore, we encourage members and other interested parties to review the entire *Notice* and to comment separately, as necessary.

Instructions

Comments must be received by **February 12, 2001**. Members and interested parties can submit their comments using the following methods:

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

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

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

Member Facilitation Of Lending Between Customers

1. Should members be prohibited from arranging for or facilitating the lending of funds between customers and other lenders?
 Yes No See my attached written comments
2. If such lending activities were not prohibited, are there limitations or restrictions that should be imposed on specific types of loans, such as loans that are used to meet a margin call or minimum equity requirements?
 Yes No See my attached written comments
3.
 - a. Do customers who borrow funds from other customers receive adequate disclosure of the credit terms associated with the loans?
 Yes No See my attached written comments
 - b. Do the persons or entities making the loans receive adequate disclosure of the credit terms and risks of the loans?
 Yes No See my attached written comments
 - c. Should members be required to provide disclosures to both parties to the loan regarding the terms and risks involved in such lending activities? For example, should disclosure requirements similar to that of SEC Rule 15c2-5 apply to these types of lending activities?
 Yes No See my attached written comments
 - d. Should members be required to make a determination that inter-customer lending activities are appropriate for customers similar to that of SEC Rule 15c2-5?
 Yes No See my attached written comments
4. Are there other approaches to addressing the concerns associated with such lending practices? For example, what types of additional supervisory mechanisms or requirements should be in place to monitor and/or approve these types of loans?
 Yes No See my attached written comments

NASD Notice to Members 01-06—Request For Comment

Contact Information

Name: _____

Firm: _____

Address: _____

City/State/Zip: _____

Phone: _____

E-Mail: _____

Are you:

An NASD Member

An Investor

A Registered Representative

Other: _____

NASD Notice to Members 01-07

INFORMATIONAL

Continuing Education

Important Reminders About Web CRD Notification Of Regulatory Element Continuing Education Requirements And Inactive Registered Persons

SUGGESTED ROUTING

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

- Continuing Education
- Legal & Compliance
- Registration Department
- Senior Management

KEY TOPICS

- Continuing Education Regulatory Element Notifications And Reports
- Inactive Registered Persons
- E-mail Notices Of Inactive Registered Persons

Executive Summary

NASD Regulation, Inc. wishes to remind firms that:

1. The Web Central Registration Depository (CRDSM) system no longer mails printed notices ("yellow sheets") to firms about their registered persons' impending continuing education Regulatory Element requirements. Firms must access their **Firm Queues** on Web CRD¹ to view continuing education information on their registered persons.
2. When a registered person becomes inactive for failing to satisfy the Regulatory Element, **all** of his or her registrations are inactive and he or she may not engage in, or be compensated for, **any** activities that require a securities registration.
3. CRD will e-mail firms whenever a registered person at the firm becomes inactive for failing to satisfy his or her Regulatory Element computer-based training requirement. Firms must request this service from CRD.

Questions/Further Information

Questions concerning this Notice may be directed to John Linnehan, Director, Continuing Education, NASD Regulation, Inc., at (240) 386-4684. Questions about **Firm Queues** should be directed to the Gateway Call Center at (301) 869-6699, or Matt Swyndle, Continuing Education, NASD Regulation, Inc., (240) 386-4686.

1. Firm Continuing Education Queues And Reports

The table on the following page listing Continuing Education (CE) Firm Queues and supplemental CE Reports is reprinted from *NASD Notice to Members 00-35*, published June 2000. Firms should review the information in their CE Firm Queues as often as is necessary to stay informed of the CE status of their registered persons. The firm's Written Supervisory Procedures should specify who at the firm is responsible for viewing the queues, notifying registered persons, tracking their completion of the Regulatory Element, and ensuring that any inactive persons do not engage in, or be compensated for, any activities that require a securities registration.

NASD Notice to Members 01-07

Types Of CE Firm Queues	
Web CRD Continuing Education Firm Queue	Hard-Copy Continuing Education Reports Replaced By Firm Queues
Approaching CE Requirement Queue Lists individuals with CE Windows starting within 28 days.	Initial Notices and Notices for Significant Disciplinary Actions
Currently CE Required Queue Lists all individuals currently in their 120-day CE Window.	Monthly Requirement Summary Report
CE Satisfied Queue Lists individuals who have completed the Regulatory Element within a time period specified by the user.	Individual and Summary Completion Reports
CE Inactive Queue Lists approved individuals at the firm who are currently CE Inactive.	Individual and Summary Inactive Reports
Current Individual Deficiencies Queue²-CE Inactive Lists new hires of the firm who are CE Inactive and whose registrations are therefore not approved. (Note: Web CRD does not approve the registrations of persons who are inactive unless and until those persons satisfy the Regulatory Element. Persons in this situation have CRD registrations with a status of DEFICIENT-CE.)	Individual and Summary Inactive Reports
2-Year CE Termed Queue Lists all individuals who have had their registrations administratively terminated because they had been CE Inactive for 2 years.	CE Two Year Termination Notice and CE Two Year Termination Warning Notice

Supplemental CE Reports Available From Web CRD

Web CRD will also provide firms with various reports to complement the Continuing Education Queues. Reports marked with an asterisk (*) may be imported into a spreadsheet or database where the data may then be sorted by the user. To request any of these reports, please send an e-mail request to crdreports@nasd.com or call the Gateway Call Center at (301) 869-6699.

CE Download* – This report contains the CE base date for actively registered individuals with the firm who are subject to the Regulatory Element.

Approaching CE Queue Download* – This report allows firms to download the list of individuals in the firm's Approaching CE Requirement Queue.

Approaching CE Queue Report – This report will provide the firm with a "printable" list of individuals in the firm's Approaching CE Requirement Firm Queue.

Current Inactive CE Individuals Within A Firm – This report lists all individuals currently employed with the requesting firm who have a status of CE Inactive at the time the report is requested.

Previously Inactive CE Individuals Within A Firm – This report lists all individuals who were employed by the requesting firm *and* who had a status of CE Inactive during the timeframe specified.

Approaching CE Two Year Termed Report – This report lists individuals who *will* be administratively terminated within the next 10 days (if they remain CE Inactive)

NASD Notice to Members 01-07

for failure to satisfy the Regulatory Element requirement. These individuals have had a status of CE Inactive for two years from their most recent requirement window end date.

CE 2 Year Termed Report – This report lists individuals who were employed by the requesting firm *and were* administratively terminated during the timeframe specified in the request for the report. Individuals on this report will need to re-qualify for registration by a qualification examination and must submit an Initial U-4 to re-activate their registrations.

2. Inactive Registered Persons

All registrations of a person who does not satisfy the Regulatory Element requirement are deemed inactive and he or she may not engage in, or receive compensation for, **any** activities requiring registration. For example, if a person possessing both a principal/supervisor registration and a General Securities (Series 7) registration becomes inactive for failing to satisfy the Regulatory Element requirement, even if this registered person is not acting in the capacity of a principal or supervisor, he or she may not solicit or handle securities transactions.

3. E-Mail Notifications Of Inactive Registered Persons

Firms can request that Web CRD send an e-mail to the firm whenever a registered person at the firm becomes inactive for failing to satisfy the Regulatory Element requirement. To request this e-mail service, perform the following steps:

1. Logon to Web CRD and go to the *CRD Main* tab. This is the Site Map.
2. In the *Organization* column on the Site Map, click on *NFI Organization Search* under the *Organization Non-Filing Info* heading.
3. Click on *Firm Notification* on the Navigation Panel at the left of the screen, **OR** on the footer at the bottom of the screen. (**Important Note:** if you do not see *Firm Notification* on the Navigation Panel or at the bottom of the screen, it is probably because you do not have authorization for this function. Contact your firm's Web CRD Account Administrator to obtain authorization.)
4. Enter the e-mail address to which you would like the e-mail notifications sent, and the contact individual's name and phone number.

5. Check off that you wish to receive e-mail notification of inactive registered persons.
6. Click on Save.

Endnotes

- 1 Firm Queues are listed in the Individual Processing column of the Web CRD Site Map, the first page after the login screen.
- 2 CE Inactive Deficiencies are found in the Registrations Queue. To access, first click on the **Registrations Queue**, then **Current Individual Deficiencies**, and then select **CE Inactive** from the deficiencies list.

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NASD Notice to Members 01-08

INFORMATIONAL

Customer Account Statements

NASD Adopts Amendments To Customer Account Statement Rule; Effective April 16, 2001

SUGGESTED ROUTING

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

- Legal & Compliance
- Limited Partnerships
- Operations

KEY TOPICS

- Customer Account Statements
- Direct Participation Programs
- Merchant Banking
- NASD Rule 2340

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) has adopted amendments to National Association of Securities Dealers, Inc. (NASD[®]) Rule 2340 (Rule) to require general securities members to provide valuations and disclosures relating to direct participation program (DPP) and real estate investment trust (REIT) securities on customer account statements under certain circumstances.¹

The text of the amendments is included with this *Notice to Members* (see Attachment A). The amendments become effective April 16, 2001.

Questions/Further Information

Questions concerning this *Notice to Members* may be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, Inc., at (240) 386-4644.

