

NASD Sanction Guidelines

NASD Revises Sanction Guidelines

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
- Registered Representatives
- Senior Management

KEY TOPICS

- Disciplinary Proceedings
- Sanctions
- Settlements

Executive Summary

The National Adjudicatory Council (NAC) has revised the National Association of Securities Dealers, Inc. (NASD®) Sanction Guidelines (Guidelines). The various bodies that adjudicate disciplinary matters use the Guidelines to determine appropriately remedial sanctions. NASD Regulation, Inc., staff and respondents also use the Guidelines to craft settlements in disciplinary matters. The NAC revised the introductory section, amended individual guidelines, and added several new guidelines. As with prior versions of the Guidelines, in this edition, the NAC does not prescribe fixed sanctions for particular violations. Rather, the NAC encourages adjudicators to exercise discretion and consider the unique facts and circumstances of each particular case.

The revised Sanction Guidelines supersede guidelines previously published by the NAC and referenced in prior *NASD Notices to Members*. The revised Sanction Guidelines are effective as of April 10, 2001, and apply to all actions as of that date, including pending disciplinary actions.

The revised Sanction Guidelines will be available on the NASD Regulation Web Site (www.nasdr.com). The Sanction Guidelines will also be available, within the next two months, for purchase in hard-copy format for \$35 by calling NASD MediaSource at (240) 386-4200.

Questions/Further Information

Questions concerning this *Notice* may be directed to Carla Carloni, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8019.

Background And Discussion

At the NAC's February 2000 meeting, the NAC appointed a Sanction Guidelines Subcommittee to revisit some of the general policies expressed in the Sanction Guidelines, amend existing guidelines, and add new guidelines as needed. The NAC recently approved the Sanction Guidelines Subcommittee's proposed amendments.

Changes To The Introductory Section

The NAC's revisions include several changes to the introductory section.¹

- The NAC revised the discussion of the remedial nature of disciplinary sanctions in General Principle One. The revised language advises adjudicators that they may consider firm size in connection with determining appropriately remedial sanctions, with a view toward ensuring that sanctions are not punitive. New footnote one lists factors that adjudicators may consider in connection with assessing firm size. New footnote two addresses whether firm size should be considered in cases involving fraudulent misconduct.
- The NAC revised General Principle Three, which advises adjudicators to tailor sanctions to the misconduct at issue. The revised language suggests that, in certain cases, the imposition of tape-recording requirements may be an appropriately remedial sanction.
- The NAC revised the current definition of "financial benefit" in General Principle Six (Disgorgement).²

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- General Principle Eight, which discusses an adjudicator's consideration of ability to pay when raised by a respondent, has been amended to incorporate information from *NASD Notice to Members 99-86* (Imposition and Collection of Monetary Sanctions).
- The NAC amended Principal Consideration No. 11 to indicate that the harm resulting from a respondent's misconduct may include harm to the firm with which an individual respondent is or was associated.
- The subsection entitled "Applicability" now clarifies for users of the Sanction Guidelines the many means by which the NAC may amend and/or supplement the Sanction Guidelines.³
- The NAC added a new subsection entitled "Censures" to the introductory section. This subsection incorporates into the Guidelines the substance of the NAC's policy on the imposition of censures announced by the NAC in *NASD Notice to Members 99-91* (Imposition of Censures).
- The NAC added a new subsection entitled "Monetary Sanctions – Imposition and Collection of Monetary Sanctions." This subsection incorporates into the Guidelines the monetary sanctions policy announced by the NAC in *NASD Notice to Members 99-86* (Imposition and Collection of Monetary Sanctions).
- The subsection entitled "Suspensions, Bars, and Expulsions," dealing with suspensions and statutory disqualifications, was amended. The current introductory section acknowledges that

the Guidelines generally recommend the imposition of suspensions of not more than two years. The NAC added an explanation that the NASD's rules allow for the imposition of lengthier suspensions and that adjudicators therefore have discretion to impose lengthier suspensions, notwithstanding the general recommendation in the Guidelines to impose suspensions that do not exceed two years.

- With respect to statutory disqualifications, the NAC added proposed footnote 10, which references the Securities and Exchange Commission's (SEC's) 1994 release regarding the permanent nature of bars.

The NAC also made other minor revisions throughout the introductory section.

Changes To Existing Guidelines

In all, the NAC revised 29 individual guidelines. Of these, the NAC revised only the disgorgement footnote discussed in footnote two in 15 guidelines.⁴ The remaining 14 guidelines contain more extensive revisions.⁵ Notable revisions to these 14 guidelines include:

- revising the non-monetary sanction sections of the churning, selling away, suitability, and unauthorized trading guidelines to ensure consistency in the recommended sanctions;
- revising the selling away guideline to clarify that whether an investment or enterprise is successful should not necessarily mitigate the significance of the sanctions imposed, and to revising and supplementing the principal

considerations listed in the guideline;

- revising the guideline for conversion or improper use of funds or securities to note that, in accordance with the NASD's Monetary Sanctions Policy (see *NASD Notice to Members 99-86*), adjudicators generally should not impose a fine if an individual is barred in a case involving conversion;
- revising the principal considerations listed in the guideline for the exercise of discretion without written authority;
- revising the Forms U-4/U-5 guideline to clarify that it applies to violations involving both the filing of initial forms and the filing of amendments thereto;
- revising the guideline for outside business activities to allow for more significant sanctions (consistent with sanctions for selling away violations) in cases involving egregious violations, particularly those in which the outside activities involve financial products;
- revising the registration guideline to indicate that an adjudicator may consider imposing a suspension against an individual respondent in all cases, including non-egregious cases;
- revising the monetary sanction section of the short sales guideline to suggest that, if a short-selling customer is not subject to NASD jurisdiction, in certain cases, it may be appropriate to add the short-selling customer's transaction profit to the fine of the executing member or associated person;

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- revising the principal considerations listed in the guideline for trade reporting; and
- revising the unauthorized trading guideline to incorporate the NAC's views as expressed in *Daniel S. Hellen*, Complaint No. C3A970031 (NAC June 15, 1999).

The NAC also made other minor revisions to these and other individual guidelines. ⁶

New Guidelines

The NAC added nine new guidelines to address violations in the following areas:

- intimidation/coordination;
- best execution;
- registration of branch offices;
- the Corporate Financing Rule;
- customer account transfer contracts;
- day trading appropriateness;
- margin requirements/ Regulation T;
- order audit trail systems; and
- the Taping Rule.

The NAC believes that its revisions will enhance NASD Regulation's regulatory function by providing adjudicators with better guidance for determining appropriately remedial sanctions in disciplinary matters.

Endnotes

- 1 The introductory section includes the Overview, General Principles, Principal Considerations, and other sections involving technical matters.
- 2 The NAC also revised the standard disgorgement footnote currently contained in 25 individual guidelines. In the current publication, a footnote included throughout the Guidelines states:

As set forth in General Principle No. 6, Adjudicators should increase the recommended fine amount by adding the amount of a respondent's financial benefit. In this instance, the factors to be considered in the calculation of financial benefit should include . . .

The factors recommended in the individual guidelines for consideration in connection with the assessment of financial benefit did not vary significantly. In the revised Sanction Guidelines, the NAC deleted the second sentence from all of the disgorgement footnotes contained in the individual guidelines and, instead, expanded the definition of "financial benefit" contained in General Principle Six.

- 3 In order to ensure that all users of the NASD Sanction Guidelines are aware of the NAC's post-publication amendments to the Guidelines, whether by *NASD Notice to Members* or NAC decision, the NASD Regulation Web Site will now include a listing of all NAC decisions, *NASD Notices to Members*, or other public documents that amend or supplement the Sanction Guidelines.
- 4 The only revision contained in the following individual guidelines is an amendment to the disgorgement footnote:
 - Engaging in Prohibited Municipal Securities Business;
 - Free-Riding and Withholding Violations;
 - Unregistered Securities - Sales of;
 - Continuing Education - Regulatory Element;
 - Disqualified Person Associating with Firm Prior to Approval; Firm Allowing Disqualified Person to Associate Prior to Approval;

- Member Agreement Violations;
 - Misrepresentations or Material Omissions of Fact;
 - Registration Violations;
 - Options Exercise and Position Limits;
 - SOES Rules;
 - Telemarketing;
 - Trades Executed During a Trading Halt;
 - Reportable Events Under Conduct Rule 3070;
 - Guaranteeing A Customer Against Loss; and
 - Trading Ahead of Research Reports.
- 5 The following guidelines contain amendments other than or in addition to the NAC's revision of the disgorgement footnote:
 - Automated Submission of Trading Data;
 - Churning or Excessive Trading;
 - Conversion or Improper Use of Funds or Securities;
 - Discretion Without Written Authority;
 - Disqualified Persons — Failure to Supervise;
 - Forms U-4/U-5;
 - Outside Business Activities;
 - Penny Stock Rules;
 - Registration Violations;
 - Selling Away;
 - Short Sale Rule;
 - Suitability;
 - Trade Reporting; and
 - Unauthorized Trading.
 - 6 Consistent with the NAC's practice in the current version of the Guidelines, the NAC added references to applicable Municipal Securities Rulemaking Board Rules to certain of the existing individual guidelines.

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FIPS Changes

Fixed Income Pricing SystemSM Additions, Changes, And Deletions As Of February 22, 2001

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

KEY TOPICS

- FIPS

As of February 22, 2001, the following bonds were added to the Fixed Income Pricing System (FIPSSM).

Symbol	Name	Coupon	Maturity
AXTO.GD	Abraxas Petroleum Corp	11.500	11/01/04
AVCU.GA	Advanstar Communications Inc	12.000	02/15/11
AMI.GH	Alaris Medical Inc	11.125	08/01/08
ALSK.GA	Alaska Communications System Group Inc	13.000	05/15/11
AWAS.GF	Allied Waste North America Inc	8.875	04/01/08
AMTU.GA	Amcore Capital	9.350	06/15/27
ARUC.GB	Amerus Capital	8.850	02/01/27
AMFM.GB	AMFM Oper Inc	12.625	10/31/06
ANCG.GC	Anker Coal Group Inc	9.750	10/01/07
ANRL.GA	Anthony Crane Rental LP	13.375	08/01/09
APUS.GA	Astoria Capital Trust I	9.750	11/01/29
AVIC.GA	Avista Capital II	0.000	06/01/37
AXPD.GA	Axia Incorporated	10.750	07/15/08
BHWI.GA	Bancorp Hawaii Capital Trust	8.250	12/15/26
BCTA.GA	Banctec Inc	7.500	06/01/08
BPLS.GA	Bank Plus Corp	12.000	07/18/07
BFCU.GA	BFOH Capital Trust I	9.875	10/15/29
CXPU.GA	Centex Construction Products Inc	9.500	07/15/08
CILC.GA	Cilcorp Inc	8.700	10/15/09
CILC.GB	Cilcorp Inc	9.375	10/15/29
CIR.GD	Circus Circus Enterprises Inc	6.450	02/01/06
CIR.GE	Circus Circus Enterprises Inc	7.000	11/15/36
CIR.GF	Circus Circus Enterprises Inc	6.700	11/15/96
CHYP.GA	City Holding Capital Trust	9.150	04/01/28
COL.GK	Columbia/HCA Healthcare Corp	7.500	11/15/95
CSFU.GA	Conseco FinancingTrust II	8.700	11/15/26
CNC.GA	Conseco Inc	8.125	02/15/03
CNC.GB	Conseco Inc	10.500	12/15/04
CRFV.GA	Crossland Federal Savings Bank	9.000	09/01/03
CCK.GF	Crown Cork & Seal Co Inc	7.500	12/15/96
CPUT.GA	CSBI Capital Trust I	11.750	06/06/27
CVYF.GA	CTC Beaver Valley Funding Corp	11.125	12/01/02
DHI.GF	D R Horton Inc	9.375	03/15/11
DLM.GA	Del Monte Foods Co	12.000	12/15/07
DPHU.GA	Delphi Funding LLC	9.310	03/25/27
DCYC.GA	Derby Cycle Corp	10.000	05/15/08
ESPI.GD	E Spire Communications Inc	13.750	07/15/07
EGLE.GB	Eagle Food Centers Inc	11.000	04/15/05
ECBD.GA	Echostar Broadband Corp	10.375	10/01/07
EYRA.GB	Eye Care Centers of America Inc	0.000	05/01/08
FFSM.GC	Fairchild Semiconductor Corp	10.500	02/01/09
FPTL.GA	FCB/NC Capital Trust I	8.050	03/01/28
FSCP.GA	FCB/SC Capital Trust I	8.250	03/15/28
FHTL.GA	FHP International Corp	7.000	09/15/03
LION.GA	Fidelity National Corp	8.500	01/31/06
FNVC.GP	Finova Capital Corp	6.150	03/31/03

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Symbol	Name	Coupon	Maturity
FNVC.GQ	Finova Capital Corp	7.250	07/12/06
FNVC.GR	Finova Capital Corp	7.625	09/21/09
FWRI.GA	First Commonwealth Capital Trust I	9.500	09/01/29
FNCO.GA	FMS Financial Corp	10.000	08/01/04
FWC.GA	Foster Wheeler Corp	6.750	11/15/05
FKCU.GA	Franklin Capital Trust	0.000	10/15/30
FMGC.GA	Fremont General Corp	7.700	03/17/04
FMGC.GB	Fremont General Corp	7.875	03/17/09
FRO.GB	Frontier Corp	6.000	10/15/03
GOMC.GA	GEO Specialty Chemicals Inc	10.125	08/01/08
GLCS.GA	Global Crossing Hldg LTD	8.700	08/01/07
GBPU.GA	Golden Books Publishing Co Inc	10.750	12/31/04
GODH.GA	Golden State Holdings Inc	0.000	08/01/03
GDGI.GA	Goss Holdings Inc	12.250	11/19/05
GHCK.GB	Graham Packaging/GPC Cap Corp	0.000	01/15/08
GAP.GD	Great Atlantic & Pacific Tea Co Inc	7.750	04/15/07
GTFL.GA	Green Tree Financial Corp	10.250	06/01/02
GYHD.GA	Greyhound Financial Corp	7.250	04/01/01
GVIV.GA	Grove Investors LLC	14.500	05/01/10
GNWT.GA	GST Network Funding Inc	10.500	05/01/08
HTBD.GA	Hat Brands Inc	12.625	09/15/02
HTBD.GB	Hat Brands Inc	12.625	09/15/02
HUBP.GA	Hubco Capital Trust I	8.980	02/01/27
IMPU.GA	Imperial Capital Trust I	9.980	12/31/26
MRU.GA	Imperial Credit Capital Trust I	10.250	06/14/02
IPX.GD	Interpool Inc	6.625	03/01/03
IVNY.GA	Interinvest Corporation of New York	0.000	04/01/04
IVNY.GB	Interinvest Corporation of New York	0.000	10/01/04
IVNY.GC	Interinvest Corporation of New York	0.000	04/01/05
IVNY.GD	Interinvest Corporation of New York	0.000	10/01/05
IVNY.GE	Interinvest Corporation of New York	9.500	10/01/05
IWCT.GA	Interwest Capital Trust I	9.875	11/15/29
ISGU.GA	ISG Resources Inc	10.000	04/15/08
JDN.GB	JDN Reality Corp	6.950	08/01/07
KGEL.GD	Kansas Gas and Electric Co	6.760	09/29/03
KGEL.GE	Kansas Gas and Electric Co	7.625	09/29/07
KGEL.GF	Kansas Gas and Electric Co	8.290	03/29/16
KASP.GA	Kasper A.S.L. LTD	13.000	03/31/04
KMCP.GE	Kmart Corp	9.870	11/01/09
KMCP.GF	Kmart Corp	10.050	11/01/19
KMCP.GG	Kmart Corp	9.870	11/01/09
KMCP.GH	Kmart Corp	10.050	11/01/14
KMCP.GI	Kmart Corp	10.050	11/01/19
LEVI.GB	Levi Strauss & Co	7.000	11/01/06
LGXC.GA	Logix Communications Enterprises Inc	12.250	06/15/08
MNPU.GA	Mainstreet Capital Trust I	8.900	12/01/27
MKCU.GA	Markel Capital Trust I	8.710	01/01/46
MXDG.GA	Maxxim Medical Group Inc	11.000	11/15/09
MBPI.GA	MBNA Capital A	8.278	12/01/26