Description Of Amendments

Background – Rule 2340 of the NASD Conduct Rules requires members that conduct a general securities business to send account statements to customers on at least a quarterly basis. The statements must include a description of any securities position, money balances, or account activity since the prior account statement was sent.² A member that does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of Rule 2340. Thus, the Rule only applies to members that self-clear or that clear for other members (“general securities members”).³

Scope Of Amendments – NASD Regulation has adopted new requirements in Rule 2340 to

require that general securities members provide valuations and disclosures relating to DPP securities and REIT securities on customer account statements. The definitions of “DPP” and “REIT” in Rules 2340(c)(3) and (4) cover securities that are sold in a public offering. The definitions exclude securities listed on a national securities exchange or The Nasdaq Stock Market[®], as well as securities that are in a depository and settle regular way. The excluded securities are more likely to trade regularly and, therefore, investors have ready access to current market value information. The definition of “DPP” also excludes any program registered as a commodity pool, since those programs generally offer investors a security that is redeemable by the issuer, at the customer’s option at regular intervals and at ascertainable values.

Mandatory Estimated Value – Rule 2340(b)(1)(B) requires a general securities member to include in a customer’s account statement an estimated value for a DPP or REIT security if the annual report⁴ of a DPP or REIT that is held in a customer’s account or included on the customer’s account statement includes a per share estimated value. The estimated value must be based on recent data in compliance with Rule 2340(b)(2) and the account statement must include the disclosures required by Rule 2340(b)(3), more fully discussed below.

Although the inclusion of the estimated value in the issuer’s annual report triggers the member’s obligation to provide a valuation on the customer’s account statement, the estimated value included on the account statement can be obtained from the annual report, an independent valuation service,⁵ or any other source.⁶

NASD Notice to Members 01-08

The estimated value must be included in the first customer account statement that is required to be sent to customers under Rule 2340(a) after the annual report is available.

Voluntary Estimated Value – If an issuer's annual report does not include an estimated value, a general securities member may nonetheless voluntarily include an estimated value for DPP or REIT securities on a customer's account statement. Rule 2340(b)(1)(A) requires that a voluntary estimated value must be based on recent data in compliance with Rule 2340(b)(2) and the account statement must include the disclosures required by Rule 2340(b)(3).

Reliability Of Estimated Values – The Rule does not obligate a general securities member to confirm the accuracy of an estimated value provided in a DPP or REIT's annual report or provided by any other source external to the member. However, if a general securities member can demonstrate (i.e., to the NASD) that an estimated value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust, Rule 2340(b)(4) requires that the member refrain from including the value on its account statements. A general securities member that can demonstrate that the estimated value in an annual report is inaccurate must, nonetheless, provide an alternative per share estimated value from another source when the member's disclosure obligation is mandatory under Rule 2340(b)(1)(B).

Requirement For Recent Data – Rule 2340(b)(2) requires that an estimated value be developed from data that is of a date no more than 18 months prior to the date

that the statement is issued. The 18-month standard provides sufficient time for the general securities member or an independent valuation service to develop an estimated value for DPP and REIT securities based on the audited financial statements contained in the Form 10-K of the DPP or REIT. For example, an estimated value based on December 31, 2001 financial statements may be used from the date the annual report is available through June 30, 2003. Thus, there would be time, for example, between April when the report is available and June 2003 for a new estimated value to be developed based on the December 31, 2002 financial statements.

Required Disclosures – Rule 2340(b)(3) requires an account statement that provides an estimated value for a DPP or REIT security to include: (1) a brief description of the estimated value, its source, and the method by which it was developed; and (2) disclosure that DPP or REIT securities are generally illiquid, and that the estimated value may not be realized when the investor seeks to liquidate the security.

Rule 2340(b)(5) requires an account statement that does not provide an estimated value for a DPP or REIT security to include disclosure that: (1) DPP or REIT securities are generally illiquid; (2) the value of the security will be different from its purchase price; and (3) if applicable, that accurate valuation information is not available.

Rules 2710 And 2810 – NASD Regulation has also adopted amendments to Rule 2710, "Corporate Financing Rule—Underwriting Terms and Arrangements," and Rule 2810, "Direct Participation Programs," that are intended to help ensure that DPP general partners or sponsors and

REIT trustees provide estimated per share values in their annual reports. Rule 2710(c)(6) and Rule 2810(b)(5), as amended, prohibit a member or associated person from participating in a public offering of DPP or REIT securities unless the general partner or trustee, as applicable, agrees to disclose in each annual report distributed to investors pursuant to Section 13(a) of the Securities Exchange Act of 1934 a per share estimated value of the securities, the method by which it was developed, and the date of the data used to develop the estimated value.

Endnotes

- 1 Securities Exchange Act Release No. 432601 (November 21, 2000); 65 F.R. 71169 (November 29, 2000).
- 2 NASD Rule 2340(c)(1) defines "account activity" to include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.
- 3 "General securities member" is defined in the rule to mean any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraphs (a)(2) and (a)(3).
- 4 NASD Rule 2340(c)(5) defines "annual report" to be the most recent annual report of a DPP or REIT distributed to investors pursuant to Section 13(a) of the Securities Exchange Act of 1934.
- 5 The term "independent valuation service" is intended to refer to a company, independent of a member, that is in the business of providing estimated values for DPP and REIT securities.
- 6 An alternative source for an estimated value would include a valuation developed internally by the member.

NASD Notice to Members 01-08

ATTACHMENT A

Adopted Revisions

New text is underlined; deletions are in brackets.

2340. Customer Account Statements

(a) General

Each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account (“account statement”) containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance or account activity during the period since the last such statement was sent to the customer.

(b) DPP/REIT Securities

(1) (A) Voluntary Estimated Value

A general securities member may provide a per share estimated value for a direct participation program (“DPP”) or real estate investment trust (“REIT”) security on an account statement, provided the member meets the conditions of paragraphs (b)(2) and (3) below.

(B) Mandatory Estimated Value

If the annual report of a DPP or REIT includes a per share estimated value for a DPP or REIT security that is held in the customer’s account or included on the customer’s account statement, a general securities member must include an estimated value from the annual report, an independent valuation service,

or any other source, in the first account statement issued by the member thereafter, provided that the member meets the conditions of paragraphs (b)(2) and (3) below.

(2) A member may only provide a per share estimated value for a DPP or REIT security on an account statement if the estimated value has been developed from data that is as of a date no more than 18 months prior to the date that the statement is issued.

(3) If an account statement provides an estimated value for a DPP or REIT security, it must include:

(A) a brief description of the estimated value, its source, and the method by which it was developed; and

(B) disclosure that DPP or REIT securities are generally illiquid, and that the estimated value may not be realized when the investor seeks to liquidate the security.

(4) Notwithstanding the requirement in paragraph (b)(1)(B), a member must refrain from including a per share estimated value for a DPP or REIT security on an account statement if the member can demonstrate the value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust.

(5) If an account statement does not provide an estimated value for a DPP or REIT security, it must include disclosure that:

(A) DPP or REIT securities are generally illiquid;

(B) the value of the security will be different than its purchase price; and

(C) if applicable, that accurate valuation information is not available.

[b](c) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

(1) [the term] “account activity” includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

[c](2) [For purposes of this rule, the term] a “general securities member” refers to any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraph (a)(2) and (a)(3). Notwithstanding the foregoing definition, a member which does not carry customer accounts and does not hold customer funds and securities is exempt from the provisions of this [Rule] section.

(3) “direct participation program” or “direct participation program security” refers to the publicly issued equity securities of a direct participation program as defined in Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national

NASD Notice to Members 01-08

securities exchange or The Nasdaq Stock Market, or any program registered as a commodity pool with the Commodities Futures Trading Commission.

(4) “real estate investment trust” or “real estate investment trust security” refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange or The Nasdaq Stock Market.

(5) “annual report” means the most recent annual report of the DPP or REIT distributed to investors pursuant Section 13(a) of the Act.

(d) Exemptions

Pursuant to the Rule 9600 Series, the Association may exempt any member from the provisions of this Rule for good cause shown.

2710. Corporate Financing Rule – Underwriting Terms and Arrangements

(a) - (b) No change.

(c) Underwriting Compensation and Arrangements

(1) - (5) No change.

(6) Unreasonable Terms and Arrangements

(A) No change.

(B) Without limiting the foregoing, the following terms and arrangements,

when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

(i) - (xiv) No change.

(xv) for a member or person associated with a member to participate in a public offering of real estate investment trust securities, as defined in Rule 2340(c)(4), unless the trustee will disclose in each annual report distributed to investors pursuant to Section 13(a) of the Act a per share estimated value of the trust securities, the method by which it was developed, and the date of the data used to develop the estimated value.

Rule 2810. Direct Participation Programs

(a) No Change.

(b) Requirements

(1) - (5) No Change.

(6) Valuation for Customer Account Statements

No member may participate in a public offering of direct participation program securities unless:

(A) the general partner or sponsor of the program will disclose in each annual report distributed to investors pursuant to Section 13(a) of the Act a per share estimated value of the direct participation program securities, the method by which it was developed, and the date of the data used to develop the estimated value.

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NASD Notice to Members 01-09

FIPS Changes

Fixed Income Pricing SystemSM Additions, Changes, And Deletions As Of November 27, 2000

SUGGESTED ROUTING

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

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

KEY TOPICS

- FIPS

As of November 27, 2000, the following bonds were added to the Fixed Income Pricing System (FIPSSM).

Symbol	Name	Coupon	Maturity
ASGB.GA	Asia Global Crossing Ltd	13.375	10/15/10
CHCA.GA	Chancellor Media Corp	8.750	06/15/07
CHCA.GC	Chancellor Media Corp	8.125	12/15/07
HPC.GC	Hercule Inc	11.125	11/15/07
JSTC.GA	Jostens Inc	12.750	05/01/10
LEH.GC	Lehman Bros Holdings	0.250	11/14/07
LEH.GD	Lehman Bros Holdings	0.250	11/14/07
SKO.GA	Shopko Stores Inc	8.500	03/15/02
SKO.GB	Shopko Stores Inc	9.250	03/15/22
SKO.GC	Shopko Stores Inc	6.500	8/15/03
SKO.GD	Shopko Stores Inc	9.000	11/15/04
SLOT.GA	Anchor Gaming	9.875	10/15/08
STN.GF	Station Casinos Inc	9.875	07/01/10
XMRD.GA	XM Satellite Radio Inc	14.000	03/15/10

As of November 27, 2000, the following bonds were deleted from the Fixed Income Pricing System.

Symbol	Name	Coupon	Maturity
ACBO.GA	Acme Boot Co	11.500	12/15/00
ARSL.GA	Ameristeel Corp	8.750	04/15/08
CCAI.GA	Cai Wireless Systems Inc	12.250	09/15/02
CHCA.GA	Chancellor Media Corp	8.750	06/15/07
CHCA.GC	Chancellor Media Corp	8.125	12/15/07
CLMU.GA	Columbia Healthcare Corp	6.125	12/15/00
CMS.GE	CMS Energy Corp	7.375	11/15/00
CNC.GD	Conseco Inc	7.875	12/15/00
CSTA.GA	Capstar Broadcasting Ptnrs Inc	12.750	02/01/09
CSTA.GB	Capstar Broadcasting Ptnrs Inc	9.250	07/01/07
CSTA.GC	Capstar Broadcasting Ptnrs Inc	12.000	07/01/09
EHSB.GA	Echostar Satellite Broadcasting Corp	13.125	03/15/04
EX.GB	Exide Corp	12.250	12/15/04
HRC.GA	Healthsouth Corp	9.500	04/01/01
LEH.GC	Lehman Bros Holdings	0.250	11/14/07
LEH.GD	Lehman Bros Holdings	0.250	11/14/07
LENF.GD	Lenfest Communications Inc	8.250	02/15/08
OIL.GC	Triton Energy Corp	8.750	04/15/02
REL.GA	Reliance Group Hldgs Inc	9.000	11/15/00
SAFH.GA	Santa Fe Hotel Inc	11.000	12/15/00
SCTG.GA	Scotsman Group Inc	9.500	12/15/00
TOKM.GC	Tokheim Corp	11.375	08/01/08
TVLC.GA	Travelcenters of America Inc	10.250	04/01/07
WVTK.GA	Wavetek Corp	10.125	06/15/07

NASD Notice to Members 01-09

As of November 27, 2000, changes were made to the symbols/names of the following FIPS bonds:

<u>New Symbol</u>	<u>Old Symbol</u>	<u>New Name/Old Name</u>	<u>Coupon</u>	<u>Maturity</u>
PRVC.GA	PRVC.GA	President Casinos Inc/President Riverboat Casinos Inc	13.000	09/15/01

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

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

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NASD Notice to Members 01-10

INFORMATIONAL

Trade Date— Settlement Date

Trade Date—Settlement Date Schedule

SUGGESTED ROUTING

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

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

KEY TOPIC

- Holiday Trade Date—
Settlement Date Schedule

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

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, January 15, 2001, 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:

Trade Date	Settlement Date	Reg. T Date*
Jan. 9	Jan. 12	Jan. 17
10	16	18
11	17	19
12	18	22
15	Markets Closed	—
16	19	23

Presidents Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Monday, February 19, 2001, in observance of Presidents Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Feb. 13	Feb. 16	Feb. 21
14	20	22
15	21	23
16	22	26
19	Markets Closed	—
20	23	27

* 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 RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of December 27, 2000.

Firms Expelled, Individuals Sanctioned

Great American Financial Network, Inc. (CRD #14108, Norcross, Georgia) and Edward Lee Bates (CRD #1815183, Registered Principal, Duluth, Georgia) were fined \$25,000, jointly and severally, and were each suspended from association with the NASD in all capacities for two years for failing to implement a continuing education plan and failing to completely respond to requests for information. The firm and Bates were also fined \$80,000, jointly and severally, and Bates was suspended from association with any NASD member in any capacity for two years and barred from association with any NASD member in a supervisory capacity failing to report customer complaints, filing inaccurate FOCUS reports, filing an audit report in an untimely manner, and failing to file an audit report. In addition, the firm was expelled from NASD membership and Bates was barred from association with NASD members in any capacity for violating net capital rules and failing to maintain current, complete, and accurate books and records. Furthermore, Bates was fined \$5,000 and suspended from association with any NASD member in any capacity for six months for failing to establish adequate written supervisory

procedures. The fines must be paid before requesting reentry into the securities industry.

The expulsions and bars became effective December 7, 2000. **(NASD Case #C07000037)**

Monitor Investment Group, Inc. (CRD #31007, New York, New York), Michael Angelo Cavallo (CRD #43518, Registered Principal, Old Bridge, New Jersey), James Justin Garcia, Jr. (CRD #1144228, Associated Person, New York, New York), Scott Herkert (CRD #2092867, Registered Representative, Staten Island, New York), Norman Martin Lescht (CRD #1164306, Registered Principal, East Brunswick, New Jersey), William Francis Palla (CRD #1101428, Registered Principal, Narbeth, Pennsylvania), Jeffrey David Pokross (CRD #2358776, Associated Person, New York, New York), Salvatore Francisco Ruggiero (CRD #2521196, Brooklyn, New York), and Edward Christopher Telmany (CRD #2574437, Registered Representative, Staten Island, New York). The firm was fined \$350,000 and expelled from NASD membership. Palla was fined \$350,000 and barred from association with any NASD member in any capacity and Pokross was fined \$300,000 and barred from association with any NASD member in any capacity. Herkert, Ruggiero, and Telmany were each fined \$100,000 and barred from association with any NASD member in any capacity. Cavallo, Garcia, and Lescht were each fined \$50,000 and barred from association with any NASD member in any capacity. The fines must be paid before reassociating with the NASD. The sanctions are based on findings that the firm, acting through Palla and Pokross, knowingly and/or recklessly engaged in

a fraudulent scheme to manipulate the supply and price of a security, charged fraudulent and excessive markups, and purchased, or induced others to purchase, the security while the firm was engaged in a distribution. Palla also directed and endorsed special selling methods to induce the sale of the stock by promising economic inducements to the firm's brokers. The firm created and provided false order tickets to the NASD to reflect reduced commissions on the tickets. The firm, acting through Palla, failed to establish and maintain adequate written supervisory procedures reasonably designed to achieve compliance with applicable securities laws. In addition, the NASD also found that the firm, acting through Palla, failed to report customer complaints and quarterly statistical and summary information regarding the complaints to the NASD.

The findings also stated that Garcia conducted a securities business without being registered with the NASD. The firm, acting through Lescht, failed to properly register Garcia and knew he was conducting a securities business without being registered with the NASD. The firm, acting through Cavallo, compensated Garcia for conducting securities transactions when he was not registered and falsified books and records by routing commissions charged on Garcia's transactions through the registered representative numbers of other brokers. The firm, acting through Palla, failed to ensure that the firm had an adequate supervisory system to detect unregistered representatives and to prevent them from conducting a securities business.

The NASD also found that Ruggiero, Herkert, and Telmany induced public customers to

purchase shares of the security by intentionally or recklessly mischaracterizing the nature of the stock being sold and making baseless price predictions. They also failed to notify their customers that the price had been manipulated, was not the result of free market forces, and failed to disclose the firm's trading activity in the stock. Furthermore, the NASD found that Palla, Cavallo, Ruggiero, Herkert, and Telmany failed to respond truthfully to NASD requests for information. **(NASD Case #C10970145)**

San Clemente Securities, Inc. (CRD #21895, San Clemente, California), Cooke Baille Christopher (CRD #1590203, Registered Principal, San Clemente, California), Thomas Henri Sunderland (CRD #1636630, Registered Principal, San Clemente, California), Douglas Grant Eichenberger (CRD #1821564, Registered Representative, Ft. Collins, Colorado), and Randy Trager Rondberg (CRD #1826543, Registered Representative, Gilbert, Arizona) submitted Offers of Settlement in which the firm was expelled from NASD membership. Christopher was barred from association with any NASD member in any capacity, and Sunderland was censured, fined \$40,000, and suspended from association with any NASD member in any capacity for two years. Sunderland was also required to requalify by exam as a general securities principal, and his fine must be paid before reassociating with a member firm. Eichenberger was barred from association with any NASD member in any capacity and required to disgorge \$13,950 in commissions. The disgorgement of commissions earned by Eichenberger must be paid before requesting reassociation with a member firm. Rondberg was censured and fined \$10,000

which includes disgorgement of \$481.63 in disgorgements earned.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the purchase by investors of custodialized certificate of deposit investments (certificates), the firm, acting through Christopher, Eichenberger, and Rondberg, engaged in various practices and conduct designed to induce public customers to invest in certificates offered and sold through the firm, and recklessly made untrue statements of material facts and omitted to state material facts necessary to make the statements by them, in the light of the circumstances in which they were made, not misleading. The findings also stated that the firm, acting through Christopher, Eichenberger, and Rondberg, recklessly confused and misled investors, failed to disclose to customers that sales commissions and custodial fees on certificate transactions would be taken "up front" from investors' principal and not from the earnings on their investment, and incorrectly represented that the full principal paid by investors had been invested in their respective certificates. As executive vice president and part owner of the firm, the NASD determined that Sunderland should have known of the deceptive conduct being perpetrated by the firm and Christopher against the customers, deliberately ignored their deceptive practices, and failed to exercise his power and authority to direct management and policies at the firm.