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Symbol	Name	Coupon	Maturity
MBPI.GB	MBNA Capital B	0.000	02/01/27
MHX.GB	Meristar Hospitality Corp	9.000	01/15/08
MHX.GC	Meristar Hospitality Corp	9.125	01/15/11
MMG.GD	Metromedia International Group Inc	10.500	09/30/07
METF.GA	Metropolitan Financial Corp	9.625	01/01/05
MTGU.GA	Metropolitan Mortgage & Securities Co Inc	9.000	12/15/04
MDTU.GA	Middle American Tissue Inc	15.000	07/15/07
MIFU.GA	Midland Funding Corp II	11.750	07/23/05
MIFU.GB	Midland Funding Corp II	13.250	07/23/06
MWAL.GA	Midway Airlines Pass-Through Trust	8.920	01/02/06
MWAL.GB	Midway Airlines Pass-Through Trust	8.860	01/02/03
MOUR.GA	Missouri Pac RR Co	5.000	01/01/45
MTLI.GB	MTL Inc	0.000	06/15/06
NFX.GB	Newfield Exploration Co	7.625	03/01/11
NXNI.GA	Nextel International Inc	12.125	04/15/08
NXNI.GB	Nextel International Inc	12.750	08/01/10
NIN.GC	Nine West Group Inc	9.000	08/15/07
NFCU.GA	North Fork Capital Trust II	8.000	12/15/27
NTLI.GB	NTL Incorporated	9.750	04/01/08
ONXY.GA	Onyx Acceptance Corp	12.500	06/15/06
PNRN.GA	Pacer International Inc	11.750	06/01/07
PCTH.GA	Pacific Aerospace & Electronics Inc	11.250	08/01/05
PKD.GD	Parker Drilling Co	9.750	11/15/06
PCPU.GA	Patriot Capital Trust I	10.300	06/01/27
PMRT.GA	Pawnmart Inc	12.000	12/31/04
PBIU.GA	PBI Capital Trust	8.570	08/15/28
PNFT.GJ	Penn Traffic Co	11.000	06/27/09
PZL.GA	Pennzoil-Quaker State	6.750	04/01/09
PZL.GB	Pennzoil-Quaker State	7.375	04/01/29
PTWC.GA	Petro-Lewis Corp	12.625	08/15/03
PHCP.GA	Phillips 66 Capital II	8.000	01/15/37
PHYK.GA	Physicians Clinical Laboratory Inc	12.000	09/30/04
PIDM.LI	Piedmont Aviation Inc	10.250	03/28/05
PHWD.GA	Planet Hollywood International Inc	10.000	05/09/05
PMDG.GA	PMD Group Inc	11.000	02/28/11
PSDF.GA	Premium Standard Farms Inc	11.000	09/17/03
QUKR.GA	Quaker State Corp	6.625	10/15/05
RUNC.GA	Radio Unica Corp	11.750	08/01/06
RLCT.GA	Reliance Capital Trust Inc	8.170	05/01/28
RPUT.GA	Republic Technologies International LLC	9.875	12/15/01
RUDU.GA	Reunion Industries Inc	13.000	05/01/03
RUDU.GB	Reunion Industries Inc	13.000	05/01/03
ASDW.GB	S D Warren Co	14.000	12/15/06
SBAC.GA	SBA Communications Corp	12.000	03/01/08
SRV.GM	Service Corporation International	6.300	03/15/03
SEV.GA	Seven Seas Petroleum Inc	12.500	05/15/05
SGTU.GA	Signal Capital Trust I	8.670	02/15/28
SWBC.GA	Southwest Bancshares Inc	9.375	07/01/01
SBSA.GD	Spanish Broadcasting Systems Inc	12.500	06/15/02

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Symbol	Name	Coupon	Maturity
SLTF.GD	Specialty Foods Corp	11.125	10/01/02
SITE.GE	SpectraSite Holdings Inc	12.500	11/15/10
SRCW.GA	Stroh Brewery Co	11.100	07/01/06
TBCU.GA	Telebanc Capital Trust I	11.000	06/01/27
TEHC.GA	Telehub Communications Corp	13.875	07/31/05
TWSP.GB	Town Sports International Inc	9.750	10/15/04
TFUO.GA	Transition Auto Finance II Inc	11.000	06/30/02
TTXG.GA	TransTexas Gas Corp	15.000	03/15/05
TSMX.GA	Trism Inc	12.000	02/15/05
UCUT.GA	United Community Capital Trust	8.125	07/15/28
USAR.QT	US Air 1990-Pass Through Trust	0.000	09/19/15
USAR.QU	US Airways Inc	11.625	08/09/09
USAR.QV	US Airways Inc	11.350	03/07/11
VTSC.GA	Ventas Inc	10.125	09/01/01
VTA.GA	Vesta Insurance Group Inc	8.750	07/15/25
WR.GD	Western Resources Inc	7.125	08/01/09
WR.GE	Western Resources Inc	6.800	07/15/18
WR.GF	Western Resources Inc	6.250	08/15/03
WSFP.GA	WSFS Capital Trust I	0.000	12/01/28
XCPT.GA	Xerox Capital Trust I	8.000	02/01/27
ZFFD.GA	Ziff Davis Media Inc	12.000	07/15/10

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As of February 22, 2001, the following bonds were deleted from the Fixed Income Pricing System.

Symbol	Name	Coupon	Maturity
ATU.GA	Applied Power Inc	8.750	04/01/09
BNKU.GA	Bank United Corp	8.875	05/01/07
BS.GD	Bethlehem Steel Corp	8.375	03/01/01
CDG.GA	Cliff Drilling Co	10.250	05/15/03
CDG.GB	Cliff Drilling Co	10.250	05/15/03
ICF.GB	ICF Kaiser Intl Inc	13.000	12/31/03
MOBL.GA	Mobilemedia Communications Inc	10.500	12/01/03
MBLM.GA	Mobilemedia Corp	9.375	11/01/07
PCRU.GA	Packaging Resources Inc	11.625	05/01/03
PRTF.GA	PRT Funding Corp	11.625	04/15/04
PNM.GD	Public Service Co New Mexico	7.500	06/15/02
FLC.GA	R & B Falcon Corp	6.500	04/15/03
FLC.GB	R & B Falcon Corp	6.750	04/15/05
FLC.GC	R & B Falcon Corp	6.950	04/15/05
FLC.GD	R & B Falcon Corp	7.375	04/15/18
FLC.GE	R & B Falcon Corp	9.500	12/15/08
FLC.GF	R & B Falcon Corp	9.125	12/15/03
FLC.GG	R & B Falcon Corp	12.250	03/15/06
RBFF.GA	RBF Finance Co	11.375	03/15/09
RBFF.GB	RBF Finance Co	11.000	03/15/06
RELH.GC	Reliance Group Holdings Inc	9.000	11/15/00
RVPC.GA	Revlon Worldwide Parent Corp	0.000	03/15/01
ABAG.GA	Safety Components Intl Inc	10.125	07/15/07
SME.GB	Service Merchandise Inc	8.375	01/15/01
SBO.GA	Showboat Inc	9.250	05/01/08
SCEP.GM	Southern Calif Edison Co	5.875	01/15/01
SVRN.GF	Sovereign Bancorp Inc	6.625	03/15/01
SPW.GA	SPX Corp	11.750	06/01/02
STBR.GA	Stater Brothers Hldgs Inc	11.000	03/01/01
TPLP.GA	Tanger Properties LP	8.750	03/11/01
TLCB.GA	TLC Beatrice Intl Holdings Inc	11.500	10/01/05
UH.GB	U.S. Home Corp New	7.950	03/01/01
UC.GB	United Cos Financial Corp	9.350	11/01/99

As of February 22, 2001, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	New Name/Old Name	Coupon	Maturity
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There were no symbol changes in FIPS for this time period.

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

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

Disciplinary Actions

Disciplinary Actions Reported For April

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 March 2001.

Firm Fined, Individual Sanctioned

Magellan Securities, Inc. (CRD #15986, Harper Woods, Michigan) and Terry Michael Laymon (CRD #304342, Registered Principal, Grosse Pointe Woods, Michigan) submitted an Offer of Settlement in which they were fined \$40,500, jointly and severally. In addition, the firm was censured and Laymon was suspended from association with any NASD member in any capacity for 30 days, with the proviso that within the 30-day suspension period, he may spend a portion of one day on the premises of his member firm solely to complete the payroll for the employees of the firm, and for no other purpose. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Laymon, prepared inaccurate blotters, ledgers, trial balances, and net capital computations, filed inaccurate Focus Part IIA reports with the NASD, and failed to comply with the terms of a restrictive agreement when the firm accepted and held customer funds for the purchase of limited partnerships and deposited the funds into its general operating account or a "Client Trust Account." The findings also stated that the firm, acting through

Laymon, failed to open a Special Reserve Bank Account for the Exclusive Benefit of Customers and failed to compute its special reserve requirement. Furthermore, the NASD found that the firm and Laymon received a total of \$266,595.39 from public customers for the purchase of interests in limited partnerships and commingled the funds with the firm's operating funds, improperly used the funds prior to purchasing such interests, and failed to use \$10,417 as directed or return the funds to the customer until directed to do so by the NASD.

Laymon's suspension will begin April 16, 2001, and will conclude at the close of business May 15, 2001. (NASD Case #C8A000060)

Firms And Individuals Fined

Barclay Investments, Inc. (CRD #6159, New York, New York) and Basil Constantine Williams (CRD #717300, Registered Principal, Englewood, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$25,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Williams, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules pertaining to the registration of principals and establishing a record of each person who had supervisory responsibilities and to identify qualifications it deemed important in determining whether a supervisor can fulfill his/her assigned responsibilities. The findings also stated that the firm, acting through Williams, allowed an

individual to function as a principal when he was not so registered with the NASD. (NASD Case #C11010005)

Market Square Securities Trading, Inc. (CRD #43401, Boca Raton, Florida) and Kenneth Glen Strom (CRD #709395, Registered Principal, Lake Forest, Illinois) submitted an Offer of Settlement in which they were censured and fined \$10,000, jointly and severally, and the firm was fined an additional \$1,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Strom, caused agency transactions for a non-public customer to be effected through the Small Order Execution SystemSM (SOESSM) and failed to qualify Strom as a limited representative equity trader prior to allowing him to execute transactions in equity, preferred or convertible debt securities other than on a securities exchange in connection with proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such transactions. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with NASD Marketplace Rule 4730. (NASD Case #C8A000064)

United Planners' Financial Services of America (CRD #20804, Scottsdale, Arizona) and Vaughn Sheldon Olthouse (CRD #501382, Registered Principal, Mesa, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000 and Olthouse was censured and fined \$20,000. Without admitting or denying the allegations, the respondents consented to the

described sanctions and to the entry of findings that the firm, acting through Olthouse, failed to inspect each office of supervisory jurisdiction annually and to establish in the firm's written supervisory procedures a schedule for the periodic inspection of the firm's branch offices. The NASD also found that the firm, acting through Olthouse, failed to conduct annual compliance interviews with each registered representative; failed to prepare a needs analysis and written training plan annually; and failed to implement a firm element continuing education program for its covered persons. The findings also stated that the firm, acting through Olthouse, failed to report customer complaints and the settlement of arbitrations to the NASD. (NASD Case #C3A010006)

W.R. Hambrecht & Co., LLC (CRD #45040, San Francisco, California) and William R. Hambrecht (CRD #234793, Registered Principal, San Francisco, California) were censured and fined \$15,000, jointly and severally. The sanctions were based on findings that the firm, acting through Hambrecht, engaged in securities sales activities in contravention of a written agreement with the NASD that required the firm to refrain from engaging in such activities until it received approval from the NASD. (NASD Case #C01000011)

Firms Fined

ABN AMRO Incorporated (CRD #15776, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$36,500, and required to pay \$268.75, plus interest, in restitution to investors. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that when it acted

as principal for its own account, the firm failed to provide written notification disclosing to its customers the correct reported trade price, and failed to provide written notification disclosing to its customers that the transaction was executed at an average price. The findings also stated that the firm failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. Furthermore, the NASD found that the firm failed to accept or decline in Automated Confirmation Transaction ServiceSM (ACTSM) transactions in eligible securities within 20 minutes after execution; failed to use reasonable diligence to ascertain the best inter-dealer market; and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The NASD also determined that the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in Nasdaq National Market (NNM) securities, Nasdaq SmallCapSM securities, and OTC Equity securities; failed to designate through ACT such last sale reports as late; and incorrectly reported to the Fixed Income Pricing SystemSM (FIPS[®]) transactions in high-yield securities. (NASD Case #CMS010026)

Hill, Thompson Magid & Co., Inc. (CRD #2202, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent

in which the firm was fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it published, or submitted for publication, quotations in the National Quotation Bureau "Pink Sheets" for securities and failed to have in its records the documentation required by SEC Rule 15c2-11(a), and failed to have a reasonable basis under the circumstances for believing that the required information was accurate in all material respects or that the sources of the required information were reliable. The findings also stated that the firm failed to file a Form 211 for the securities at least three business days before the firm's quotations were published or displayed in a quotation medium, and the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning NASD Marketplace Rule 6740 and SEC Rule 15c2-11. (NASD Case #CMS010015)

International Correspondent Trading, Inc. (CRD #37401, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to indicate on limit order tickets whether the orders were day or good-till-canceled orders. Furthermore, the NASD determined that the firm failed to indicate on order tickets whether they were market or limit orders, failed to indicate the time of entry or execution, failed to indicate the time of cancellation, failed to indicate whether the securities were "long" or "short" in the account, and failed to indicate

affirmative determination. The NASD also found that order tickets could not be located. (NASD Case #C9B010011)

Kirlin Securities, Inc. (CRD #21210, Syosset, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,250. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to Nasdaq late; reported late trades without the ".SLD" modifier. In addition, the findings stated that the firm reported short sales that were late; failed to report bunched trades with the ".B" modifier; failed to use the late bunch trade modifier (".SB"); and failed to compare trades within 20 minutes. The findings also stated that the firm failed to provide customers with best execution and failed to comply with FIPS rules and trade reporting requirements. In addition, the NASD found that the firm's order tickets failed to contain notations documenting the firm's efforts to obtain quotes from three dealers. Moreover, the NASD found that the firm's written supervisory procedures did not set forth procedures adequately designed to ensure compliance with the prohibition against the coordination of quotes, trades, and trade reports; the proper displaying of quotes and prices; the prohibition against delaying trade reporting and sharing information with other market makers; firm quote obligations and procedures; timely and accurate trade reporting obligations; ACT Rule amendments; and proper conduct by trading personnel. Furthermore, the NASD found that the firm failed to report to the NASD the internal suspension of its marketing manager and the suspension of registered representatives. The findings stated that the firm

failed to report to the NASD that a claim by the estate of a customer was resolved for an amount in excess of \$25,000. (NASD Case #C10010035)

Parker Financial Corporation (CRD #42140, Huntington Station, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported short sale transactions in NNM securities through ACT and failed to append the ".S" modifier identifying the transactions as short sales. The NASD also found that the firm reported agency transactions to ACT incorrectly as principal transactions. The findings also stated that the firm failed to execute short sale transactions in accordance with the NASD short sale "bid test" requirements and failed to make an affirmative determination as to the stock's availability in short sale transactions reported to ACT. In addition, the NASD found that the firm reported transactions late to ACT without the ".SLD" modifier, and reported aggregated transactions to ACT without the ".B" modifier. (NASD Case #C10010032)

Sterne, Agee & Leach, Inc. (CRD #791, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accurately report the unit price for transactions in Nasdaq NMS securities, in that the firm failed to exclude the markup/markdown for the reported transactions. The findings also stated that the firm held

unexecuted customer limit orders in Nasdaq securities and continued to trade the securities for the firm's market making account at prices that would have satisfied the customers' limit orders but failed to execute the limit orders within 60 seconds of the times of the trades in the firm's market making account. The NASD also found that the firm failed to publish within 30 seconds of receipt bids or offers that reflected the prices and full size of customer limit orders, which orders were at prices that would have improved the firm's bid or offer in each security related to those orders; and failed to designate transactions as short sales or short sale exempt through ACT by including the appropriate .S or .X modifier. In addition, the NASD found that the firm failed to file Municipal Securities Rulemaking Board (MSRB) Form G-36 for municipal underwritings within 10 business days after the final agreement to purchase, offer, or sell the securities in accordance with MSRB filing procedures and failed to maintain a record of sending the required forms and documents to the MSRB. (NASD Case #C05010014)

Individuals Barred Or Suspended

Mark P. Azzolino (CRD #4209615, Registered Representative, Fairlawn, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for three months. 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, Azzolino consented to the described sanctions and to the

entry of findings that he provided false responses on his Form U-4.

Azzolino's suspension began March 19, 2001, and will conclude at the close of business June 18, 2001. (NASD Case #C9B010007)

John Baragwanath (CRD #2472854, Registered Representative, Santiago, Chile) submitted an Offer of Settlement in which he was fined \$6,000 and suspended from association with any NASD member in any capacity for 20 business days. 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, Baragwanath consented to the described sanctions and to the entry of findings that he paid a public customer approximately \$7,000 to partially reimburse the customer for a loss, without the knowledge and consent of his member firm.

Baragwanath's suspension began April 2, 2001, and will conclude at the close of business April 30, 2001. (NASD Case #C10000191)

Rodney Lynn Belzer (CRD #1616847, Registered Representative, Kansas City, Missouri) 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, Belzer consented to the described sanction and to the entry of findings that he accepted \$775,600 from public customers intended for investment purposes and, without the knowledge or consent of the customers, deposited the funds into his personal bank account and used \$530,600 of the funds for his own use and benefit. (NASD Case #C04010003)

Frederick Michael Benson (CRD #2876856, Registered Principal, Woodinville, Washington) submitted an Offer of Settlement 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, Benson consented to the described sanctions and to the entry of findings that he held himself out as a broker and affirmatively misrepresented his registration status. The findings also stated that Benson recommended securities transactions to public customers, made announcements about particular stocks to everyone in the trading room on a regular basis, and talked to individual customers about stocks during the trading day without being registered with the NASD. In addition, the NASD found that Benson accepted customer orders and entered them on the branch's admin machine prior to being registered with the NASD.

Benson's suspension began April 2, 2001, and will conclude at the close of business May 1, 2001. (NASD Case #CAF000028)

Thomas Charles Bradley (CRD #28346, Registered Representative, Pinehurst, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for one year, and ordered to disgorge \$17,500 in unjust profits to public customers. The fine payment and satisfactory proof of payment of the disgorgement must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bradley consented to the described sanctions and to the entry of findings that he

participated in private securities transactions and failed to provide his member firm with prior written notice, describing in detail the proposed transactions, his role therein, and stating whether he had received, or would receive, selling compensation in connection with the transactions.

Bradley's suspension began April 2, 2001, and will conclude at the close of business April 1, 2002. (NASD Case #C05010015)

David Wayne Burk (CRD #1094676, Registered Representative, Sparks, Maryland) was barred from association with any NASD member in any capacity. The sanction was based on findings that Burk failed to respond to NASD requests for information. (NASD Case #C9A000022)

Marco Louis Carucci (CRD #1951639, Registered Representative, Brooklyn, New York) and Christopher Michael Tomasulo (CRD #1220199, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which each respondent was fined \$2,500, suspended from association with any NASD member in any capacity for 30 days, and ordered to pay \$2,482 in restitution to a public customer. In light of the financial status of Carucci and Tomasulo, fines of \$2,500 were imposed. Payment of the fine and satisfactory proof of restitution, with interest, must be provided by each respondent before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that they failed to follow a public customer's instructions to sell securities.

Carucci's and Tomasulo's suspensions began March 19, 2001, and will conclude at the close of business April 17, 2001. (NASD Case #C10010030)

Mark Christopher Chang (CRD #2648704, Registered Representative, Miami, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Chang altered nine checks issued to public customers, endorsed the checks, and cashed eight of the checks, all without the authorization of the firm or the customers. Chang also failed to respond to an NASD request for information. (NASD Case #C07000046)

Shun Tak ("Dixon") Chow (CRD #2721545, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 18 months. 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, Chow consented to the described sanctions and to the entry of findings that he effected orders for the purchase of shares of an investment product that was not approved by his member firm for public customers away from his firm. The NASD also found that, prior to effecting the transactions, Chow failed to provide written notification to, or obtain written approval from, his member firm.

Chow's suspension began March 19, 2001, and will conclude at the close of business September 18, 2002. (NASD Case #C10010034)

John Patrick Clancy (CRD #2085167, Registered Representative, New York, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 60 days. In light of the financial status of Clancy, no monetary sanction has been imposed. Without admitting or denying the allegations, Clancy consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview.

Clancy's suspension began April 2, 2001, and will conclude at the close of business May 31, 2001. (NASD Case #C10990222)

Clayton John Darrohn, Jr. (CRD #2708608, Registered Representative, West Sayville, 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, Darrohn consented to the described sanction and to the entry of findings that, prior to becoming registered at a member firm, he used the registered representative numbers of other individuals to effect securities transactions on behalf of public customers. The findings also stated that Darrohn failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C10010028)

Christopher M. Delcioppo (CRD #2730016, Registered Representative, New York, New York) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 45 days. 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, Delcioppo consented to the described sanctions and to the entry of findings that he failed to timely respond to NASD requests for information.

Delcioppo's suspension began April 2, 2001, and will conclude at the close of business May 16, 2001. (NASD Case #C07000027)

Christopher Ronald DiGregorio (CRD #2754779, Registered Representative, Staten Island, New York) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, DiGregorio consented to the described sanctions and to the entry of findings that he effected unauthorized transactions in a public customer's account.

DiGregorio's suspension began April 2, 2001, and will conclude at the close of business April 16, 2001. (NASD Case #C9B000042)

Ralph Umberto D'Ovidio (CRD #1736914, Registered Representative, Surfside, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that D'Ovidio failed to respond to NASD requests for information. (NASD Case #C07000069)

Salvatore Louis Esposito (CRD #2534742, Registered Representative, Howard Beach, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Esposito had an impostor take the Series 7 qualification exam on his behalf. The findings also stated that Esposito failed to respond truthfully during an NASD on-the-record interview. (NASD Case #C10000186)

Juan Carlos Fernandez (CRD #2080130, Registered Principal, Lakeworth, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Fernandez failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C07000059)

Timothy Patrick Flood (CRD #2074476, Registered Representative, Lawrenceville, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$50,000, barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member in any capacity after three years. The fine must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Flood consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of a public customer and entered into a settlement agreement and release with his customer wherein he paid the customer \$122,491.30 without disclosing the settlement or the unauthorized trades to his member firm. Furthermore, the NASD found that Flood signed a \$45,837.19 promissory note payable to the customer to settle the complaint without informing his member firm. Also, the NASD found that, when attempting to become registered with a member firm, Flood failed to disclose the existence of a customer complaint against him for the unauthorized trading and his settlement of the complaint. (NASD Case #C07010009)

Floyd Clark Gambrel, Jr. (CRD #2492516, Registered Representative, Eden, Idaho) 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, Gambrel consented to the described sanction and to the entry of findings that he engaged in private securities transactions, and failed to provide prior written notice to his member firm describing in detail the proposed transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation in connection with the transactions. (NASD Case #C3B010002)

Joseph Gaetano Gerace (CRD #1060223, Registered Principal, San Rafael, California) submitted an Offer of Settlement in which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. 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, Gerace consented to the described sanctions and to the entry of findings that, a member firm, acting through Gerace, effected transactions in securities while failing to maintain minimum required net capital.

Gerace's suspension began April 2, 2001, and will conclude at the close of business May 14, 2001. (NASD Case #C01000020)

Gary Ducarmel Guirand (CRD #2372860, Registered Principal, Baldwin, New York) 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 30 days, and ordered to pay \$5,416.75 in restitution to a public customer. Without admitting

or denying the allegations, Guirand consented to the described sanctions and to the entry of findings that he placed unauthorized trades in the accounts of public customers. The findings also stated that Guirand failed to comply with a customer's instructions that his account be closed and the remaining securities be delivered to him.

Guirand's suspension began April 2, 2001, and will conclude at the close of business May 1, 2001. (NASD Case #CAF010005)

John Weldon Hare (CRD #1965893, Registered Principal, Darien, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 14 days. Without admitting or denying the allegations, Hare consented to the described sanctions and to the entry of findings that he failed to provide prompt written notice to his member firm of his activities outside the scope of his relationship with his firm.

Hare's suspension began April 2, 2001, and concluded April 15, 2001. (NASD Case #C11010006)

Kevin Arthur Hoag (CRD #1908521, Registered Representative, San Francisco, California) was fined \$12,200 and barred from association with any NASD member in any capacity. The fine must be paid before any application for reentry into the securities industry will be considered. The sanctions were based on findings that Hoag executed unauthorized transactions in the accounts of public customers. (NASD Case #C01000013)

Larry Bruce James (CRD #2616619, Registered Representative, Brookhaven, New York) was barred from association with any NASD member in any

capacity. The sanction was based on findings that James failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C10000144)

Michael Joel Keizman (CRD #2824901, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Keizman failed to respond to NASD requests for information. (NASD Case #C10000164)

Nicholas John Kirk (CRD #2004783, Registered Representative, Rocklin, California) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and required to pay \$78,500, plus interest, in restitution to a public customer. 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, Kirk consented to the described sanctions and to the entry of findings that he borrowed \$78,500 from a public customer purportedly for start-up costs for a business and failed to provide the customer with any instrument documenting the duration of the terms of the loans, including the principal borrowed from her or the interest, if any, she would be earning on that principal. The NASD found that, instead, Kirk used the funds for his personal use and benefit and never repaid the customer any portion of the loans. The findings also stated that Kirk gave the NASD false and misleading responses to written requests concerning his handling of loan proceeds and provided false and misleading representations on his Form U-4. (NASD Case #C02000055)

Robert Daniel Louis (CRD #2707569, Registered Principal, Hackensack, New Jersey) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Louis falsified a public customer's account record by falsely representing that he was the account executive on the customer's account, signing the new account form, and permitting another individual to use his account executive number when executing transactions in the account. The NASD also found that Louis testified falsely in an NASD on-the-record interview. (NASD Case #C9B000007)

Matthew Steven McKeon (CRD #2564640, Registered Representative, Flushing, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, McKeon consented to the described sanctions and to the entry of findings that he failed to execute a public customer's sell order. The findings also stated that McKeon failed to timely respond to an NASD request for information.

McKeon's suspension began April 2, 2001, and will conclude at the close of business May 1, 2001. (NASD Case #C10010036)

Michael Louis Meskers (CRD #3225041, Registered Representative, Brooklyn, New York) 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 one year, and ordered to requalify by exam as a general securities representative within 90 days from the

date the suspension is over. If Meskers fails to requalify within that period, he shall be suspended from acting in that capacity until the exam is successfully completed. 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, Meskers consented to the described sanctions and to the entry of findings that he falsified firm documents by signing his name as the approving registered representative on customer new account forms by backdating his approval date on the forms. The findings also stated that Meskers accepted a \$39,476.36 check from his member firm that represented commissions relating to transactions, transferred the funds to an individual not registered with the NASD, and, thereby, facilitated the payment of commissions to an unregistered individual.

Meskers' suspension began March 19, 2001, and will conclude at the close of business March 18, 2002. (NASD Case #C10010018)

Anthony Armando Morrelli (CRD #2561728, Registered Representative, Mineola, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Morrelli effected transactions in the account of public customers without their prior knowledge, authorization, or consent. (NASD Case #C10000199)

Mynor Monterroso (CRD #2355105, Associated Person, Norco, California) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity, with the right to reapply for association with any NASD member in any capacity after a period

of five years. Without admitting or denying the allegations, Monterroso consented to the described sanctions and to the entry of findings that he provided false responses on his Form U-4 and failed to amend his Form U-4. The findings also stated that Monterroso failed to respond to NASD requests for information. (NASD Case #C02000063)

Steven Barry Nothmann (CRD #1265457, Registered Representative, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Nothmann consented to the described sanctions and to the entry of findings that, in response to an NASD request for information, he provided tax returns to the NASD that he had previously completed using his son's social security number and made the documents appear to look as if they contained his social security number.

Nothmann's suspension began March 19, 2001, and will conclude at the close of business June 18, 2001. (NASD Case #C11010002)

Peter Gerard Olton (CRD #1967551, Registered Principal, Parlin, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Olton converted \$13,000 of a public customer's funds by effecting a wire transfer from the customer's brokerage account to his personal bank account without the knowledge, authorization, or consent of the customer. The findings also stated that Olton failed to respond to NASD requests for information. (NASD Case #C10000168)

Mark S. Pacelli (CRD #2344494, Registered Representative, Plantation, Florida) 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. The sanctions were based on findings that Pacelli received \$40,000 from a public customer for investment purposes and used the funds for his own benefit. Pacelli also failed to respond to an NASD request for information. (NASD Case #C07000063)

Vito Gerard Padulo (CRD #2370645, Registered Representative, Englishtown, New Jersey) was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 days for unauthorized transactions. In addition, Padulo was barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The fine must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. The sanctions were based on findings that Padulo effected unauthorized transactions in the account of a public customer and failed to respond to NASD requests for information.

Padulo's bar became effective February 21, 2001. (NASD Case #C10000166)

Cosmo Scali (CRD #2396302, Registered Representative, Brooklyn, New York) and Jeffrey Scott Geoghegan (CRD #2582567, Registered Representative, Putnam Valley, New York) were each barred from association with any NASD member in any capacity. The sanctions were based on findings that Scali and Geoghegan engaged in transactions in the accounts of public customers without their prior

knowledge, authorization, or consent. The findings also stated that Scali requested that a public customer provide him with an address outside of Texas to circumvent Texas blue sky restrictions. In addition, the NASD found that Geoghegan solicited public customers to purchase units in an initial public offering (IPO) prior to its effective date and failed to advise his customers of material facts regarding the extensive risks associated with the proposed investment, and falsified an entry on an order ticket in order to evade Virginia blue sky restrictions. (NASD Case #C10970143)

Warren Richard Schreiber (CRD #722981, Registered Representative, East Hills, 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, Schreiber consented to the described sanction and to the entry of findings that he entered a plea of guilty in the U.S. District Court, Southern District of New York, to felony securities law violations, (NASD Case #CAF010004)

Gary Clinton Scofield (CRD #1026835, Registered Representative, Clifton Park, New York) 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 18 months, ordered to disgorge commissions, and required to pay \$4,486.68, plus interest, in partial restitution to a public customer. If the customer has received full restitution from another source, the \$4,486.68 will be paid as an additional fine. The fine payment and satisfactory proof of disgorgement and restitution, with interest, must be made before reassociating with any

NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scofield 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. The findings also stated that Scofield received a \$564.07 override in connection with the sale of a promissory note by another registered representative.