Sunderland's suspension began December 18, 2000, and will conclude at the close of business on December 17, 2002. **(NASD Case #C02000042)**

Firms Fined, Individuals Sanctioned

First Financial Equity Corporation (CRD #16507, Scottsdale, Arizona) and George Edward Fischer (CRD #1315706, Registered Principal, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$15,000, jointly and severally. In addition, the firm was censured and fined \$7,000, jointly and severally, with another individual, and Fischer was 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 the firm, acting through Fischer, participated in the offer and sale of debt securities in a private placement, received investor funds for the purchase of notes, and failed to promptly transmit the funds to an account specified by the Securities and Exchange Commission (SEC). The findings also stated that the firm, acting through Fischer, continued to offer and sell notes after the date upon which the offering should have been terminated due to the failure of the stated contingency. The firm also, acting through another individual, conducted a securities business while failing to maintain the required minimum net capital.

Fischer's suspension began January 2, 2001, and will conclude at the close of business on January 16, 2001. **(NASD Case #C3A000030)**

Light Securities (CRD #23660, San Francisco, California) and Walter Waitak Light (CRD #1494331, Registered Principal, Alameda, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, and the firm and Light were

fined \$15,000, jointly and severally. In addition, Light was suspended from association with any NASD member in any capacity for 30 business days and required to requalify as a general securities principal and registered options principal within nine months before acting in those capacities. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Light recommended and effected in the account of a public customer an options trading strategy that was unsuitable for the customer, failed to ascertain the customer's risk tolerance, experience and financial position, and to make the required independent determination of suitability. The findings also stated that the firm and Light entered into settlement agreements with customers that inaccurately disclosed the settlement below the amount which would have required disclosure on Light's Form U-4, and failed to timely amend Light's Form U-4 to disclose the complaints and settlements.

Light's suspension began December 4, 2000, and will conclude at the close of business on January 17, 2001. **(NASD Case #C01000035)**

**Firms And Individuals Fined
Keystone Investment Advisors, LLC (CRD #44856, Kansasville, Wisconsin) and Roger William Christoph (CRD #1182220, Registered Principal, Burlington, Wisconsin)** submitted a Letter of Acceptance, Waiver, and Consent in which the respondents 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 Christoph, received

funds for the sale of units in a contingency offering, and withdrew funds from the escrow account prior to selling the required minimum amount of units in bona fide transactions. The findings also stated that the firm, acting through Christoph, failed to abide by the terms of its membership agreement, by failing to notify the NASD promptly that it intended to materially change its business operations from "best efforts" underwritings to a firm commitment basis. Furthermore, the NASD found that the firm, acting through Christoph, sold shares of stock at the initial public offering price to accounts maintained by investment partnerships or corporations, but failed to obtain from the accounts information relating to the names and business connections of all persons having a beneficial interest in each of the accounts in order to assure that such sales were made in compliance with the NASD's Free-Riding and Withholding Interpretation. The NASD also determined that the firm, acting through Christoph, effected transactions in securities when it failed to maintain the minimum required net capital and to accurately compute its net capital. **(NASD Case #C8A000073)**

Precision Trading Group, LLC (CRD #47858, Stamford, Connecticut) and Dennis Gerard Boyd (CRD #1488976, Registered Principal, Fairfield, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$13,000, jointly and severally, which includes \$3,000 of the financial benefit the firm obtained by permitting representatives to conduct a securities business while unregistered. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Boyd, allowed

unregistered employees to engage in a securities business and to function as representatives. The findings also stated that the firm, acting through Boyd, failed to ensure that individuals actively engaged in the trading of securities in the Nasdaq and Over-the-Counter (OTC) markets were properly registered as equity traders in accordance with the NASD's Series 55 rule requirements. In addition, the NASD found that the firm, acting through Boyd, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules applicable to the processing of registration applications. **(NASD Case #C11000028)**

Firms Fined

Bishop, Rosen & Co., Inc. (CRD #1248, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through Automated Confirmation Transaction ServiceSM (ACTSM), last sale reports of transactions in Nasdaq National Market (NNM), Nasdaq SmallCapSM, eligible securities, and OTC Equity securities, and failed to designate through ACT such last sale reports as late. The findings also stated that the firm failed to transmit through ACT last sale reports of transactions in ACT eligible securities within 90 seconds of execution. **(NASD Case #CMS000241)**

Cantor Fitzgerald & Co. (CRD #134, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the

firm was censured, fined \$10,000, and ordered to revise its written supervisory procedures relating to the SEC and NASD firm quote rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or offer in an amount up to its published quotation size and, thereby, failed to honor its published quotation. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning the SEC and NASD firm quote rules. **(NASD Case #CMS000230)**

EDI Financial, Inc. (CRD #15699, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$11,000, jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected the sale of municipal securities from its own account to that of a public customer at aggregate prices that were unfair and unreasonable in that the markups were 8.2 and 15.9 percent, respectively. The findings also stated that the firm failed to designate a principal responsible for the supervision of municipal securities activities, and failed to establish, maintain, and enforce written supervisory procedures designed to address municipal securities transactions. Furthermore, the NASD found that the firm failed to adequately implement the Firm Element of the NASD's Continuing Education Program in that the firm failed to develop a needs analysis and a written training plan for the firm's covered

registered persons. **(NASD Case #C06000030)**

First Security Van Kasper, Inc. (CRD #7665, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$16,500, and required to revise its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM securities, failed to designate through ACT such last sale reports as late, failed to accept or decline to ACT transactions in eligible securities within 20 minutes of execution, and failed to report transactions to ACT within 90 seconds after execution. In addition, the NASD determined that the firm reported transactions in high yield corporate debt securities to the Fixed Income Pricing SystemSM (FIPS) that it was not required to report, and executed short sale transactions and failed to report each of these transactions to ACT with a short sale indicator. The NASD also found that the firm's supervisory system failed to provide for supervision to ensure compliance with applicable security laws, regulations, and NASD rules concerning ACT reporting, trade reporting, short sales, and books and records. **(NASD Case #CMS000245)**

Garban Corporates LLC (CRD #2762, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through

ACT last sale reports of transactions in NNM and eligible securities and to designate them as late. The findings also stated that the firm failed to transmit within 90 seconds last sale reports of transactions in ACT eligible securities. **(NASD Case #CMS000232)**

The J.B. Sutton Group, LLC, n/k/a Global Capital Markets, LLC (CRD #16191, Syosset, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to indicate whether payment for order flow was received on customer confirmation statements and failed to accept or decline trades within 20 minutes of execution with respect to NNM, Nasdaq SmallCap, OTC Equity, and Third Market trades. The findings also stated that the firm traded ahead of customer limit orders for securities in which the firm made a market and failed to update immediately its quotation with respect to customer limit orders or otherwise failed to execute those orders. **(NASD Case #C10000206)**

Maple Partners, U.S.A., Inc. (CRD #33947, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions in NNM securities, at or below the inside bid when the current inside bid was below the preceding inside bid in each of the securities. The findings also stated that the firm executed short sale transactions in certain securities,

failed to annotate an affirmative determination for each of these transactions, and failed to report short sale transactions to ACT with a short sale indicator. In addition, the NASD found that the firm failed to establish, maintain, and/or enforce written supervisory procedures reasonably designed to achieve compliance with applicable NASD short sale rules. **(NASD Case #C9B000038)**

Pond Equities, Inc. (CRD #30934, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which it was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT, last sale reports of transactions in NNM, SmallCap, eligible, and OTC Equity securities, and failed to designate through ACT such last sale reports as late. The NASD also found that the firm failed to transmit last sale reports of transactions in ACT eligible securities within 90 seconds after execution. **(NASD Case #CMS000236)**

Preferred Securities Group, Inc. (CRD #35704, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$2,500, fined \$3,000 jointly and severally with an individual respondent, and fined \$8,000 jointly and severally with another individual respondent. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to post inventory positions and margin balances to its general ledger, and, as a result, its books and records, net capital computations, and FOCUS reports were

inaccurate. The findings also stated that the firm failed to report riskless principal trades in a security, failed to promptly display or timely execute customer limit orders, and allowed an inactive registered representative to effect securities transactions for customers. **(NASD Case #C07000083)**

Wien Securities Corporation (CRD #10467, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a registered market maker in securities, the firm failed to execute orders presented at its published bid or offer in an amount up to its published quotation size and thereby, failed to honor its published quotation. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning the SEC and NASD firm quote rules. **(NASD Case #CMS000228)**

Wien Securities Corporation (CRD #10467, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which it 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, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NNM, Nasdaq SmallCap, and eligible securities and to designate through ACT such last sale reports as late. The findings also stated that the firm failed to

transmit through ACT transactions in ACT eligible securities. **(NASD Case #CMS000235)**

W.S. Griffith & Co., Inc. (CRD #10410, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to amend its Form BD, and Forms U-5 and Forms U-4 for individuals, in a timely manner, after becoming aware of lawsuits filed against the firm and individuals alleging securities fraud, other securities law violations, and other misconduct. **(NASD Case #C01000032)**

Individuals Barred Or Suspended

Stephen Robert Ackley (CRD #1149303, Registered Representative, Springfield, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$32,919.38, plus interest, in restitution to public customers. Proof of restitution, with interest, shall be a prerequisite before reassociating with a member firm or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ackley consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, failed to provide his firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions. **(NASD Case #C8B000018)**

Christopher Aden (CRD #8977095, Associated Person, Yonkers, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Aden engaged in the offer and sale of shares of stock through a private placement offering to members of the public, and induced investors to purchase or sell shares of stock by means of manipulative, deceptive, and other fraudulent devices or contrivances. In addition, Aden engaged in the securities business and functioned as a representative of his member firm prior to properly qualifying and registering in the appropriate capacity. Aden also failed to appear for an NASD on-the-record interview. **(NASD Case #C8A990032)**

Robert Babson Alling, III (CRD #2063488, Registered Representative, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one month. The fine must be paid before reassociating with a member firm following the suspension. Without admitting or denying the allegations, Alling consented to the described sanctions and to the entry of findings that he submitted a Uniform Application for Securities Industry Registration or Transfer (Form U-4) to the NASD and failed to disclose felony convictions.