Scofield's suspension began April 2, 2001, and will conclude at the close of business October 1, 2002. (NASD Case #C11010004)

Derick Lawrence Sharpe (CRD #2790179, Registered Representative, Lawrenceville, Georgia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sharpe failed to respond to NASD requests for information. (NASD Case #C05000037)

Morgan Simonson (CRD #3136194, Associated Person, New York, New York) 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 \$9,619.21 in restitution to a public customer. Satisfactory proof of restitution, with interest, must be made prior to reassociation with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Simonson consented to the described sanctions and to the entry of findings that he transferred \$18,719.21 in customer funds to his personal bank account without the customer's prior knowledge, authorization, or consent and misused and commingled the

funds. The findings also stated that Simonson returned \$9,100 to the customer and converted the remaining balance for his own use and benefit. In addition, the NASD found that Simonson prepared monthly account statements for the customer that contained false information. Moreover, the NASD found that Simonson failed to inform his member firm that he maintained a securities account with another member firm and failed to inform the other member firm that he was associated with a member firm. Furthermore, the NASD findings stated that Simonson failed to respond to NASD requests for information and documentation. (NASD Case #C10010040)

Ronald Lawrence Solomon (CRD #1093887, Registered Principal, Miami, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Solomon failed to respond to NASD requests to provide information and failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C07000052)

Robert James Strain, II (CRD #2787826, Registered Representative, Charlotte, North Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Strain caused the wire transfer of funds totaling \$500 from an investment club account to his aunt's bank account although he was not entitled to any of the funds in this account. Strain also failed to respond to NASD requests for information. (NASD Case #C07000076)

Thomas Otto Tabat (CRD #1011671, Registered Representative, Glendale, 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, Tabat consented to the described sanction and to the entry of findings that he participated in private securities transactions outside the scope of his employment with a member firm. The findings also stated that Tabat failed to provide prior written notice to, or receive written approval from, his member firm to participate in the transactions. (NASD Case #C3A010007)

Verdell N. Tassler (CRD #1984549, Registered Representative, Abilene, Kansas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Tassler failed to respond to NASD requests for information. (NASD Case #C04000032)

Robert Tretiak (CRD #1416058, Registered Principal, Las Vegas, Nevada) was barred from association with any NASD member in any principal capacity, suspended from association with any NASD member in any capacity for two years and six months, fined \$35,000, and suspended until an outstanding arbitration award is paid in full plus an additional 30 days. If, after 30 months from the date of the National Adjudicatory Council (NAC) decision, an outstanding arbitration award is not fully paid or otherwise satisfied, the suspension imposed will convert to a bar in all capacities. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of two Office of Hearing Officers (OHO) decisions. The sanctions were based on findings that Tretiak fraudulently sold securities in an initial public offering (IPO) while using a materially misleading prospectus and in violation of the

contingency requirements contained in the prospectus and that he failed properly to establish an escrow account for the IPO. The NAC also found that Tretiak failed to satisfy a \$52,360 arbitration award that had been reduced to civil judgment.

Tretiak has appealed this action to the SEC and the sanctions, other than the principal bar, and the suspension until he pays off the arbitration award, are not in effect pending consideration of the appeal. The principal bar and suspension, until the arbitration award is paid, began March 9, 2001. (NASD Cases #C02990042 and #C02980085)

Jason Varzarevsky (CRD #2891755, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for six months, ordered to pay \$30,000 in restitution to a public customer, and ordered to requalify by exam as a general securities representative within 90 days of the approval and issuance of the AWC. If Varzarevsky fails to requalify within the time period, he shall not associate with any NASD member in any capacity until he requalifies. Payment of the fine and satisfactory proof of restitution, with interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Varzarevsky consented to the described sanctions and to the entry of findings that he made material misrepresentations to induce a public customer to purchase shares of stock.

Varzarevsky's suspension began March 19, 2001, and will conclude at the close of business September 18, 2001. (NASD Case #C10010031)

Louis David Verrone (CRD #1037862, Registered Representative, Johnstown, Pennsylvania) 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 disgorge \$10,000 received in commissions. Satisfactory proof of payment of the disgorgement must be made before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Verrone 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. (NASD Case #C9A010004)

David Michael Weeks (CRD #2280967, Registered Principal, West Hills, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. In light of the financial status of Weeks, no monetary sanction has been imposed. Without admitting or denying the allegations, Weeks consented to the described sanction and to the entry of findings that he effected transactions in the accounts of public customers without the prior knowledge or consent of the customers and commingled the funds of public customers with cash and/or securities held in his personal securities account. The findings also stated that Weeks failed to respond to NASD requests for information and documentation. (NASD Case #C10010013)

Robert Walter White (CRD #2118340, Registered Representative, Winston-Salem, North Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that White received \$10,000 from a public customer to be deposited in the customer's investment account and, instead, converted the funds to his own use and benefit without the customer's knowledge or consent. The findings also stated that White failed to respond to NASD requests for information. (NASD Case #C05000052)

Richard Peter Williams, Jr. (CRD #2556997, Registered Representative, Pompton Lakes, 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 30 days. 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, Williams consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U-4 to disclose that he had been named as a respondent in an investment-related, consumer-initiated arbitration which alleged that he was involved in sales practice violations.

Williams' suspension began April 2, 2001, and will conclude at the close of business May 1, 2001. (NASD Case #C9B010010)

Scott Douglass Winningham (CRD #2398475, Registered Representative, Canton, Michigan) 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, Winningham consented to the described sanctions and to the entry of findings that he prepared and delivered to members of the public, sales literature in the form of a flyer offering his services as a financial consultant, and failed to have a registered principal of the firm approve the flyer prior to its use. The findings also stated that Winningham failed to provide the customers with a sound basis for evaluating the facts presented in the flyer with regard to the representations that no account fee and no commissions would be charged, and for evaluating the financial consulting expertise being offered. Moreover, the NASD found that the flyer contained a testimonial concerning the quality of his advice but failed to clearly state that "the testimonial may not be representative of the experience of other clients," and "the testimonial is not indicative of future performance or success." Furthermore, the NASD determined that the testimonial in the flyer contained statements and claims that were exaggerated, unwarranted, and/or misleading.

Winningham's suspension began April 2, 2001, and concluded at the close of business April 6, 2001. (NASD Case #C8A010008)

Daniel Alberto Zappala (CRD #2762038, Registered Representative, Merrick, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for six months, and ordered to pay \$3,500 in restitution to a public customer. Payment of the fine and satisfactory proof of payment of the restitution,

with interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Zappala consented to the described sanctions and to the entry of findings that he effected transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent.

Zappala's suspension began April 2, 2001, and will conclude at the close of business October 1, 2001. (NASD Case #C10010038)

Individuals Fined

Joseph Edward Kurczodyna (CRD #864454, Registered Principal, Lake Bluff, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$12,500. Without admitting or denying the allegations, Kurczodyna consented to the described sanctions and to the entry of findings that he failed to establish, maintain, and enforce written supervisory procedures, or to take reasonable steps to supervise individuals to prevent free-riding and withholding violations in an IPO. (NASD Case #C8A010011)

William Joseph Shaughnessy (CRD #870259, Registered Representative, Tucson, Arizona) submitted an Offer of Settlement in which he was censured and fined \$10,000. Without admitting or denying the allegations, Shaughnessy consented to the described sanctions and to the entry of findings that he made unsuitable recommendations for the joint securities account of public customers that resulted in an over-concentration of precious metals-related investments in the account. The findings also stated

that Shaughnessy completed a new account form for the customers' securities account that contained material inaccuracies. (NASD Case #C3A000036)

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of March 9, 2001. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

LH Ross & Company, Inc. (CRD #37920, Boca Raton, Florida) and Franklyn Ross Michelin (CRD #2459180, Registered Principal, Boca Raton, Florida) were censured and fined \$24,000, jointly and severally. Respondents were also jointly and severally assessed \$2,909.70 as costs, including \$2,159.70 for transcripts and an administrative fee of \$750. The sanctions were based on findings that the respondents failed to implement the supervisory tape recording procedures required by the NASD taping rule.

This action was called for review by the NAC and the sanctions are not in effect pending consideration of the review. (NASD Case #C07000033)

Frank Anthony Cardia, Jr. (CRD #2808582, Registered Representative, Bogota, New Jersey) was barred from association with any NASD member in any capacity and fined \$50,000 for falsifying records concerning a customer's account and for providing false information to the NASD. Cardia was also suspended from associa-

tion with any NASD member in any capacity for six months, fined \$30,000 for pre-selling the after-market in a stock, and ordered to pay \$8,637.95, plus interest, in restitution to a customer for failing to execute a limit order. The sanctions were based on findings that Cardia intentionally falsified a public customer's account records by falsely representing that another individual was the account executive on the customer's account and providing false testimony to the NASD during an on-the-record interview. Cardia also violated the antifraud provisions of the securities laws by utilizing a tie-in arrangement in which the customer had to agree to purchase aftermarket shares of stock in order to purchase shares in an IPO, and failed to follow a customer's instruction to sell a security. In addition, the NASD found that Cardia falsely stated in a written response to an NASD request for information that no customer had complained that he failed to place a sell limit order.

Cardia has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C9B000007)

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.

Salam Aburas (CRD #2969004, Registered Representative, Berwyn, Illinois) was named as a respondent in an NASD complaint alleging that he purchased, or caused to be purchased, shares of common stock for the account of a public customer, without the knowledge or consent of the customer, and in the absence of written or oral authorization from the customer allowing him to exercise discretion in said account. (NASD Case #C8A010014)

Wendell Duane Beldon (CRD #1324913, Registered Principal, Tulsa, Oklahoma) was named as a respondent in an NASD complaint alleging that he recommended and effected sales of Class B mutual fund shares to a public customer without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation and needs. (NASD Case #C05010012).

Steven John Manocchia (CRD #1010935, Registered Representative, Smithfield, Rhode Island) was named as a respondent in an NASD complaint alleging that he misappropriated and converted at least \$8,198.44 in funds from a loan taken on a variable life insurance policy held in the name of a public customer. The complaint also alleges that Manocchia, without the consent of the customer, caused the loan check to be issued and sent to his address, forged the customer's signature on the check, added his own signature, and deposited the check into his own bank account. (NASD Case #C11010007)

Robert David Mayfield (CRD #2386752, Registered Principal, Murrietta, California) and Daniel Joseph Frydrych (CRD #1343609, Registered Principal, Temecula, California) were named as respondents in an NASD complaint alleging that they recommended to public customers the purchase and sale of securities without having reasonable grounds for believing that such recommendations were suitable for the customers in light of the nature of the transactions and the facts disclosed by the customers as to their other securities holdings, financial situation, investment objectives, circumstances, and needs. The complaint further alleges that Frydrych and Mayfield engaged in unethical conduct in that they provided the customers and their member firm with a materially false and misleading mutual fund switch form negatively impacting their ability to accurately assess the suitability of the transactions. (NASD Case #C02010003)

Thomas Vincent Meaglia (CRD #862483, Registered Representative, Glendora, California) and Richard Steven Meza (CRD #2570853, Registered Representative, Corina, California) were named as respondents in an NASD complaint alleging that

they exercised discretion in the accounts of public customers, without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by their member firm. The complaint also alleges that Meaglia and Meza recommended and engaged in transactions in the account of public customers, and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. (NASD Case #C02010002)

Kevin Arthur Sawicki (CRD #3100380, Registered Representative, West Palm Beach, Florida) was named as a respondent in an NASD complaint alleging that he failed to respond to NASD requests for information. The complaint also alleges that Sawicki made misrepresentations and material omissions of fact to public customers in order to induce the customers to purchase stock; failed to disclose that he was paid commission on the sales; and failed to discuss any negative or cautionary information regarding the stock to the customers. (NASD Case #C07010006)

Sean Patrick Tenney (CRD #3055872, Registered Representative, Orlando, Florida) was named as a respondent in an NASD complaint alleging that he forged the signature of a public customer on a Mutual Fund and Certificate Redemption, Exchange, and/or Transfer of Investment form and a Financial Advisory Service Agreement form without the customer's authorization. The complaint also alleges that Tenney failed to respond to NASD requests for information. (NASD Case #C07010012)

Michael Verbitsky a.k.a. Michael Levine (CRD #3070975, Registered Representative, Livingston, New Jersey) was named as a respondent in an NASD complaint alleging that he sold and purchased securities for the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization from the customers to exercise discretion in said accounts. The complaint further alleges that Verbitsky failed to respond to NASD requests for information. (NASD Case #C9B010018)

Firm Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement

LCP Capital Corp. f.k.a First Hanover Securities,
Staten Island, New York
(February 15, 2001)

Firms Suspended For Failure To Supply Financial Information

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

Caribbean Securities LLC,
New York, New York
(March 15, 2001)

Montrose Capital Management LTD, New York, New York
(March 12, 2001)

Northridge Capital Corporation,
Melville, New York
(March 12, 2001)

The Taggart Company LTD,
Beverly Hills, California
(March 12, 2001)

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

Camm, Daniel A.
Odessa, Florida
(February 9, 2001)

DiMaria, Anthony F.
Bronx, New York
(February 9, 2001)

Millard, Russell W.
Redlands, California
(March 7, 2001)

Pagano, Louis J.
Staten Island, New York
(March 7, 2001)

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.)

Breckenridge, Deborah J.
Sunrise, Florida
(February 20, 2001)

Carnahan, Michael
Jupiter, Florida
(March 3, 2001)

Clyde, Stephen B.
Richwood, New Jersey
(March 9, 2001)

Dunlap, III, Arthur Lee
Winchester, Virginia
(February 28, 2001)

Hanson, Jr., Paul
Sausalito, California
(February 13, 2001)

Kuwata, Colburn Yoshitaka
Honolulu, Hawaii
(March 9, 2001)

Litwin, Gerald
Summit, New Jersey
(February 21, 2001)

Mason, Christopher T.
Glendale, Arizona
(March 7, 2001)

Monares, Ed J.
Malibu, California
(March 6, 2001)

Phillips, Daniel John
Stuart, Florida
(March 7, 2001)

Reed, Christopher R.
Cincinnati, Ohio
(February 21, 2001)

Santucci, Joel M.
Hallandale, Florida
(March 9, 2001)

Welsome, William A.
San Diego, California
(March 6, 2001)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement

The date the registration was suspended is included after the entry. If the individual has complied, the listing also includes the date the suspension was lifted.

Jones, Marvin Hughey
Long Beach, California
(February 26, 2001-March 6, 2001)

Lemieux, John Charles
Levittown, New York
(March 2, 2001-March 19, 2001)

NASD Regulation Files Six Enforcement Actions Involving Marketing and Sales of Variable Annuities

NASD Regulation announced the filing of six separate enforcement actions against firms for the improper marketing and sale of variable annuities. One individual was also named. These disciplinary actions represent the first cases resulting from a series of special examinations focusing on the sale of variable contracts conducted by NASD Regulation during 1999 and 2000. Monetary sanctions, including restitution, in the five settled actions total more than \$112,000.

The six cases include allegations and findings of violations in the following areas:

- Misleading and unbalanced advertising and sales literature that failed to adequately disclose that variable contracts purchased in tax-deferred plans provide no additional benefit to the customer;
 - Use of a Web site that implied that tax benefits in tax-deferred plans are only available if they are funded with an annuity contract;
 - Unsuitable sales of variable annuities;
 - Failure to collect customer financial and other information for use in making suitability determinations;
- and
- Deficient supervisory procedures with respect to suitability reviews.

The sanctions in this group of settled cases include censures and fines ranging from \$10,000 to \$32,500 and restitution to an

affected public customer. These actions were investigated and filed by NASD Regulation offices in New Orleans and Dallas, and represent the continuing effort of NASD Regulation to address problem areas in the sale, distribution and marketing of variable products.

Sales of variable products have grown enormously over the past several years, and with the rise in new annuity products, investors may be inclined to replace their current annuity with a new one in a tax-free exchange. To help investors consider a replacement, NASD Regulation today issued an *Investor Alert*, offering investors key points to review before replacing a variable product. Over the past few years, NASD Regulation has also offered guidance to its members on the proper sale of variable products through the issuance of *Notices to Members 99-35* and *00-44* and an article in the Summer 2000 issue of the *Regulatory and Compliance Alert*. These information pieces have given firms and their brokers sound guidance on how to sell variable annuity and life contracts, and also offer key points to consider when evaluating the suitability of these products for investors.

Mary L. Schapiro, President of NASD Regulation, said, "These enforcement actions demonstrate that variable annuities, like other securities products, must be properly sold and must be suitable investments for those who purchase them. Because these are complex products both for the broker who sells them, as well as the investor who buys them, it is extremely important that firms selling variable annuities have supervisory systems in place that will be able to detect if unsuitable sales are taking place."

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD Regulation in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because the complaints are unadjudicated, the respondents should be contacted before drawing any conclusion regarding the allegations in the complaints.

Under NASD rules, individuals and firms named in complaints can file a response and request a hearing before an NASD Regulation disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD.