Alling's suspension began December 18, 2000, and will conclude at the close of business on January 17, 2001. **(NASD Case #C3A000044)**

Matthew Francis Baas, III (CRD #2087476, Registered Representative, Rego Park, New York) was barred from association with

any NASD member in any capacity. The sanction was based on findings that Baas failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #C10000115)**

Nicolette Silvestra Borgia-Beightol (CRD #1061842, Registered Representative, Erie, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Borgia-Beightol consented to the described sanction and to the entry of findings that she failed to respond to an NASD request for information regarding allegations that she received funds from a public customer for investment and failed to apply the funds as instructed. **(NASD Case #C9A000042)**

Lawrence Dean Burke, Jr. (CRD #2255621, Registered Representative, Fresh Meadows, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay \$3,000 in restitution to a public customer. Proof of restitution shall be a prerequisite before reassociating with a member firm or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Burke consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing written notice to, or receiving written approval from, his member firm. The findings also stated that Burke converted and/or improperly used a \$3,000 payment he received from a public customer and failed to respond to an NASD request for information. **(NASD Case #C10000160)**

Jeffrey John Chaimowitz (CRD #2589437, Registered Principal, Rocky Point, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chaimowitz consented to the described sanction and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C1000066)**

Richard Philip Chingos (CRD #2504767, Registered Representative, Long Island City, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chingos consented to the described sanction and to the entry of findings that he executed transactions in the accounts of public customers without their prior knowledge, authorization, or consent. The findings also stated that Chingos failed to respond truthfully, accurately, non-deceptively, and/or completely during an NASD on-the-record interview. **(NASD Case #C1000095)**

Arthur William Clements (CRD #2112373, Registered Representative, Andora, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$40,000, plus interest, in restitution to a public customer. Satisfactory proof of restitution payment, with interest, shall be a prerequisite before requesting relief from statutory disqualification. Without admitting or denying the allegations, Clements consented to the described sanctions and to the entry of findings that he made improper use of at

least \$40,000 belonging to one of his clients. **(NASD Case #C1100029)**

William Michael Cutrone (CRD #2542314, Registered Representative, Woodbury, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay \$51,873.72, plus interest, in restitution to public customers. Proof of restitution is required before reassociating with a member firm or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cutrone consented to the described sanctions and to the entry of findings that he directly and/or indirectly, singly and in concert, by use of the means or instrumentalities of interstate commerce, or of the mails, and in connection with the purchase and sale of securities, knowingly or recklessly engaged in, and/or induced others to engage in a device, scheme, or artifice to defraud, the use of untrue statements of material fact and/or the omission of material facts necessary to make statements made, in light of the circumstances, not misleading, and acts, practices, or courses of business that operated as a fraud or deceit upon persons. Cutrone made misrepresentations including specific price predictions for speculative securities, omitted negative information about a security being recommended, and failed to make any disclosure of risk. The findings also stated that Cutrone executed unauthorized trades in the accounts of public customers without the necessary discretionary trading authority, failed to execute customer sell orders, and failed to disclose when he solicited purchase orders that he would refuse or discourage the sale of securi-

ties. The NASD also found that Cutrone failed to respond to NASD requests for information. **(NASD Case #CAF000009)**

William Charles DeMorrow, III (CRD #1144637, Registered Principal, Hudson, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeMorrow consented to the described sanction and to the entry of findings that he participated in the sale of promissory notes to public customers and failed to give his member firm prior written notice of his participation in such sales. DeMorrow also failed to respond to an NASD request for information and documents. **(NASD Case #C07000082)**

James Jay Dorney (CRD #2335567, Registered Representative, Superior, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dorney consented to the described sanction and to the entry of findings that he appropriated for his own use approximately \$25,000 that was intended to be the principal of trusts for which he was the trustee. **(NASD Case #C3A000048)**

Stephen Kenneth Faber (CRD #2132958, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity, ordered to pay \$11,173, plus interest, in restitution, and ordered to disgorge \$920.28 in commissions. The sanctions were based on findings that Faber effected unauthorized transactions in the account

of public customers without the knowledge or consent of the customers and without written or oral authorization to exercise discretion in the account. The findings also stated that Faber failed to respond to NASD requests for information. **(NASD Case #C10000112)**

Robert John Faleska (CRD #204040, Registered Representative, Carteret, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Faleska consented to the described sanction and to the entry of findings that he submitted fictitious life insurance applications to his member firm. **(NASD Case #C10000205)**

Matthew Craig Fine (CRD #2841607, Registered Representative, Fort Lee, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fine consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C9B000033)**

Darrell Wayne Flowers, Sr. (CRD #2242139, Registered Representative, Fairview, Tennessee) submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Flowers consented to the described sanctions and to the entry of findings that he exercised

discretionary authority in the accounts of a public customer by executing equity transactions without the customer's prior written authorization and his member firm's written acceptance of the accounts as discretionary. The findings also stated that Flowers shared in the profits of a customer's account without prior written authorization from his firm and executed purchase transactions in the account without the customer's prior knowledge, authorization, or consent.

Flowers' suspension began January 2, 2001, and will conclude January 1, 2003. **(NASD Case #C10000103)**

Gines Jose Garcia (CRD #2863499, Registered Representative, Paterson, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Garcia consented to the described sanctions and to the entry of findings that he engaged in the unauthorized purchase of shares of stock for the account of a public customer.

Garcia's suspension began December 18, 2000, and concluded at the close of business on December 22, 2000. **(NASD Case #C9B000031)**

Max Gordon Gladstone (CRD #2220722, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before reassociating with an NASD member firm. Without admitting or denying the allega-

tions, Gladstone consented to the described sanctions and to the entry of findings that he purchased shares of stock 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.

Gladstone's suspension began December 18, 2000, and concluded at the close of business on January 2, 2001. **(NASD Case #C10000202)**

John Patrick Goldsworthy (CRD #730533, Registered Representative, Harahan, Louisiana) was barred from association with any NASD member in any capacity. The NAC imposed the sanctions following a remand by the SEC. The sanction was based on findings that Goldsworthy engaged in private securities transactions without prior written notice to, and written approval from, his member firm.

Goldsworthy has appealed this action to the SEC and all sanctions, other than the bar, are not in effect pending consideration of the appeal. **(NASD Case #C05940077)**

Brett Howard Hamburger (CRD #1974666, Registered Representative, Sunrise, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hamburger effected unauthorized transactions in the account of a public customer without obtaining authorization from the customer. The findings also stated that Hamburger misrepresented his identity to a public customer and solicited the purchase and sale of securities without being properly registered with the NASD and the State of Illinois through a member firm. The NASD also found that Hamburger failed

to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10990210)**

Timothy Lane Hamilton (CRD #1049533, Registered Representative, Dayton, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$19,271.44, plus interest, in restitution to public customers. Proof of restitution, with interest, shall be a prerequisite before reassociating with a member firm or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Hamilton consented to the described sanctions and to the entry of findings that he engaged in private securities transactions away from his member firm, failed to provide the firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions. **(NASD Case #C8B000019)**

Reinhard Hermes (CRD #1597099, Registered Principal, Laguna Niguel, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before reassociating with a member firm or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hermes consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide written notice to the NASD describing in detail the proposed transactions, his proposed role, and stating whether he had received or might receive selling compensation in

connection with the transactions.

Hermes' suspension began January 2, 2001, and will conclude on January 1, 2003. **(NASD Case #C02000065)**

William Edson Howard, III (CRD #1395976, Registered Representative, Ft. Pierce, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 12 months. The fine must be paid before reassociating with a member firm or before requesting relief from statutory disqualification. Howard must also demonstrate that he has paid \$12,708, that represents his financial benefit from private securities transactions, to the trustee in bankruptcy of a company before reassociating with a member firm or before requesting relief from statutory disqualification. Without admitting or denying the allegations, Howard consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing his member firm prior written notice of his intention to participate and without seeking or receiving the permission of his member firm since the transactions were "for compensation."