VARIABLE ANNUITY ENFORCEMENT ACTIONS INCLUDE:

1. American United Life Insurance Company - Case No. C05010011

American United Life Insurance Company is named in this complaint, which alleges:

- a) Misleading and unbalanced advertising and sales literature that failed to adequately disclose that variable contracts purchased in tax-deferred plans provide no additional benefit to the customer;
- b) Use of a Web site that implied that tax benefits in tax-deferred plans are only available if they are funded with annuity contracts;
- c) Failure to adequately disclose that the investment vehicles funding the plans are variable contract sub-accounts, as opposed to mutual funds; and

d) Inadequate written supervisory procedures.

Under the NASD rules, the individuals and the firms named in the complaints can file a response and request a hearing before an NASD Regulation disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD.

2. Prudential Securities, Inc. - Case No. C06010005

Prudential Securities, Inc. settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

Failure to enforce the firm's written procedures relating to the sale of annuities—certain documentation (e.g., order tickets and other documents required under the firm's own procedures) was missing in 201 transactions reviewed.

The firm was censured and fined of \$10,000.

3. First Union Brokerage Services, Inc. - Case No. C05010010

First Union Brokerage Services, Inc. settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

a) The firm failed to establish and maintain adequate written procedures to supervise the sale of variable annuity contracts in terms of how reviews were to be done, how to evidence the review, how to supervise the suitability of the allocation of premium payments to sub-accounts, and how certain of the review responsibilities could be delegated.

b) The firm failed to obtain customer information required pursuant to its written procedures.

The firm was censured and fined \$32,500, which includes \$5,000 of disgorgement.

4. Allmerica Investments, Inc.- Case No. C06010004

Allmerica Investments, Inc. settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

Deficient written supervisory procedures relating to annuity sales – routine procedure not in place to ensure adequate principal review of customers' investment objectives.

The firm was censured and fined \$15,000.00.

5. Ralph C. Evans - Case No. C05010009

Ralph C. Evans settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

Evans sold a \$325,000 annuity contract into a revocable trust for the benefit of a 76-year-old widow. Funds for the purchase were derived from the sale of Class B mutual funds, for which the account incurred contingent deferred sales charges, and from a margin loan. The transaction was unsuitable because Evans had not made any determination about whether the anticipated holding period was long enough such that the tax-deferred benefits would be likely to outweigh the fees imposed on the annuity relative to other investments. These included the contingent deferred sales charges paid in

connection with the sale of the mutual fund shares and the margin interest.

Evans was censured, fined \$10,000, and ordered to pay restitution to the affected customer in the amount of \$20,130.61.

6. Lutheran Brotherhood Securities Corp. - Case No. C06010003

Lutheran Brotherhood Securities Corporation settled the following charges without admitting or denying NASD Regulation allegations. The findings include:

a) Failure to collect investment objective information in connection with 12 of 99 annuity transactions reviewed; and

b) Deficient written supervisory procedures concerning annuity sales with respect to (i) collection of investment objective information, (ii) supervisory review of financial status information, and (iii) supervisory review of allocation of premium payments to sub-accounts in relation to investment objectives.

The firm was censured and fined \$25,000.

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INFORMATIONAL

Predispute Arbitration Agreements

SEC Approves Amendments To Prohibit Terminated Or Suspended Member Firms From Enforcing Predispute Arbitration Agreements Against Customers In The NASD Arbitration Forum;
Effective Date: June 11, 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.

- Executive Representatives
- Legal & Compliance
- Senior Management

KEY TOPICS

- Arbitration
- Code of Arbitration Procedure

Executive Summary

On April 6, 2001, the Securities and Exchange Commission (SEC or Commission) approved an amendment to National Association of Securities Dealers, Inc. (NASD®) Rule 10301 to prohibit a member firm whose membership has been terminated, suspended, canceled, or revoked, or that has been expelled from the NASD, or that is otherwise defunct, from enforcing a predispute arbitration agreement against a customer in the NASD forum, unless the customer agrees to arbitration in writing after the claim has arisen.¹

As a corollary to this rule change, before serving a customer claim against a member firm, NASD Dispute Resolution, Inc. will notify the customer if the member firm falls into one of the categories enumerated in the rule, so customers can make an informed decision regarding whether to proceed in arbitration, to file their claim in court, or to take no action. Although the rule change only applies to claims against member firms, before serving a customer claim against an associated person, NASD Dispute Resolution will also inform the customer if the associated person's registration is terminated, revoked, or suspended.

Included with this *Notice* is Attachment A, the text of the amendment that will become effective on June 11, 2001.

Questions/Further Information

Questions regarding this *Notice* may be directed to Laura Leedy Gansler, Counsel, NASD Dispute Resolution, Inc., at (202) 728-8275.

Discussion, Background

In October 1998, the General Accounting Office (GAO) undertook a study of the securities industry arbitration process, focusing on the number of unpaid arbitration awards. In its June, 2000 report, *Securities Arbitration: Actions Needed to Address Problem of Unpaid Awards* (GAO Report), the GAO found that a significant percentage of the awards favorable to customers that were issued in 1998 were unpaid. The majority of unpaid awards involved arbitration cases against firms that the NASD had terminated from membership for serious violations of the federal securities laws and NASD rules, or that had filed for bankruptcy. In fact, investors collect their awards in well over 90 percent of the NASD cases involving active firms.

The GAO noted that the NASD takes aggressive action to address complaints about non-payment of awards. In response to the recommendations in the GAO Report, NASD Dispute Resolution has taken the following additional steps to track and address non-payment. In *NASD Notice to Members 00-55*, published August 10, 2000, NASD Dispute Resolution introduced a new system of monitoring and tracking compliance with arbitration awards by members and associated persons. On September 18, 2000, NASD Dispute Resolution began asking claimants to notify it if a member or associated person has not paid the arbitration award within 30 calendar days of receipt of the award. In addition, member firms are now required to notify NASD Dispute Resolution in writing within 30 days of receipt of an award that they or their associated persons have paid or otherwise complied with the award, or to identify a valid basis

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for non-payment. NASD Dispute Resolution has agreed to provide the Commission with quarterly reports on the results of this process. These steps will enable the NASD to institute suspension proceedings promptly when appropriate, and will prevent unnecessary regulatory effort in cases in which the award is the subject of a pending motion to vacate or there is another valid basis for non-payment.

Even with NASD Dispute Resolution's vigorous efforts to ensure payment of awards, the GAO Report highlighted that customers in arbitration cases involving terminated or suspended members face a significantly higher risk of non-payment than do customers in cases involving active members. While non-payment of awards by terminated or suspended members is beyond the control of NASD Dispute Resolution, NASD Dispute Resolution believes that, even if customers have signed a predispute arbitration agreement, they should be able to seek relief in court, where they could more directly and immediately avail themselves of any judicial remedies available under state law, including those that might prevent the dissipation of assets.

Accordingly, NASD Dispute Resolution has amended the Code of Arbitration Procedure (Code) to prohibit member firms whose NASD membership has been terminated, suspended, canceled, or revoked, or that have been expelled from the NASD, or that are otherwise defunct, from enforcing predispute arbitration agreements against customers in the NASD arbitration forum, unless the customer agrees to arbitration in writing after the claim has arisen.

Description Of Amendment

NASD Dispute Resolution has amended Rule 10301 of the Code, governing required submission of claims, to provide that a claim by a customer involving a member firm (1) whose membership is terminated, suspended, canceled, or revoked, (2) that has been expelled from the NASD, or (3) that is otherwise defunct, is ineligible for arbitration in the NASD arbitration forum unless the customer agrees to arbitration in writing after the claim has arisen.²

The rule applies only to claims against member firms that fall into one of the categories enumerated in the rule. As a corollary to this rule change, before serving a customer claim against a member firm, NASD Dispute Resolution will notify the customer if the member firm falls into one of the enumerated categories, so that the customer can make an informed decision regarding whether to proceed in arbitration, to file the claim in court, or to take no action.

Because the rule does not apply to claims against associated persons, such claims remain eligible for arbitration pursuant to Rule 10301(a). However, before serving a customer claim against an associated person, NASD Dispute Resolution will inform the customer if the associated person's registration is terminated, revoked, or suspended.

Effective Date

The amended rule will apply to all claims served on or after June 11, 2001.

Endnotes

- 1 Exchange Act Release No. 44158 (April 6, 2001) (File No. SR-NASD-01-08), 66 Federal Register 19267 (April 13, 2001).
- 2 NASD Dispute Resolution notes that the rule is similar in principle to Rule 10301(d) of the Code, which provides that class actions are ineligible for arbitration in the NASD forum.

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ATTACHMENT A

Text of Amendment

New language is underlined; deleted language is in brackets.

10000. Code of Arbitration Procedure

10301. Required Submission

(a) Any dispute, claim, or controversy eligible for submission under the Rule 10100 Series between a customer and an active member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated persons shall be arbitrated under this Code, as provided by any duly executed and enforceable written agreement or upon the demand of the customer. A claim involving a member in the following categories shall be ineligible for submission to arbitration under the Code unless the customer agrees in writing to arbitrate the claim after it has arisen:

(1) A member whose membership is terminated, suspended, canceled, or revoked;

(2) A member that has been expelled from the NASD; or

(3) A member that is otherwise defunct.

(b) – (d) Unchanged.

INFORMATIONAL

Disclosure Of Order Routing

Member Obligations To Provide Statistical Information About Order Routing Under Rule 11Ac1-6 Of The Securities Exchange Act Of 1934

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
- Senior Management

KEY TOPICS

- Exchange Act Rule 11Ac1-6
- Disclosure of Order Routing

Executive Summary

Rule 11Ac1-6 under the Securities Exchange Act of 1934 (Exchange Act) requires all broker/dealers that route customer orders in equity and option securities to make publicly available quarterly reports that disclose the venues to which it routes non-directed orders in certain covered securities. The Rule further requires broker/dealers to disclose the nature of any relationship they have with those venues, including any payment for order flow arrangements. Finally, the Rule requires broker/dealers to disclose, upon customer request, the venues to which individual orders were sent for execution. The compliance date for the Rule is July 2, 2001.

Questions/Further Information

Please note that this is a Securities and Exchange Commission (SEC) rule. Accordingly, questions of interpretation or other concerns about the Rule should be directed to the SEC. However, members may direct general questions concerning this *Notice* to Kathleen O'Mara, Assistant General Counsel, or Philip Shaikun, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8071.

Background And Information

In order to improve public disclosure of order execution and routing practices, the SEC on November 17, 2000 adopted Exchange Act Rules 11Ac1-5¹ and 11Ac1-6. Rule 11Ac1-6 requires all broker/dealers that route customer orders in equity and option securities to make publicly available quarterly reports about the routing of customer orders. More specifically, the Rule

requires quarterly disclosure of the percentage of customer orders that were non-directed; the identity of the 10 venues to which the largest number of non-directed orders were routed for execution; the identity of any other venues to which at least five percent of non-directed orders were routed for execution; and disclosure of payment for order flow or other material arrangements between broker/dealers and those venues. The Rule further requires broker/dealers to disclose to customers, upon request, the venue to which the customer's orders were routed for the previous six months and certain other data about those customer orders. Attachment A of this *Notice* contains the text of the Rule.

The scope of Rule 11Ac1-6 differs in some ways from that of Rule 11Ac1-5. For example, Rule 11Ac1-6 covers a wider range of securities. First, whereas Rule 11Ac1-5 applies only to national market system securities, the definition of "covered security" in Rule 11Ac1-6 also includes Nasdaq SmallCap equities and listed options. Second, the Rule applies to all broker/dealers that route orders on behalf of their customers, whereas Rule 11Ac1-5 applies generally to broker/dealers that execute orders. The term "customer order" is defined in Rule 11Ac1-6 as any order to buy or sell a covered security that is not for the account of a broker/dealer. It excludes, however, any order for a quantity of a security having a market value of at least \$50,000 for a covered security that is an option contract and a market value of at least \$200,000 for any other covered security. Third, Rule 11Ac1-6 applies to all types of orders, some of which are specifically excluded from the coverage of Rule 11Ac1-5 (e.g., pre-opening orders and short sale

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orders), provided that they are “non-directed orders.” All customer orders are considered to be non-directed in the absence of specific customer instructions on where they are to be routed.

The Rule requires that the quarterly reports be divided into four sections, each section to address a different category of covered securities: (1) equity securities listed on the New York Stock Exchange; (2) equity securities qualified for inclusion on Nasdaq; (3) equity securities listed on the American Stock Exchange or another national securities exchange; and (4) options. Each of these sections must contain the quantitative information identified above concerning the percentage of non-directed orders and the venues to which those orders were routed. Additionally, each section must discuss the broker/dealer’s relationship, if any, with those venues, including payment for order flow or profit sharing arrangements.²

Broker/dealers must “make publicly available” the quarterly reports within one month after the end of the quarter addressed in the report. The Rule defines “make publicly available” to require broker/dealers to (1) post the report on a free Internet Web site; (2) furnish a written copy of the report on request; and (3) notify customers annually that a copy of the reports will be furnished on request.

Effective Date

Broker/dealers must comply with the Rule for all covered securities beginning on July 2, 2001. Therefore, the first required report must cover transactions during the quarter ending on September 30, 2001. That quarterly report must be made publicly available by October 31, 2001. Broker/dealers must also respond to customer requests for order-routing information for orders routed on July 2, 2001 and after.

Endnotes

- 1 Rule 11Ac1-5 requires “market centers” to provide statistical information concerning order execution. The details of that Rule are contained in *NASD Notice to Members 01-16*. Subsequent interpretive guidance and exemption information related to that Rule can be found on the NASD Regulation Web Site (www.nasdr.com).
- 2 The term “payment for order flow” is defined very broadly in Exchange Act Rule 10b-10(d)(9) to include any payment or benefit that results in compensation to the broker/dealer for routing orders to a particular venue. The term “profit-sharing relationship” is defined in paragraph (a)(7) of Rule 11Ac1-5 to mean any ownership or other type of affiliation under which the broker/dealer, directly or indirectly, shares in any profits that may be derived from the execution of non-directed orders. It, therefore, specifically covers internalization of customer orders by a broker/dealer that executes customer orders as principal.

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ATTACHMENT A

§240.11Ac1-6 Disclosure of order routing information.

(a) Definitions. For the purposes of this section:

(1) The term covered security shall mean:

(i) Any national market system security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as defined in Section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)); and

(ii) Any option contract traded on a national securities exchange for which last sale reports and quotation information are made available pursuant to an effective national market system plan.

(2) The term customer order shall mean an order to buy or sell a covered security that is not for the account of a broker or dealer, but shall not include any order for a quantity of a security having a market value of at least \$50,000 for a covered security that is an option contract and a market value of at least \$200,000 for any other covered security.

(3) The term directed order shall mean a customer order that the customer specifically instructed the broker or dealer to route to a particular venue for execution.

(4) The term make publicly available shall mean posting on an Internet web site that is free and readily accessible to the public, furnishing a written copy to customers on request without charge, and notifying customers at least annually in writing that a written copy will be furnished on request.

(5) The term non-directed order shall mean any customer order other than a directed order.

(6) The term effective national market system plan shall have the meaning provided in §240.11Aa3-2(a)(2).

(7) The term national market system security shall have the meaning provided in §240.11Aa2-1.

(8) The term payment for order flow shall have the meaning provided in §240.10b-10(d)(9).

(9) The term profit-sharing relationship shall mean any ownership or other type of affiliation under which the broker or dealer, directly or indirectly, may share in any profits that may be derived from the execution of non-directed orders.

(10) The term time of the transaction shall have the meaning provided in §240.10b-10(d)(3).

(b) Quarterly report on order routing.

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(1) Every broker or dealer shall make publicly available for each calendar quarter a report on its routing of non-directed orders in covered securities during that quarter. For covered securities other than option contracts, such report shall be divided into three separate sections for securities that are listed on the New York Stock Exchange, Inc., securities that are qualified for inclusion in the Nasdaq Stock Market, Inc., and securities that are listed on the American Stock Exchange LLC or any other national securities exchange. Such report also shall include a separate section for covered securities that are option contracts. Each of the four sections in a report shall include the following information:

(i) The percentage of total customer orders for the section that were non-directed orders, and the percentages of total non-directed orders for the section that were market orders, limit orders, and other orders;

(ii) The identity of the ten venues to which the largest number of total non-directed orders for the section were routed for execution and of any venue to which five percent or more of non-directed orders were routed for execution, the percentage of total non-directed orders for the section routed to the venue, and the percentages of total non-directed market orders, total non-directed limit orders, and total non-directed other orders for the section that were routed to the venue; and

(iii) A discussion of the material aspects of the broker's or dealer's relationship with each venue identified pursuant to paragraph (b)(1)(ii) of this section, including a description of any arrangement for payment for order flow and any profit-sharing relationship.

(2) A broker or dealer shall make the report required by paragraph (b)(1) of this section publicly available within one month after the end of the quarter addressed in the report.

(c) Customer requests for information on order routing.

(1) Every broker or dealer shall, on request of a customer, disclose to its customer the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.

(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (c)(1) of this section.

(d) Exemptions. The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

INFORMATIONAL

Margin Disclosure

SEC Approves NASD Rule Proposal Requiring Delivery Of Margin Disclosure Statement To Non-Institutional Customers

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
- Senior Management

KEY TOPICS

- Customer Disclosures
- Margin

Executive Summary

On April 26, 2001, the Securities and Exchange Commission (SEC) approved National Association of Securities Dealers, Inc. (NASD[®]) Rule 2341, which requires all NASD members to deliver to non-institutional customers a specified disclosure statement that discusses the operation of margin accounts and the risks associated with trading on margin (the "rule change").¹ The rule change requires that the margin disclosure statement be provided to margin customers in a separate document prior to or at the opening of a margin account. The rule change also requires that the margin disclosure statement or an abbreviated version of the disclosure statement be provided to margin customers on an annual basis, either in a separate document or as part of other account documentation. Members are permitted to develop an alternative margin disclosure statement, provided that the alternative disclosure statement is substantially similar to the mandated statement and incorporates all of the relevant concepts.

The text of the rule change is provided in Attachment A. Sample initial and annual margin disclosure statements are provided in Attachments B and C, respectively. The rule change becomes effective on **June 4, 2001**. Members are required to provide the initial disclosure statement to existing margin customers at the time of the next annual statement to the customer, but no later than **November 30, 2001**.

Questions concerning this *Notice* may be directed to Stephanie M. Dumont, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc.

(NASD Regulation), at (202) 728-8176, or Susan DeMando, Director, Financial Operations, Member Regulation, NASD Regulation, at (202) 728-8411.

Background

The growth in the level of customer margin account balances, coupled with the increase in customer inquiries and complaints to NASD Regulation and the SEC relating to the handling of margin accounts, has raised concerns as to whether investors understand the operation and risks associated with margin trading. NASD Regulation staff believes that investors' misconceptions about margin requirements, particularly with respect to maintenance margin, may cause investors to underestimate the risks of margin trading and to misunderstand the operation of and reasons for margin calls. Investors who cannot satisfy margin calls have had substantial portions of their accounts liquidated to satisfy these margin calls. Such liquidations can create realized losses for these customers that may far exceed the risk of loss they would have faced if they had not traded on margin.

A report issued last year by the General Accounting Office (GAO) noted that the SEC has determined from the customer complaints it has received that many investors who traded online did not understand margin requirements.² The lack of disclosure relating to when firms would sell securities in a margin account to cover margin loans was among the leading margin-related complaints that the SEC received.

The GAO Report also collected and summarized information from 12 online broker/dealers.³ All of the

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online firms contacted did provide their customers the limited information currently required on margin trading.⁴ Some firms also provided additional information relating to margin, such as requirements for account opening, procedures for selling securities to cover account losses, or special requirements for volatile stocks. However, nearly half of the firms contacted automatically⁵ opened margin accounts for new customers without providing the customer information relating to the risks associated with margin trading. At three firms that automatically opened margin accounts, customers would find out about their account type only if they read and understood their account agreements, which SEC staff indicated were written in legal language and might be difficult for investors to understand. Three of the 12 online broker/dealers contacted did take "extra measures" to ensure that their customers understood that stocks could be sold to cover outstanding loans in a margin account. These firms included information on their Web sites that explained that accounts could be liquidated in fast-moving markets before the customary period.

The GAO Report concluded that better investor protection information, including information relating to margin requirements, was needed on Web sites of some online broker/dealers. In this regard, the GAO Report

recommended that the SEC ensure that broker/dealers with online trading systems include accurate and complete information on their Web sites regarding, among other things, margin requirements.

Description Of Rule Change

Although NASD Regulation recognizes that some members are providing disclosures to customers relating to margin, the content of these disclosures is not consistent from firm to firm and may not always be in a form that is understandable to investors. As such, the rule change requires members to deliver to non-institutional customers a specified disclosure statement that discusses the operation of margin accounts and the risks associated with trading on margin.⁶ The rule change also requires members to deliver the disclosure statement or an abbreviated version of the disclosure statement annually to all non-institutional customers with margin accounts.

A sample initial margin disclosure statement and an abbreviated version of the disclosure statement for use in meeting the annual delivery requirement are provided in Attachments B and C, respectively. Members are permitted to develop alternative margin disclosure statements to meet these requirements, provided that the alternative disclosure statements are substantially

similar to the mandated initial or annual statements and incorporate all of the relevant concepts.

Members are required to deliver the initial and annual disclosure statement, in writing or electronically, to customers on an individual basis.⁷ The initial disclosure at or prior to the opening of the account must be made in a separate document, even if a member chooses to deliver the disclosures as part of or within the margin agreement or other opening account documentation. However, with respect to the annual disclosure requirement, members are permitted to provide the disclosures within other documentation, such as the account statement.

Both the clearing firm and the introducing firm are responsible for ensuring that the customer receives the required disclosures under new Rule 2341. However, pursuant to NASD Rule 3230, the clearing firm and introducing firm may specify, as part of the clearing agreement, which party is responsible for delivery of the initial and annual disclosure statements to the customer.

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Endnotes

- 1 See Securities Exchange Act Release No. 44223 (April 26, 2001), 66 FR 22274 (May 3, 2001) (File No. SR-NASD-00-55). The requirements described herein apply to **all NASD members**, regardless of the member's designated examining authority (DEA) for margin purposes.
- 2 See *On-Line Trading, Better Investor Protection Information Needed*, Report to Congressional Requesters, GAO, General Government Division, 00-43 (May 2000) (the "GAO Report"). According to the GAO Report, between January 1998 and June 1999, 140 margin-related complaints concerning online trading firms were submitted to the SEC.
- 3 These firms represented less than 10 percent of the total estimated number of firms that offer online trading. However, they accounted for approximately 90 percent of the online *trading volume* during early 1999.
- 4 Rule 10b-16 of the Securities Exchange Act of 1934 ("SEC Rule 10b-16") requires that broker/dealers that extend credit to customers to finance securities transactions furnish, in writing, specified information regarding the terms of the loan. These disclosures must be made on both an initial and periodic basis. For instance, at the time a customer opens a margin account, a broker/dealer must provide the customer with a written statement disclosing, among other things, the annual rate of interest, the method of computing interest, and what other credit charges may be imposed.
- 5 Those firms that provided clear indications of the type of account to be opened offered their customers the option on the Web site to choose either a cash or margin account, or both. However, those firms that automatically opened margin accounts only offered new customers a choice with respect to account ownership, such as joint or individual account.
- 6 The term "non-institutional customer" is defined in the rule change as a customer that does not qualify as an "institutional account" under NASD Rule 3110(c)(4). Rule 3110(c)(4) defines "institutional account" as the account of: (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing similar functions); or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.
- 7 Members are required to deliver the disclosure statement to each customer individually. For example, a member firm posting the disclosure statement on its Web site would not fulfill the delivery requirements, although such supplemental disclosure would be beneficial to investors.

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ATTACHMENT A – RULE TEXT

Rule 2341. Margin Disclosure Statement

(a) No member shall open a margin account, as specified in Regulation T of the Board of Governors of the Federal Reserve System, for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in writing or electronically, and in a separate document, the following margin disclosure statement:

Your brokerage firm is furnishing this document to you to provide some basic facts about purchasing securities on margin, and to alert you to the risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by your firm. Consult your firm regarding any questions or concerns you may have with your margin accounts.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from your brokerage firm. If you choose to borrow funds from your firm, you will open a margin account with the firm. The securities purchased are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account.

It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- **You can lose more funds than you deposit in the margin account.** A decline in the value of securities that are purchased on margin may require you to provide additional funds to the firm that has made the loan to avoid the forced sale of those securities or other securities or assets in your account(s).
- **The firm can force the sale of securities or other assets in your account(s).** If the equity in your account falls below the maintenance margin requirements or the firm's higher "house" requirements, the firm can sell the securities or other assets in any of your accounts held at the firm to cover the margin deficiency. You also will be responsible for any short fall in the account after such a sale.
- **The firm can sell your securities or other assets without contacting you.** Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities or other assets in their accounts to meet the call unless the firm has contacted them first. This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if a firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without notice to the customer.
- **You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.** Because the securities are collateral for the margin loan, the firm has the right to decide which security to sell in order to protect its interests.
- **The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.** These changes in firm policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause the member to liquidate or sell securities in your account(s).

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- **You are not entitled to an extension of time on a margin call.** While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.

(b) Members shall, with a frequency of not less than once a calendar year, deliver individually, in writing or electronically, the disclosure statement described in paragraph (a) or the following bolded disclosures to all non-institutional customers with margin accounts:

Securities purchased on margin are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account. It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- **You can lose more funds than you deposit in the margin account.**
- **The firm can force the sale of securities or other assets in your account(s).**
- **The firm can sell your securities or other assets without contacting you.**
- **You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.**
- **The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.**
- **You are not entitled to an extension of time on a margin call.**

The annual disclosure statement required pursuant to this paragraph may be delivered within or as part of other account documentation, and is not required to be provided in a separate document.

(c) In lieu of providing the disclosures specified in paragraphs (a) and (b), a member may provide to the customer an alternative disclosure statement, provided that the alternative disclosures shall be substantially similar to the disclosures specified in paragraphs (a) and (b).

(d) For purposes of this Rule, the term "non-institutional customer" means a customer that does not qualify as an "institutional account" under Rule 3110(c)(4).

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ATTACHMENT B – SAMPLE INITIAL MARGIN DISCLOSURE STATEMENT

Your brokerage firm is furnishing this document to you to provide some basic facts about purchasing securities on margin, and to alert you to the risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by your firm. Consult your firm regarding any questions or concerns you may have with your margin accounts.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from your brokerage firm. If you choose to borrow funds from your firm, you will open a margin account with the firm. The securities purchased are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account.

It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- **You can lose more funds than you deposit in the margin account.** A decline in the value of securities that are purchased on margin may require you to provide additional funds to the firm that has made the loan to avoid the forced sale of those securities or other securities or assets in your account(s).
- **The firm can force the sale of securities or other assets in your account(s).** If the equity in your account falls below the maintenance margin requirements or the firm's higher "house" requirements, the firm can sell the securities or other assets in any of your accounts held at the firm to cover the margin deficiency. You also will be responsible for any short fall in the account after such a sale.
- **The firm can sell your securities or other assets without contacting you.** Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities or other assets in their accounts to meet the call unless the firm has contacted them first. This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if a firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without notice to the customer.
- **You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.** Because the securities are collateral for the margin loan, the firm has the right to decide which security to sell in order to protect its interests.
- **The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.** These changes in firm policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause the member to liquidate or sell securities in your account(s).
- **You are not entitled to an extension of time on a margin call.** While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.

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ATTACHMENT C – SAMPLE ANNUAL DISCLOSURE STATEMENT

Securities purchased on margin are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, the firm can take action, such as issue a margin call and/or sell securities or other assets in any of your accounts held with the member, in order to maintain the required equity in the account. It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

- You can lose more funds than you deposit in the margin account.
- The firm can force the sale of securities or other assets in your account(s).
- The firm can sell your securities or other assets without contacting you.
- You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.
- The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice.
- You are not entitled to an extension of time on a margin call.

INFORMATIONAL

Membership And Registration Rules

Series 24, 26, And 62 Modified

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 and Compliance
- Operations
- Registration
- Training

KEY TOPICS

- Corporate Securities Limited Representative (Series 62)
- General Securities Principal (Series 24)
- Investment Company Products/Variable Contracts Limited Principal (Series 26)
- NASD Rules 1022(a) and (d)
- NASD Rule 1032(e)
- Qualification Examinations

Executive Summary

NASD Regulation, Inc. has modified the examination programs for the General Securities Principal (Series 24), the Investment Company Products/Variable Contracts Limited Principal (Series 26), and the Corporate Securities Limited Representative (Series 62). The changes are reflected in study outlines that will soon be available on the NASD Regulation Web Site. The changes will appear in examinations administered starting on July 2, 2001.

Questions/Further Information

Questions concerning this *Notice to Members* may be directed to one of the following persons in NASD Regulation's Testing and Continuing Education Department: Karen Bescher at (240) 386-4677; Eva Cichy at (240) 386-4680; Carole Hartzog at (240) 386-4678; Nicole Hillman at (240) 386-4681; or Elaine Warren at (240) 386-4679.

Background/Discussion

The Series 24 Examination qualifies an individual to manage or supervise the member's investment banking or securities business for corporate securities, direct participation programs, and investment company products/variable contracts. The Series 62 Examination qualifies an individual as a representative for the solicitation, purchase, and/or sale of corporate stocks, corporate bonds, rights, warrants, real estate investment trusts, collateralized mortgage obligations, and securities of closed-end companies registered pursuant to the Investment Company Act of 1940. The Series 26 Examination qualifies an individual who will

function as a principal for the solicitation, purchase, and/or sale of redeemable securities of companies registered pursuant to the Investment Company Act of 1940; securities of closed-end companies registered pursuant to the Investment Company Act of 1940 during the period of original distribution only; and variable contracts and insurance premium funding programs and other contracts issued by an insurance company, except contracts which are exempt securities pursuant to Section 3(a)(8) of the Securities Act of 1933.

The staff of the Qualifications Department of NASD Regulation, in conjunction with an industry committee (consisting of investment bankers, sales managers, compliance officers, mutual fund managers, and training personnel) recently undertook a review of the Series 24, Series 26, and Series 62 examination programs. As a result of this review, NASD Regulation has revised the examination specifications, study outlines, and question banks to reflect changes to the rules, regulations, and products covered by the examination programs. In addition, the Series 26 Examination material has been reorganized into five substantive categories of critical functions that a Series 26 principal may be required to perform – hiring and qualification; training of representatives; supervision; sales practices; and business processing and recordkeeping.

In order to adequately test the material covered on the revised Series 24, Series 26, and Series 62 Examinations, the number of questions on each examination has increased: the Series 24 increases to 150 questions from 125; the Series 26 increases to

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110 questions from 100; and the Series 62 increases to 115 questions from 100. The allowed testing time for these examinations also will change to 3 1/2 hours for the Series 24; 2 1/2 hours for the Series 26; and 2 1/2 hours for the Series 62.¹

Administration of the revised examinations will start on July 2, 2001 at all NASD Regulation-approved testing centers.

Availability Of Study Outlines

The study outlines for the revised examination programs will soon be available from the NASD Regulation Qualifications Web Page at http://www.nasdr.com/5200_explan.htm.

Endnotes

- 1 These changes were submitted to the SEC (for immediate effectiveness) on March 26, 2001 in rule filings SR-NASD-2001-22 (Series 26) and SR-NASD-2001-23 (Series 24 and 62).

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FIPS Changes

Fixed Income Pricing SystemSM Additions, Changes, And Deletions As Of March 22, 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.

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

KEY TOPICS

- FIPS

As of March 22, 2001, the following bonds were added to the Fixed Income Pricing System (FIPSSM).