Howard's suspension will begin January 16, 2001, and will conclude at the close of business on January 15, 2002. **(NASD Case #C3A000047)**

Mizanul Kabir (CRD #2128146, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity and ordered to pay \$26,481.25, plus interest, in restitution to a public customer. The sanctions were based on findings that Kabir knowingly or reck-

lessly made fraudulent misrepresentations and omissions to a public customer regarding a security and failed to disclose material information relating to the risks associated with an investment. The findings also stated that

Kabir falsely informed the customer that he was required to purchase securities in the aftermarket. The NASD also found that Kabir opened a new brokerage account at his member firm for a customer without the customer's prior knowledge, authorization, or consent and effected an unauthorized transaction in the account. **(NASD Case #C10000071)**

Gordon Kerr (CRD #268444, Registered Representative, Walnut, California) was barred from association with any NASD member in any capacity. The SEC affirmed the sanction following appeal of a December 1999 NAC decision. The sanction was based on findings that Kerr functioned as a securities principal while he was barred from acting in that capacity. **(NASD Case #C02980051)**

Mohammad Ali Khan (CRD #1923986, Registered Representative, Franklin Park, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Khan failed to respond to NASD requests to appear for on-the-record interviews. **(NASD Case #C10990220)**

Thomas Joseph Klima (CRD #2512872, Registered Representative, Chandler, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Klima consented to the described sanction and to the entry of findings that he transferred

funds from customer accounts, and without the knowledge or consent of the customers, converted the funds to his own use and benefit. **(NASD Case #C04000037)**

Timothy James Lease (CRD #1968334, Registered Principal, Lancaster, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 18 months. In light of the financial status of Lease, no monetary sanction has been imposed. Without admitting or denying the allegations, Lease consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. The findings also stated that Lease recommended and purchased promissory notes for the account of public customers and failed to have reasonable grounds for believing that these recommendations and resulting transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs.

Lease's suspension began December 18, 2000, and will conclude at the close of business on June 17, 2002. **(NASD Case #C9A000040)**

Joseph Xavier Loftus, Jr. (CRD #2725482, Registered Principal, Hoboken, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,418.75, which included the disgorgement of commissions earned of \$418.75, suspended from association with any NASD member in any capacity for 10 business days, and ordered to pay \$6,612.50, plus interest, in restitution to a public customer. Without admitting or

denying the allegations, Loftus consented to the described sanctions and to the entry of findings that he recommended the purchase of shares of stock to a public customer that was unsuitable given the customer's financial status, investment objectives, and investment experience.

Loftus' suspension began December 4, 2000, and concluded at the close of business on December 15, 2000. **(NASD Case #C10000193)**

Joaquin Lopez, III (CRD #4068288, Registered Representative, Aurora, Colorado) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lopez consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C3A000035)**

Francis Albert Lupo (CRD #2387813, Registered Representative, Staten Island, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lupo failed to respond to NASD requests to appear for on-the-record interviews. **(NASD Case #C10000096)**

Anthony Andrew Marx, Jr. (CRD #2180220, Registered Representative, Astoria, New York) was barred from association with any NASD member in any capacity and ordered to pay \$91,080.36, plus interest, in restitution to his former member firm. The sanctions were based on findings that Marx effected unauthorized transactions in the account of public customers without their prior knowledge, authorization, or consent. The findings also stated that Marx drew checks on the funds in

the account of public customers, endorsed the checks with the payees' signatures and his own signature without the knowledge or consent of the customers, deposited the funds into his personal bank account, and converted funds totaling \$13,623.71 to his own use and benefit. Marx also failed to respond to NASD requests for information. **(NASD Case #C10000100)**

Eugene McCall, Jr. (CRD #2276981, Registered Representative, Elida, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$241,344.55, plus interest, in restitution to public customers. Proof of restitution must be submitted before reassociating with a member firm or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McCall consented to the described sanctions and to the entry of findings that he sold purported "investments" to public customers totaling \$241,344.55 and received at least \$201,046.81 from the account into which these funds were placed and used the funds for his own benefit, without the knowledge or consent of the customers. The findings also stated that McCall provided materially false, inaccurate, and misleading information in response to an NASD request for information and failed to respond to NASD requests for information and documents. **(NASD Case #C8B000016)**

Thomas Michael McDermott (CRD #326652, Registered Principal, Bloomfield, New Jersey) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member as a general securities principal for 60 days.

Without admitting or denying the allegations, McDermott consented to the described sanctions and to the entry of findings that he failed to implement, maintain, and enforce an effective supervisory system and written procedures that would have enabled his member firm to comply with federal securities laws and NASD rules to detect and prevent illegal bidding for, purchasing, or inducing others to purchase a security in the secondary market while a distribution was still in progress.

McDermott's suspension began January 2, 2001, and will conclude at the close of business on March 2, 2001. **(NASD Case #C10000029)**

Robin Bruce McNabb (CRD #1016598, Registered Principal, San Jose, California) was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a March 1999 NAC decision. The sanctions were based on findings that McNabb participated in private securities transactions without giving prior written notification to his member firm. The findings also stated that McNabb recommended to public customers the purchase of securities without having reasonable grounds for believing that the investments were suitable for the customers in light of the facts disclosed by the customers regarding their other security holdings, and their financial situation, and needs.

McNabb has appealed this action to the U.S. Court of Appeals for the Ninth Circuit and the sanctions, other than the bar, are not in effect pending consideration of the appeal. **(NASD Case #C01970021)**

Douglas Takeshi Nonaka (CRD #1757727, Registered Representative, Aiea, Hawaii) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to demonstrate, should he seek reentry into the securities industry, that he has paid \$7,680 to the trustee in bankruptcy of an issuer or to individual investors. Without admitting or denying the allegations, Nonaka consented to the described allegations and to the entry of findings that he engaged in private securities transactions without providing prior written notice to his member firm. The NASD also found that Nonaka failed to respond to NASD requests for information. **(NASD Case #C3A000045)**

Nelson Chukwunyer Onyejiaka (CRD #2864207, Registered Representative, Southbound Brook, New Jersey) was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before reassociating with a member firm following the suspension. The Office of Hearing Officers (OHO) imposed the sanctions following the call for review and remand by the NAC. The findings stated that Onyejiaka failed to disclose his felony conviction on a Form U-4.

Onyejiaka's suspension began January 2, 2001, and will conclude at the close of business on July 1, 2002. **(NASD Case #C10990121)**

Marlon Gerbacio Pamintuan (CRD #2721666, Registered Representative, Hayward, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Pamintuan failed to respond to NASD requests for information. **(NASD Case# C02000033)**

Stearns Charles Pluff, III (CRD #1056497, Registered Representative, Austin, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Pluff consented to the described sanctions and to the entry of findings that he shared directly in the losses in a customer's account when he transferred \$49,995 to a customer to compensate the customer for losses and failed to obtain prior written authorization from his member firm.

Pluff's suspension began December 18, 2000, and concluded at the close of business on December 22, 2000. **(NASD Case #C06000028)**

David Andrew Roshco (CRD #2013641, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Roshco failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C10000090)**

Robert David Ross (CRD #404593, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for six months. In light of the financial status of Ross, no monetary sanction has been imposed. Without admitting or denying the allegations, Ross consented to the described sanction and to the entry of findings that he effected the purchase of shares of stock in the accounts of public customers without their prior knowledge, authorization, or consent.

Ross' suspension began December 11, 2000, and will conclude on June 10, 2001. **(NASD Case #CMS000237)**

David Robert Scholle (CRD #2461242, Registered Representative, Pittsburgh, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Scholle received approximately \$3,500 from public customers to pay premiums for auto and homeowners insurance policies, failed to pay or direct the payment of the premiums, and converted the \$3,500 to his own use and benefit without the customers' knowledge or consent. The findings also stated that Scholle failed to respond to NASD requests for information. **(NASD Case #C9A000021)**

Anthony Douglas Schupp (CRD #1012126, Registered Representative, Shrewsbury, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for one year, ordered to disgorge the \$2,608 in commissions received in connection with the violative transactions, plus interest, in partial restitution to a public customer. The fine must be paid and satisfactory proof of disgorgement and partial restitution, with interest, must be submitted before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schupp consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Schupp's suspension began January 2, 2001, and will conclude on January 1, 2002. **(NASD Case #C11000030)**

Steven Arthur Scott (CRD #1174431, Registered Representative, Laguna Hills, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before reassociating with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scott consented to the described sanctions and to the entry of finding that he participated in private securities transactions and outside business activities without providing prior oral or written notification to, and receiving permission from, his member firm.

Scott's suspension will begin January 16, 2001, and will conclude at the close of business on January 15, 2003. **(NASD Case #C02000069)**

Russell Bruce Simmons (CRD #2934499, Registered Representative, Valrico, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 120 days, and ordered to disgorge \$6,035.97 in commissions to public customers. Without admitting or denying the allegations, Simmons consented to the described sanctions and to the entry of findings that prior to his association with a member firm, he engaged in the sale of promissory notes to public customers and failed to disclose this activity to the firm, and continued to sell the notes after he became an associated person at the firm. Further-

more, the NASD determined that Simmons failed to submit written notice to, and obtain authorization from, the firm to continue in his sales of promissory notes.

Simmons' suspension will begin January 16, 2001, and will conclude at the close of business on May 15, 2001. **(NASD Case #C07000093)**

Peter John Sinram (CRD #825018, Registered Representative, Valley Stream, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sinram consented to the described sanction and to the entry of findings that he engaged in trading certain bond positions of his member firm and failed to disclose to the firm material information pertaining to the trading. The findings also stated that Sinram provided false and misleading market valuations to his member firm with respect to the bond positions. The NASD also found that Sinram failed to respond to NASD requests for information. **(NASD Case #C10000203)**

Jan Melvin Siroky (CRD #425443, Registered Representative, Colorado Springs, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Siroky consented to the described sanction and to the entry of findings that he accepted funds from a public customer intended for investment and retained possession and control of the funds prior to applying them to the intended investment, thereby misusing customer funds. **(NASD Case #C3A000049)**

Virginia Marie Smith (CRD #3245980, Associated Person, Randolph, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before reassociating with a member firm. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that she failed to respond truthfully on a Form U-4 and failed to disclose that she had pled guilty to several drug-related charges in the State of New Jersey.