Symbol	Name	Coupon	Maturity
AGPE.GA	AmeriGas Partners/Eagle Financial Corp	10.000	04/15/06
CSAR.GA	Caraustar Industry Inc	9.875	04/01/11
CSAR.GB	Caraustar Industry Inc	7.250	05/01/10
CSOR.GA	Case Corp	7.250	08/01/05
CSOR.GB	Case Corp	7.250	01/15/16
CSOR.GC	Case Corp	6.250	12/01/03
CRSE.GA	Case Credit Corp	6.125	02/15/03
CRSE.GB	Case Credit Corp	6.125	10/15/01
CENX.GA	Century Aluminum Co	11.750	04/15/08
CHNC.GA	Chandler USA Inc	8.750	07/16/14
CHCG.GG	Charter Communications Hldgs Cap Corp	10.750	10/01/09
CHCG.GH	Charter Communications Hldgs Cap Corp	13.500	01/15/11
CHCG.GI	Charter Communications Hldgs Cap Corp	11.125	01/15/11
CMS.IL	CMS Energy Corp	8.500	04/15/11
CDO.GA	Comdisco Inc	6.375	11/30/02
CDO.GB	Comdisco Inc	6.125	01/15/03
CDO.GC	Comdisco Inc	6.000	01/30/02
CDO.GD	Comdisco Inc	5.950	04/30/02
CDO.GE	Comdisco Inc	7.250	09/01/02
CDO.GF	Comdisco Inc	9.500	08/15/03
CDIG.GK	CSC Holdings Inc	7.625	04/01/11
RDEN.GA	Elizabeth Arden Inc	11.750	02/01/11
FLM.GF	Fleming Cos Inc	10.125	04/01/08
HPCS.GA	Horizon PCS Corp	14.000	10/01/10
HOVV.GD	Hovnanian Enterprises Inc	10.500	10/01/07
IRDM.GB	Iridium LLC/Cap Corp	14.000	07/15/05
IRM.GD	Iron Mountain Inc	8.625	04/01/13
NEV.GC	Nuevo Energy Co Series B	9.375	10/01/10
OCR.GA	Omnicare Inc	8.125	03/15/11
PIC.GB	Piccadilly Cafeterias Inc	12.000	11/01/07
PLX.GC	Plains Resources Inc Series F	10.250	03/15/06
RVHG.GA	Revlon Holdings Inc	12.000	02/01/04
TWTC.GA	Time Warner Telecom Inc	10.125	02/01/11
YUM.GC	Tricon Global Restaurant Inc	8.875	04/15/11
YUM.GD	Tricon Global Restaurant Inc	8.500	04/15/06
TNUS.GD	Trinet Corporate Realty Trust Inc	6.750	03/01/03
USDU.GA	U.S. Industries Inc / USI Amer	7.125	10/15/03
USCN.GA	U.S. Can Co	12.375	10/01/10
USG.GJ	USG Corp	8.500	08/01/05
USG.GK	USG Corp	9.250	09/15/01
WIN.GA	Winn-Dixie Stores Inc	8.875	04/01/08

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As of February 22, 2001, the following bonds were deleted from the Fixed Income Pricing System.

Symbol	Name	Coupon	Maturity
TCEN.GA	21st Century Telecom Group Inc	12.250	02/15/08
AIRA.GA	Airtran Airlines Inc	10.500	04/15/01
TTE.GA	Autotote Corp	10.875	08/01/04
CHK.GA	Chesapeake Energy Corp	9.125	04/15/06
DEHA.GA	DeGeorge Home Alliance Inc	12.000	04/01/01
GYHD.GA	Greyhound Financial Corp	7.250	04/01/01
HNTC.GA	Huntsman Corp	10.625	04/15/01
MSEL.GA	Merisel Inc	12.500	12/31/04
PRIM.GA	Prime Succession Inc	10.750	08/15/04
PHM.GD	Pulte Corp	7.625	10/15/17
SCRB.GA	Sea Containers LTD	12.500	12/01/04
SCRB.GB	Sea Containers LTD	9.500	07/01/03
SCRB.GC	Sea Containers LTD	12.500	12/01/04
SCRB.GD	Sea Containers LTD	10.500	07/01/03
SCRB.GE	Sea Containers LTD	7.875	02/15/08
TK.GA	Teekay Shipping Corp	8.320	02/01/08
UNTA.GA	United Artists Theatres Co	9.750	04/15/08
UNTA.GB	United Artists Theatres Co	10.062	10/15/07
VALJ.GA	Valujet Inc	10.250	04/15/01
VRIO.GB	Verio Inc	13.500	06/15/04
VRIO.GD	Verio Inc	10.625	11/15/09
WSEQ.GA	Winstar Equipment Corp	12.500	03/15/04
WEQC.GA	Winstar Equipment II Corp	12.500	03/15/04

As of February 22, 2001, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	New Name/Old Name	Coupon	Maturity
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There were no symbol changes in FIPS for this time period.

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, NASDR Market Regulation, 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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INFORMATIONAL

Trade Date— Settlement Date

Memorial Day: Trade Date—Settlement Date Schedule

SUGGESTED ROUTING

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

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

KEY TOPICS

- Holiday Trade Date—
Settlement Date Schedule

Memorial Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, May 28, 2001, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
May 22	May 25	May 30
23	29	31
24	30	June 1
25	31	4
28	Markets Closed	—
29	June 1	5

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

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Disciplinary Actions

Disciplinary Actions Reported For May

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 April 2001.

Firm Expelled, Individual Sanctioned

Baxter, Banks & Smith, Ltd. (CRD #40771, St. Petersburg, Florida) and Francis Martin McDermott (CRD #1013320, Registered Principal, St. Petersburg, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was expelled from NASD membership. McDermott was barred from association with any NASD member in any supervisory, principal, or proprietary capacity, and barred from association with any NASD member in any capacity with the right to reapply for association with any NASD member firm after three years in a non-supervisory, principal, or proprietary capacity. In light of the financial status of McDermott, no monetary sanction has been imposed. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through its representatives, engaged in a scheme involving the use of high pressure, manipulative, and deceptive sales practices and misrepresentations and omissions of material facts in connection with the sale of common stock referred to as "deal stocks."

According to the findings, the firm employed a three-step process for soliciting customers, first using unregistered cold callers to prospect for potential customers. Then the firm's representatives would cold call the prospects and attempt to solicit their purchase of a known Nasdaq or New York Stock Exchange (NYSE) listed stock, and subsequently employ a "bait and switch" tactic by calling back the customers and soliciting their purchase of one of the deal stocks. The NASD found that the misrepresentations, price predictions, and omissions by the representatives involved information that was material to the investors' investment decision, and that certain representatives engaged in unauthorized trades when customers did not agree to purchase a deal stock and refused to execute customer orders to sell the stock. The NASD also found that the firm, acting through McDermott, failed to comply with Securities Exchange Act Rule 15c-9 concerning approval of accounts to trade in penny stocks and receipt of customer agreements to specific transactions, and the requirement to obtain suitability statements signed by the customers and approved by the firm. In addition, the NASD determined that the firm, acting through McDermott, failed to establish, maintain, and enforce a system to supervise the activities of its registered representatives that was reasonably designed to achieve compliance with applicable securities laws, rules, and regulations. **(NASD Case #C07010014)**

Firms Fined, Individuals Sanctioned

Commerzbank Capital Markets Corporation (CRD #21787, New York, New York) and Udo Braun (CRD #2897104, Registered Principal, Rye, New York)

submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Braun was also suspended from association with any NASD member in any principal capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Braun became actively engaged in the management of the firm's securities business prior to becoming registered with the NASD in any capacity.

Braun's suspension began April 16, 2001, and concluded at the close of business April 20, 2001. **(NASD Case #C05990038)**

Millennium Securities Corp. (CRD #31695, New York, New York), Richard Allen Sitomer (CRD #1995999, Registered Principal, New York, New York) and Todd Michael Rome (CRD #2082803, Registered Principal, New York, New York)

submitted an Offer of Settlement in which the firm was ordered to file a Broker/Dealer Withdrawal Form to withdraw its membership from NASD no later than December 31, 2001, and that, if it fails to do so, not to oppose any action brought by the NASD Department of Enforcement seeking its expulsion. The firm was also required to disgorge \$1.1 million and ordered not to act as a participant in any underwriting or initial public offering (IPO) in any capacity until such time as it has withdrawn from membership in the NASD. Sitomer and Rome were each fined

\$100,000, suspended from association with any NASD member in any capacity for six months, and suspended from association with any NASD member in any principal capacity for two years. Sitomer was also ordered to guarantee \$225,000 of the firm's \$1.1 million disgorgement.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm participated as co-underwriter in an IPO of common stock and warrants. Sitomer and Rome sold a majority of the firm's allocation to public customers whose accounts they controlled, and repurchased all of the securities bought by the customers at the same prices after the opening of aftermarket trading and before becoming available to the investing public, thereby continuing the distribution. Following the repurchases, the firm upticked its quotations and significantly increased the prices of the securities despite relatively little trading activity, and used special selling methods to resell the securities to retail customers at prices substantially above those paid by the firm to reacquire them. The NASD also found that the firm, Sitomer, and Rome made markets in common stock and warrants, and bid for, purchased, or induced others to purchase those securities. The findings also stated that the respondents failed to disclose that they were conducting a distribution, the amount of securities distributed, the source of the securities, and that the firm's customers would be paying significantly more than what the firm had just paid for the same securities.

Sitomer's and Rome's suspensions in any capacity began

April 12, 2001, and will conclude at the close of business October 11, 2001. Sitomer's and Rome's suspensions in any principal capacity began April 12, 2001, and will conclude at the close of business April 11, 2003. **(NASD Case #CAF000005)**

Firms And Individuals Fined

BCR Capital Corporation (CRD #25330, Indianapolis, Indiana) and Rex M. Craig (CRD #1988160, Registered Principal, Tipton, Indiana)

submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Craig, participated in an all-or-none offering of limited partnership interests and rendered false and misleading representations in the offering memorandum that investors would receive a refund of their subscription price together with interest earned therein if the terms of the contingency were not met. The findings also stated that the firm, acting through Craig, failed to properly escrow funds for sales from investors' funds. **(NASD Case #C8A010009)**

NevWest Securities Corporation (CRD #46464, Henderson, Nevada) and Anthony Marks Mello, III (CRD #2781726, Registered Principal, Las Vegas, Nevada)

submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Mello, offered and

sold shares of common stock through a private “minimum-maximum” offering to public customers and presented to the customers a private placement memorandum that contained false and misleading statements. The findings also stated that the firm, acting through Mello, failed to deposit and retain customer funds in a properly established bank escrow account pending the occurrence of the contingency, failed to compute the amounts required to be deposited into the Special Reserve Bank Account for the Exclusive Benefit of Customers, and failed to timely deposit the amounts required to be deposited into the account. **(NASD Case #C02010005)**

Tower Equities, Inc. (CRD #16195, Dayton, Ohio) and Kenneth Robert Wiseman (CRD #1345001, Registered Principal, Vandalia, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wiseman, effected transactions in securities when it failed to maintain the minimum required net capital. The findings also stated that the firm, acting through Wiseman, failed to maintain an accurate general ledger. **(NASD Case #C8B010008)**

Wolff Investment Group, Incorporated (CRD #21930, New York, New York) and Patricia Ann Schaen (CRD #412379, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, payable to a public

customer. Failure to pay the fine within 60 days from the date the AWC is issued will result in the suspension of Schaen from association with any NASD member in any capacity and the suspension of the firm’s membership until payment is complete. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Schaen, failed to establish procedures for the review and endorsement by a principal of all transactions that would prevent unauthorized trading. **(NASD Case #C10010041)**

Firms Fined

Baird, Patrick & Co., Inc. (CRD #1149, New York, New York) submitted an Offer of Settlement in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept Automated Confirmation Transaction ServiceSM (ACTSM) eligible transactions within 20 minutes after execution and reported Consolidated Quotation Service transactions without the “.T” modifier. The findings also stated that the firm reported the incorrect volume for a Nasdaq National Market (NNM) transaction and failed to establish, maintain, and enforce adequate written supervisory procedures to address all areas of the firm’s trading and market making business in that the firm’s procedures failed to address ACT rule compliance, limit order protection, Small Order Execution SystemSM (SOESSM) activity, locked and crossed markets, short sale rule compliance, the Order Audit Trail System (OATSSM) clock synchronization, and registration

of equity traders and supervisors. **(NASD Case #C8A000050)**

Broadmark Capital Corporation (CRD #39056, Seattle, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to the ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity; incorrectly reported to ACT transactions as agency crosses when corresponding order tickets reflected the firm acting as principal; failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity; and failed to accept in ACT transactions in eligible securities within 20 minutes of the execution time. The findings also stated that the firm failed to consistently record or maintain all relevant terms and conditions on the memoranda for orders in that there was no indication of “not held” to denote working order status. The NASD also found that the firm incorrectly disclosed agency capacity on its customer confirmations for transactions when corresponding order tickets reflected the firm acting as principal. Furthermore, the NASD found that the firm used a non-compliant, non-synchronized, mechanical time stamp machine that failed to provide the “seconds” field to document times of receipt and execution. Moreover, the firm’s supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations

concerning trading and market place rules. **(NASD Case #C3B010004)**

Dean Witter Reynolds, Inc. (CRD #7556, New York, New York)

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 relating to the U.S. Securities and Exchange Commission (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 an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size. The NASD found that the firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. Furthermore, the NASD determined that the firm's supervisory system did not 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 #CMS010034)**

J.B. Oxford & Company (CRD #14343, Beverly Hills, California)

submitted a Letter of Acceptance, Waiver, and Consent in which it was censured, fined \$76,500, required to pay \$12,002.96, plus interest, in restitution to customers, and required to revise its written supervisory procedures relating to the SEC and NASD firm quote rules, the Order Handling Rules, trade reporting, ACT reporting, registration, locked and crossed markets, anti-competitive practices, books and records, short sale affirmative determination requirements and OATS. Without admitting or denying the allegations, the firm

consented to the described sanctions and to the entry of findings that an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size. The firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. The findings also stated that the firm, a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or ask quotations in the Nasdaq stock market that caused a locked or crossed market condition to occur in each instance, and failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. Furthermore, the NASD found that the firm failed to execute an order fully and promptly, and failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. The NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations concerning the Order Handling Rules, trade reporting, ACT

reporting, registration, locked and crossed markets, anti-competitive practices, SEC and NASD firm quote rules, short sale affirmative determination, and OATS. **(NASD Case #CMS010038)**

Jefferson Pilot Securities Corp. f.k.a. Chubb Securities (CRD #3870, Atlanta, Georgia)

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 during the course of its branch office audits and subsequent reviews of a registered representative's activities, the firm discovered a mutual fund switching by the representative. The NASD determined that, although the firm addressed the mutual fund switching with the representative, it failed to adequately address this issue in a timely manner and, therefore, failed to supervise, establish, and maintain a supervisory system that would ensure compliance with its suitability obligations. **(NASD Case #C07010011)**

Jesup & Lamont Securities Corp. (CRD #17833, New York, New York)

submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report short sale transactions to the ACT with a short sale modifier and failed to record or maintain all relevant terms and conditions on the memoranda for block order transactions in that there were no indications of "not held" to denote working order status. The findings also stated that the firm failed to show the correct time of execution

on the memoranda of transactions reported to ACT. The NASD also found that customer confirmations failed to properly disclose the reported price to ACT and the difference between the reported price and the price to the customer, and incorrectly disclosed agency capacity on its customer confirmations for transactions when corresponding order tickets and account statements reflected the firm acting as principal. Furthermore, the NASD found that the firm failed to maintain a written record of its compliance with affirmative determination requirements in connection with customer-related short sales. Moreover, the NASD found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning trading and marketplace rules. **(NASD Case #C3B010005)**

Merrion Group, LLC (CRD #30145, Westfield, New Jersey) submitted an Offer of Settlement 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 conducted a securities business while failing to maintain its minimum required net capital. **(NASD Case #C9B000013)**

Morgan Stanley & Co., Incorporated (CRD #8209, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in Nasdaq securities in its

published quotation, when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. **(NASD Case #CMS010035)**