Smith's suspension began January 2, 2001, and will conclude at the close of business on January 31, 2001. **(NASD Case #C9B000036)**

Renjun Song (CRD #2399859, Registered Representative, Philadelphia, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Song failed to respond to NASD requests for information. **(NASD Case #C9A000024)**

Michael Joel Spillert (CRD #1711695, Registered Representative, Parsippany, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Spillert consented to the described sanctions and to the entry of findings that he drafted a change of broker of record request letter, and forged a public customer's signature on the letter, without the customer's prior knowledge or consent.

Spillert's suspension began January 2, 2001, and will conclude on January 1, 2002. **(NASD Case #C9B000035)**

Richard Lee Stevens (CRD #852090, Registered Representative, Valley Cottage, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Stevens consented to the described sanctions and to the entry of findings that he forged the signature of public customers on insurance replacement forms without their prior knowledge or consent.

Steven's suspension began January 2, 2001, and will conclude at the close of business on January 31, 2001. **(NASD Case #C9B000032)**

Charles Wesley Testino, Jr. (CRD #1216651, Registered Representative, Tucson, Arizona) was fined \$177,000, suspended from association with any NASD member in any capacity for six months, and ordered to requalify by exam as an investment company and variable contracts products representative before associating again with a member firm. The Office of Hearing Officers imposed the sanctions following a call for review and remand by the NAC. The sanctions were based on findings that Testino engaged in private securities transactions without prior notice to his member firm.

Testino's suspension began December 4, 2000, and will conclude at the close of business on June 4, 2001. **(NASD Case #C3A990031)**

Robert Alden Thayer (CRD #874129, Registered Principal, Colorado Springs, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for two years. In light of

the financial status of Thayer, no monetary sanction has been imposed. Without admitting or denying the allegations, Thayer consented to the described sanction and to the entry of findings that he failed to implement an effective system for monitoring his member firm's equities division to prevent price manipulation of a private placement, failed to monitor the activities of an individual, and failed to enforce provisions of the firm's policy and procedure manual. The findings also stated that Thayer failed to establish, maintain, and enforce procedures reasonably designed to achieve compliance with the penny stock rules. The NASD also found that Thayer failed to disclose and confirm in writing to public customers the control relationship between his member firm and a security.

Thayer's suspension began January 2, 2001, and will conclude on January 1, 2003. **(NASD Case #CAF000031)**

Thomas K. Van Ahn (CRD #2117531, Registered Representative, Oshkosh, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Van Ahn consented to the described sanctions and to the entry of findings that he failed to send copies of order tickets for all trades placed directly with the clearing firm to the main office. The findings also stated that Van Ahn placed options transactions for his own account without the approval of the firm's officers, general securities principals, or the registered options principal.

Van Ahn's suspension began December 18, 2000, and

concluded at the close of business on January 2, 2001. **(NASD Case #C8A000068)**

Lester Henry Veltman, Jr. (CRD #454075, Registered Representative, Tulsa, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one month. Without admitting or denying the allegations, Veltman 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 permission from, his member firm.

Veltman's suspension will begin January 16, 2001, and will conclude at the close of business on February 15, 2001. **(NASD Case #C3A000050)**

Jonathan Hudson Webb (CRD #1408674, Registered Principal, Evanston, Illinois) was fined \$10,000, barred from association with any NASD member in any principal, supervisory, or proprietary capacity, and suspended from association with any NASD member in any capacity for six months. The NAC imposed the sanctions following appeal and call for review by the NAC of an Office of Hearing Officers decision. The sanctions were based on findings that a member firm, acting through Webb, conducted business while failing to maintain the minimum required net capital, failed to comply with the terms of its restrictive agreement by failing to maintain minimum net capital, prepared inaccurate general ledger, trial balance, and net capital computation, and filed inaccurate FOCUS Part IIA reports. In addition, the firm, acting through Webb, conducted a municipal securities business while failing to employ a properly

qualified and registered municipal securities principal, a financial and operations principal, and properly qualified registered general securities principals. Furthermore, Webb acted in the capacity of a municipal securities principal without being properly qualified and registered in such capacity, and failed to respond completely to NASD requests for information and documents. Webb also failed to disclose on Forms U-5 and U-4 that he was the subject of an NASD investigation.

Webb's suspension began January 2, 2001, and will conclude at the close of business on July 1, 2001. **(NASD Case #C8A980059)**

Donny Randall Wells (CRD #1089583, Registered Representative, Santa Rosa, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000, suspended from association with any NASD member in any capacity for four months, and required to requalify by taking and passing the Series 7 exam. Without admitting or denying the allegations, Wells consented to the described sanctions and to the entry of findings that he failed to inform public customers and his member firm, that an individual subject to an NASD bar was making false assertions and generating false documents to make customers believe that their mutual fund investments were invested with or through a member firm. Furthermore, the NASD found that Wells failed to disclose to his present member firm, in a timely manner, that he was named as a defendant in lawsuits pertaining to the individual's misconduct, and failed to keep his registration information current by amending a Form U-4 to disclose the lawsuits, in a timely manner.

Wells' suspension began January 2, 2001, and will conclude at the close of business on May 1, 2001. **(NASD Case #C01000033)**

Eric John Whittemore (CRD #2739516, Registered Representative, Manchester, New Hampshire) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Whittemore consented to the described sanction and to the entry of findings that he misappropriated \$4,930 belonging to the branch office of a member firm. **(NASD Case #C11000027)**

Ira Marcrobert Zadikow (CRD #1385075, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Zadikow consented to the described sanctions and to the entry of findings that he effected transactions in a public customer's account without confirming such transactions with the customer.

Zadikow's suspension began January 2, 2001, and concluded on January 6, 2001. **(NASD Case #C9B000034)**

Individual Fined

Robert D. Michaux (CRD #2780470, Registered Representative, Richmond, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$17,500. For six months following acceptance of the AWC, he may become associated with an NASD member in a non-registered capacity, but may not become associated with an NASD

member in any capacity that requires registration, including but not limited to, the solicitation and recommendation of securities transactions to customers or otherwise handling or servicing customer accounts. For 12 months following the six-month period, Michaux may become associated with an NASD member in a registered capacity, but only if the firm has adopted and implemented procedures for supervising him. Without admitting or denying the allegations, Michaux consented to the described sanctions and to the entry of findings that he effected unsuitable and excessive trades in the account of a public customer. The findings also stated that Michaux exercised discretion in the accounts of public customers without having said discretion evidenced in writing and without having the account approved as discretionary by his member firm. In addition, the NASD determined that Michaux placed false information regarding a customer's margin trading experience on a margin account approval form. **(NASD Case #C07000092)**

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 as of December 22, 2000. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

John Lawson Greer, III (CRD #860076, Registered Principal, Knoxville, Tennessee) was fined \$5,000, suspended from association with any NASD member in any capacity for two weeks, and

ordered to sit for the supervisory section of the Continuing Education Program, Regulatory Element, within 180 days from the date the decision becomes final. Greer was also ordered to hereafter be employed by a member firm that will agree to have all new account forms for Greer and his customers reviewed by the firm's compliance department. The sanctions were based on findings that Greer established an account for a fictitious customer, completed account forms for the fictitious customer, and attempted to effect a purchase in the account. The findings also stated that Greer established the account to effect personal transactions in a dishonest manner to avoid detection from his member firm.

This action has been called for review by the NAC and the sanctions are not in effect pending consideration of the review. **(NASD Case #C05990035)**

Kevin Lee Otto (CRD #1929973, Registered Representative, Milwaukee, Wisconsin) was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a June 1999 NAC decision. The sanctions were based on findings that Otto received \$22,000 from a public customer and used the funds for some purpose other than for the benefit of the customer, without the customer's knowledge or authorization, before he returned the funds to the customer at a later date.

Otto has appealed this case to the U.S. Court of Appeals for the Seventh Circuit and all sanctions, other than the bar, are not in effect pending consideration of the appeal. **(NASD Case #C8A970015)**

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.

James Henry Bond, III (CRD #2001777, Registered Representative, New York, New York) was named as a respondent in an NASD complaint alleging that he engaged in unauthorized transactions in the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in their accounts. **(NASD Case #C10000210)**

Mark Alan Goldberg (CRD #2481041, Registered Representative, Ft. Lauderdale, Florida) was named as a respondent in an NASD complaint alleging that he recommended to public customers the purchase of shares of stock and made predictions and misrepresentations concerning the stock, without having a reasonable basis for his representations to customers. The complaint also alleges that Goldberg failed to respond to NASD requests for information. **(NASD Case #C07000094)**

Kenneth Edward Hetlinger (CRD #1260242, Registered Representative, Mundelein, Illinois) was named as a respondent in an NASD complaint alleging that he caused over \$74,000 to be wire-transferred from the account of a public customer to his

attorney's account, and used the funds for either his own benefit or for some purpose other than for the benefit of the customer, without the customer's knowledge or consent. The complaint also alleges that Hetlinger failed to respond to NASD requests for documents and information. **(NASD Case #C8A000072)**

George Honorato Malagon, Jr. (CRD #2088064, Registered Principal, Fresh Meadows, New York) was named as a respondent in an NASD complaint alleging that he engaged in unauthorized trading in the account of a public customer without the discretionary trading authority for the account. The complaint also alleges that Malagon failed to disclose material facts to public customers that a reasonably prudent customer would have wanted disclosed in making investment decisions and that Malagon had a duty to disclose. **(NASD Case #CAF000046)**

Albert Medina (CRD #2730223, Registered Representative, Lauderhill, Florida) was named as a respondent in an NASD complaint alleging that he effected securities transactions without obtaining prior authorization from the customers. In addition, the complaint alleges that Medina failed to timely respond to NASD requests for information. **(NASD Case #C07000086)**

Petra Moreno (CRD #1738689, Registered Representative, El Paso, Texas) was named as a respondent in an NASD complaint alleging that she received checks totaling \$427.46 that represented payments for a life insurance policy the customer purchased, cashed the checks, and used the funds for her own use and benefit, without the authorization, knowledge, or consent of the customer. The complaint also alleges that

Moreno failed to respond to NASD requests for information. **(NASD Case #C06000032)**

Keith Richard Procovic (CRD #2202049, Registered Representative, Boca Raton, Florida) was named as a respondent in an NASD complaint alleging that he effected the purchase of securities in the joint account of public customers without their knowledge or prior authorization. The complaint also alleges that Procovic failed to respond to NASD requests for information. **(NASD Case #C07000087)**

Walter Ray Reinhardt (CRD #2468084, Registered Representative, Hillsborough, North Carolina) was named as a respondent in an NASD complaint alleging that he engaged in private securities transactions by selling promissory notes to public customers and failed to receive written permission from his member firm to participate in such transactions. The NASD also alleges that Reinhardt forged the signatures of a public customer on several account transfer documents without prior authorization from the customer. **(NASD Case #C07000090)**

Alfred Salazar (CRD #1059427, Registered Principal, Littleton, Colorado) was named as a respondent in an NASD complaint alleging that by the use of means and instrumentalities of interstate commerce, or of the mails, directly or indirectly, he made untrue statements of material fact in connection with the purchase or sale of a security. The complaint alleges that Salazar effected transactions by means of a manipulative, deceptive, or other fraudulent device or contrivance and approved a private placement memorandum that contained materially false statements or acted with reckless disregard as to

the truth or falsity of the statements contained in the memorandum. The complaint also alleges that Salazar failed to disclose and confirm in writing to public customers the control relationship between his member firm and the security in which the firm made a market. In addition, the complaint alleges that Salazar failed to respond to NASD requests for information, documentation, and to appear to give testimony. **(NASD Case #CAF000048)**

Vadim Steven Shapiro (CRD #2562368, Registered Representative, Baltimore, Maryland) was named as a respondent in an NASD complaint alleging that in connection with an inducement to purchase or sell a security, through means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly employed a device, scheme or contrivance, 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. The complaint alleges that Shapiro made material misrepresentations including specific and substantial price predictions and omitted material facts regarding a security's losses and poor performance. The complaint also alleges that Shapiro failed to execute customer sell orders. **(NASD Case #C10000207)**

Donna Michelle Thomas-Gardner (CRD #2808748, Registered Representative, East Point, Georgia) was named as a respondent in an NASD complaint alleging that she caused a public customer's name on a brokerage account at her member firm to be changed to the name of her landlord, and further changed the

address of record on the customer's account, without the authorization of the customer. The complaint also alleges that Thomas-Gardner caused cashier's checks to be issued that were drawn against the customer's account and failed to submit the debit memoranda and copies of the cashier's checks to the home office. As a result, the NASD alleges that while these checks were honored by the member firm, they were not debited against the account, and the checks were negotiated and the proceeds were used for her own benefit. The complaint further alleges that Thomas-Gardner failed to respond to NASD requests for information. **(NASD Case #C07000081)**

Vincent Bernard Tolbert (CRD #2343655, Registered Representative, Killeen, Texas) was named as a respondent in an NASD complaint alleging that he received \$260 in cash from a public customer representing premium payments for a homeowner's insurance policy and converted the funds to his own use and benefit without the authorization, knowledge, or consent from the customer. In addition, the complaint alleges that Tolbert failed to respond to NASD requests for information. **(NASD Case #C06000034)**

Firm Suspended

The following firm was suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

James W. Twohig & Company, Princeton, West Virginia (December 6, 2000)

Firms Expelled For Failure To Pay

Fines/Costs And/Or Provide Proof Of Payment In Connection With Violations

L.H. Alton & Company, San Francisco, California (November 20, 2000)

Trafalgar Financial Services, Inc., Boston, Massachusetts (November 20, 2000)

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

Alton, Lewis H., San Francisco, California (November 20, 2000)

Bauer, John L., Bronx, New York (November 20, 2000)

Elio, Carmen W., Jr., Medford, Massachusetts (November 20, 2000)

Elio, Michael A., Medford, Massachusetts (November 20, 2000)

Eliscu, Mathew B., Chicago, Illinois (November 20, 2000)

Fried, Brian A., Smithtown, New York (November 20, 2000)

Furman, Len K., Brandenton, Florida (November 20, 2000)

Jasovsky, Darin, Bayonne, New Jersey (November 20, 2000)

Pinchas, Rafael, Hillcrest, New York (November 20, 2000)

Shvarts, Aleksandr, Brooklyn, New York (November 20, 2000)

Vultaggio, Jack, Tewksbury, Massachusetts (November 20, 2000)

Individuals Suspended Pursuant To NASD Rule 9540 Series For Failure To Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry.)

Bell, Timothy E., Winterville, Ohio (November 24, 2000)

Grieg, Tommy A., Santa Maria, California (December 8, 2000)

Lewis, Gregory, Milwaukee, Wisconsin (December 1, 2000)

The American Stock Exchange, NASD Regulation, and the New York Stock Exchange Jointly Fine Morgan Stanley & Co. Incorporated \$200,000

The American Stock Exchange, LLC, NASD Regulation, Inc., and the New York Stock Exchange, Inc., as a result of a coordinated investigation, announced that Morgan Stanley & Co. Inc. consented to a censure and \$200,000 fine for violations arising from the inaccurate reporting of short interest from November 1996 to August 1998. Morgan Stanley also has consented to an undertaking regarding its procedures for reporting short interest to the three self-regulatory organizations (SROs). The disciplinary actions were brought by the three SROs and the fine imposed will be paid jointly to them by Morgan Stanley.

The Amex, NASD Regulation, and the NYSE found that during the 22-month period, Morgan Stanley inaccurately reported to the three SROs short positions in numerous securities as required by the rules of the SROs. The inaccurate reporting resulted from Morgan Stanley's overstating short positions that ranged from over 1,000 shares to over 1 million shares in certain securities. The SROs found that the inaccuracies were caused

by the firm's failure to properly program its mainframe computer.

The SROs require each firm to maintain a record of total "short" positions in all customer and proprietary firm accounts in listed securities and report the information monthly to its SRO. A short position occurs when a security is sold that the seller does not own. The security is borrowed by, or for the account of, the seller. The seller maintains the short position until, at a later date, it is purchased and/or delivered for the account.

The reporting inaccuracies were initially discovered by the Amex in October 1998 as a result of an inquiry made to Morgan Stanley regarding a large change in the reported short position in an Amex-listed security. Morgan Stanley did not disclose the matter to all of the SROs until late November 1998, approximately three months after it became aware of the reporting inaccuracies.

The three SROs found that Morgan Stanley failed to provide reasonable supervision of its business activities in reporting to the SROs short positions in securities and failed to establish and maintain adequate procedures and controls to ensure compliance with its reporting obligations. Among other things, the SROs found that the firm failed to have in place adequate procedures to audit or review its computer systems to ensure that short position reports were prepared in a manner consistent with SRO rules; written procedures for the supervision of the steps to be followed by firm personnel for the preparation and submission of short position reports; and systems and procedures of follow-up and review adequate to ensure that the SROs were promptly notified after the

discovery of the inaccurate reporting of short positions.

Morgan Stanley, which neither admitted nor denied the SROs' allegations or findings, has undertaken to review its procedures for reporting short interest to the SROs and has agreed to implement the appropriate new procedures (in addition to procedures implemented by the firm in August 1998) to ensure compliance with applicable SRO rules and the federal securities laws.

NASD Regulation Sanctions Providential Securities, Inc. And Bars Principal, Henry Fahman

NASD Regulation announced it has sanctioned and fined Providential Securities, Inc., of Orange County, CA, \$115,000 and has permanently barred its Chairman and CEO, Henry Fahman, for violation of numerous NASD rules and federal securities laws. In addition, the firm agreed to return funds to customers who invested in its private placement between December 1998 and June 1999.

NASD Regulation found that between December 1998 and June 1999, Providential sold its corporate shares to public customers through Providential Securities, Inc.'s private placement memorandum. Providential and Fahman misrepresented to investors through, and failed to provide them with complete and accurate information in, the private placement memorandum in their attempt to raise money for the firm. NASD Regulation also found that the customer funds generated from Providential's private placement were not protected in accordance with the NASD's rules and federal securities laws, and ultimately were used by the firm for purposes than originally described.

In addition, NASD Regulation found that Providential and Fahman improperly operated unregistered branch offices, allowed unregistered individuals to participate in its securities business, and violated the NASD's advertising rules in connection with the firm's Web site.

Without admitting or denying NASD Regulation's allegations, Providential and Fahman agreed to settle the charges. NASD Regulation's Los Angeles District Office investigated this matter.

NASD Regulation wishes to acknowledge the assistance in this matter provided by the staff of the Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs. Henry Fahman testified before the Subcommittee during its hearings on day trading in February 2000.