Pennsylvania Merchant Group, Ltd. (CRD #18533, West Conshohocken, Pennsylvania) submitted an Offer of Settlement in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce supervisory procedures for its retail sales activity reasonably designed to achieve compliance with applicable securities laws and regulations. **(NASD Case #C9A000007)**

Raymond James & Associates, Inc. (CRD #705, St. Petersburg, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to pay \$1,137.50, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market; failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions; and to ascertain the best inter-dealer market by failing to execute customer market orders fully and promptly. The findings also stated that the firm failed to

immediately display customer limit orders in Nasdaq securities in its published quotation, when each such order was at a price that would improve the firm's bid or offer in each security, or at a price equal to its public quote when such quote was priced equal to the firm's bid or offer and the national best bid or offer for each such security and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. **(NASD Case #CMS010028)**

Robb Peck McCooley Clearing Corporation (CRD #7432, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT, last sale reports of transactions in an NNM security. **(NASD Case #CMS010037)**

Seaboard Securities, Inc. (CRD #755, Florham Park, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$27,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce adequate written supervisory procedures regarding options transactions and the review of branch office activities. The findings also stated that the firm failed to designate a supervisory principal for trading/market making, options, continuing education, and government securities. In addition, the NASD determined that, in connection

with an IPO underwriting, the firm accepted customer checks dated prior to the effective date of the offering, and failed to update its quote within 30 seconds in instances when the customer's limit order was priced better than the firm's prevailing quotation. Furthermore, the NASD found that the firm reported short sale transactions to ACT without using the short sale modifier; failed to execute short sale transactions on a down bid at a price that was not 1/16 above the current inside bid; and failed to maintain evidence of having made an affirmative determination ensuring that the shares could be obtained for a short sale. Moreover, the NASD found that the firm failed to identify on order tickets whether the transactions were long or short, and failed to file, or to file in a timely manner, customer complaints it received. **(NASD Case #C9B010026)**

Individuals Barred Or Suspended

David Stephen Adams (CRD #1450961, Registered Representative, Bloomington, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Adams endorsed a public customer's check for \$7,318.06, and used the funds either for his own use and benefit or for some purpose other than the benefit of the customer, without the knowledge or consent of the customer. Adams also failed to respond to NASD requests for information. **(NASD Case #C8A000057)**

Jonathan Elia Sasoon Bekhor (CRD #1910534, Registered Principal, Beverly Hills, California) submitted an Offer of Settlement in which he was fined

\$10,000, suspended from association with any NASD member in any capacity for 60 business days, and ordered to requalify by exam as a general securities principal within 60 days from the day the order accepting the Offer was issued by the NASD. If Bekhor fails to requalify, he will be suspended from acting in such capacity until the exam is successfully completed. The fine must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bekhor consented to the described sanctions and to the entry of findings that a member firm, acting through Bekhor, failed to have a qualified municipal securities principal engaged in the management, direction, or supervision of an underwriting, and allowed an unregistered person to act in that capacity; failed to designate a municipal securities principal responsible for its supervision; and failed to have the trade tickets for the underwriting approved by a municipal securities principal. The findings also stated that a member firm, acting through Bekhor, violated the terms of an NASD Restriction Agreement and acted as sole underwriter in a municipal securities offering. The NASD also found that Bekhor failed to send to the Municipal Securities Rulemaking Board (MSRB) copies of a completed MSRB Form G-36, failed to pay an underwriting fee to the MSRB, and failed to comply with MSRB bookkeeping requirements.

Bekhor's suspension began April 16, 2001, and will conclude at the close of business July 10, 2001. **(NASD Case #C10990037)**

Ricardo Fallesgon Brown (CRD #845315, Registered Representative, Newport News,

Virginia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Brown received insurance disbursement checks totaling \$8,510.82 sent by his member firm for delivery to insurance customers, forged the endorsements on the checks, and deposited them into his personal bank account. In addition, Brown completed and submitted to his member firm an unauthorized application for a \$12,000 withdrawal on behalf of a public customer, received a \$12,000 disbursement check from his member firm, forged the customer's endorsement on the check, and deposited it into his personal bank account. Brown also submitted loan applications on behalf of public customers without their authorization, received checks totaling \$10,500, forged the endorsements of the customers on the disbursement checks, and deposited them into his personal bank account. Furthermore, Brown failed to respond to NASD requests for information. **(NASD Case #C07000064)**

David Wainwright Buys, Sr. (CRD #1965954, Registered Representative, Montville, New Jersey) 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 \$66,993.23 in restitution to a trust account and/or its beneficiaries. 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, Buys consented to the described sanctions and to the entry of findings that he converted

\$66,993.32 from a trust account in which he served as a trustee and used the funds for his own use and benefit, without the beneficiaries' knowledge or consent. **(NASD Case #C9B010023)**

Nicholas Michael Calapa (CRD #1245429, Registered Representative, Stamford, Connecticut) 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 Calapa, no monetary sanctions were imposed. Without admitting or denying the allegations, Calapa consented to the described sanction and to the entry of findings that he recommended unsuitable trading in the account of a public customer. Calapa inappropriately recommended that the customer continue use margin loans in order to engage in a short-term trading strategy involving highly concentrated positions in particular securities, causing the account to suffer losses in excess of \$88,000. The findings also stated that Calapa acted in reckless disregard of his client's interest when he disregarded the impact of the short-term trading, the inappropriate use of margin in the account, the risks that the account incurred from this activity, and the high concentration levels of certain securities in the account.

Calapa's suspension began April 16, 2001, and will conclude at the close of business October 15, 2001. **(NASD Case #C11010010)**

Daniel Clinton Carlson (CRD #1497477, Registered Representative, Dassel, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with

any NASD member in any capacity for six months. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carlson consented to the described sanctions and to the entry of findings that he failed to give prior written notice to his member firm and receive written approval from the firm prior to participating in private securities transactions.

Carlson's suspension began May 7, 2001, and will conclude at the close of business November 6, 2001. **(NASD Case #C04010014)**

Paul Edward Carney (CRD #1943974, Registered Representative, Vernon Hills, Illinois) was barred from association with any NASD member in any capacity and ordered to pay \$1,700,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Carney effected unprofitable trades in the accounts of a public customer and prepared and delivered false profit and loss statements to the customer in an attempt to conceal losses incurred in the accounts. Moreover, Carney continued to effect trades in the customer's accounts after being instructed by the customer to stop. Carney also failed to answer all questions asked of him during a NASD on-the-record interview. **(NASD Case #C8A000024)**

Robert Scott Cash (CRD #2063885, Registered Representative, St. Petersburg Beach, Florida) was fined \$20,000 and suspended from association with any NASD member in any capacity for 30 business days for engaging in outside business activities, and

suspended from association with any NASD member in any capacity for 60 days for making unsuitable recommendations. The sanctions were based on findings that Cash recommended that a public customer purchase a single premium deferred annuity outside of the scope of his employment with his member firm and failed to provide prior written notice to, or receive written approval from, his member firm before such recommendation. Cash also recommended to a public customer the purchase of mutual funds and then changed the customer's account from a cash account to a margin account, without the customer's knowledge or consent, and without ever having discussed the use of margin with the customer, and engaged in a series of transactions in the customer's account that were unsuitable for the customer based upon the customer's investment objective, financial situation, and needs.

Cash's suspension began April 16, 2001, and will conclude at the close of business July 24, 2001. **(NASD Case #C07000075)**

William E. Cherry, Jr. (CRD #3237150, Associated Person, West Hempstead, 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, Cherry consented to the described sanction and to the entry of findings that he received the proctor's report from the NASD's Certification Testing Center that stated that Cherry had failed the NASD Series 63, Uniform Securities Agent State Law exam, and altered the proctor's report to reflect that he had passed the

exam. Cherry presented the altered report to his member firm, misrepresenting that he had passed the exam. **(NASD Case #C10010047)**

James Joseph Corcoran (CRD #2328082, Registered Principal, Patchogue, New York) submitted an Offer of Settlement 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 any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Corcoran consented to the described sanctions and to the entry of findings that he offered and sold securities to public customers by means of misrepresentations of material information and omissions to disclose material information. The findings also stated that Corcoran made predictions of the future price of a speculative security in connection with the offer and sale of that security to a public customer.

Corcoran's suspension will begin the earlier of 30 days after he enters a plea of guilty or nolo contendere or is convicted in a criminal case or December 31, 2001. **(NASD Case #C3A000028)**

Shawn Cunningham (CRD #4031341, Registered Representative, Raleigh, North Carolina) was barred from association with any NASD member in any capacity. The sanction was based on findings that Cunningham provided false responses on his Form U-4. Cunningham also failed to respond to NASD requests for information. **(NASD Case #C07000080)**

Richard D'Ambola (CRD #2816480, Registered Representative, Landing, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for six months, and required to disgorge \$13,460, plus interest, to customers. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Proof of payment of disgorgement, 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, D'Ambola consented to the described sanctions and to the entry of findings that he effected offers and sales of securities to public customers outside of the normal course or scope of his association with his member firm and failed to provide his member firm prior written notification of such offers and sales of securities.

D'Ambola's suspension began May 7, 2001, and will conclude at the close of business November 6, 2001. **(NASD Case #C9B010020)**

Leigh Farrington Fiske (CRD #2330320, Registered Representative, Monterey, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Fiske failed to respond to NASD requests for information. **(NASD Case #C01000024)**

Pasquale Forti (CRD #2685740, Registered Principal, Hazlet, New Jersey) 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 30 days, ordered to pay \$5,000 in restitution to a public customer, and ordered to attend a continuing education course with respect to the duties of a general securities representative. The fine payment and satisfactory proof of payment of restitution, with interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Forti consented to the described sanctions and to the entry of findings that he failed to execute a public customer's request to sell shares of stock and warrants. The findings also stated that Forti made material misrepresentations to another public customer that resulted in the customer purchasing shares of stock and then delayed his request to sell the stock.

Forti's suspension began April 16, 2001, and will conclude at the close of business May 15, 2001. **(NASD Case #C10010039)**

Dennis Lester Freeman (CRD #213683, Registered Representative, Storm Lake, Iowa) 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 10 business days. Without admitting or denying the allegations, Freeman consented to the described sanctions and to the entry of findings that he negotiated and entered into a settlement agreement with public customers to pay them \$25,000 to resolve their verbal complaints about the decline in value of their accounts, without the knowledge or consent of his member firm.

Freeman's suspension began April 16, 2001, and concluded at the close of business April 27, 2001. **(NASD Case #C04010004)**

Gary Dale Fresk (CRD #1075245, Registered Representative, Bellevue, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Fresk consented to the described sanctions and to the entry of findings that he recommended the sale of \$342,525 worth of mutual funds to a public customer without having reasonable grounds for believing that the recommendation was suitable for the customer. The findings also stated that Fresk exercised discretionary power in the customer's account, without the customer's prior written authorization or without the written acceptance of the account as discretionary by his member firm.

Fresk's suspension began April 16, 2001, and concluded at the close of business April 25, 2001. **(NASD Case #C3B010003)**

Harold Bailey Gallison, Jr. (CRD #1040211, Registered Principal, Las Vegas, Nevada) 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, Gallison consented to the described sanction and to the entry of findings that he failed to abide by an NASD Order that prohibited him from associating with any NASD member in a principal or supervisory capacity. **(NASD Case #C02000027)**

Jerry Lee Getter (CRD #1080528, Registered Representative, Brookville, Ohio) 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, Getter consented to the described sanction and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his firm with detailed written notice of the transactions, his role therein, and to receive written permission from his firm to engage in the transactions. **(NASD Case #C8B010007)**

Steven Douglas Goodman (CRD #1510905, Registered Principal, Allison Park, Pennsylvania) was fined \$75,000 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a November 1999 National Adjudicatory Council (NAC) decision. The sanctions were based on findings that Goodman used high-pressure tactics to induce sales, and increased customer losses by dissuading them from selling, and failed to execute sell orders. **(NASD Case #C9B960013)**

James Alan Gorab (CRD #2910909, Registered Representative, Hoboken, New Jersey) 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 any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gorab consented to the described sanctions and to the entry of findings that he submitted a false transcript to a member firm

regarding his educational background and willfully failed to disclose information on his Form U-4.

Gorab's suspension began April 16, 2001, and will conclude at the close of business April 15, 2003. **(NASD Case #C9B010013)**

Donald Albert Gorneau (CRD #1477882, Registered Representative, Winslow, Maine) 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, Gorneau consented to the described sanction and to the entry of findings that he received over \$60,000 from public customers to invest in variable annuities and traditional life insurance products, and, instead, converted the funds to his own use and benefit. **(NASD Case #C11010012)**

Rocco Nick Graziosi (CRD #2590696, Registered Representative, Glen Cove, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Graziosi consented to the described sanctions and to the entry of findings that he arranged to have another registered representative sign new account forms falsely representing that the representative was the customers' account executive, failed to sign the forms as the customers' account executive and, thereby caused his firm to maintain inaccurate books and records. Furthermore, the NASD determined that Graziosi knowingly and improperly used the registered representative's executive number

for entering transactions in the customers' account, thereby causing his member firm to maintain inaccurate books and records.

Graziosi's suspension began April 16, 2001, and will conclude July 15, 2001. **(NASD Case #C9B010015)**

Suzanne Marie Greany (CRD #2488261, Registered Representative, Wales, Massachusetts) 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, Greany consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information. **(NASD Case #C11010011)**

John Stephen Grosenheider (CRD #2072154, Registered Representative, Austin, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Grosenheider failed to update his Form U-4. Grosenheider also failed to respond to NASD requests for information. **(NASD Case #C06000022)**

Mark Robert Harris (CRD #2273482, Registered Representative, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 90 days. 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, Harris consented to the described

sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to, and to receive written approval from, his member firm prior to engaging in such activities.

Harris' suspension began May 7, 2001, and will conclude August 4, 2001. **(NASD Case #C07010020)**

Barbara Jennings (CRD #3168111, Registered Representative, Plainsboro, 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 any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jennings consented to the described sanctions and to the entry of findings that she failed to update her Form U-4.

Jennings' suspension began April 16, 2001, and will conclude at the close of business May 15, 2001. **(NASD Case #C9B010016)**

Todd Joseph Kamler (CRD #2720579, Registered Representative, Kearney, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 60 days. In light of the financial status of Kamler, no monetary sanction has been imposed. Without admitting or denying the allegations, Kamler consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to, and receive written approval from, his member

firm prior to engaging in such activities.

Kamler's suspension began May 7, 2001, and will conclude at the close of business July 5, 2001. **(NASD Case #C04010007)**

Dennis Lee Knuth (CRD #1769376, Registered Representative, Mosinee, Wisconsin) 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, Knuth consented to the described sanction and to the entry of findings that he received checks totaling \$33,096 from a public customer intended for the purchase of a life insurance product and converted the funds to his own use and benefit without the knowledge or consent of the customer. The findings also stated that Knuth affixed the signatures of public customers to an insurance policy withdrawal request, and without their knowledge or consent, affixed their signatures to an \$1,800 insurance proceeds check and converted the funds to his own use and benefit. **(NASD Case #C04010006)**

Kenneth Thomas Lambright (CRD #1124567, Registered Representative, Baltimore, Maryland) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 20 business days. In light of the financial status of Lambright, no monetary sanctions were imposed. Without admitting or denying the allegations, Lambright consented to the described sanction and to the entry of findings that he guaranteed a public customer against loss. The findings also stated that Lambright failed to respond to NASD requests for information.

Lambright's suspension began April 16, 2001, and concluded at the close of business May 11, 2001. **(NASD Case #C9A000033)**

Eric Peter Lesak (CRD #2390075, Registered Representative, Wantagh, New York) was censured, fined \$15,000, and barred from association with any NASD member in any capacity. The fine must be paid before reassociating with any NASD member. The sanctions were based on findings that Lesak effected unauthorized transactions in the account of a corporate customer without the knowledge, authorization, or consent of the company's president. The findings also stated that Lesak failed to respond to NASD requests to appear for on-the-record interviews. **(NASD Case #C10000087)**

Michael Emmanuel Leventis (CRD #2269194, Registered Principal, Delray Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$40,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Leventis consented to the described sanctions and to the entry of findings that he made material misrepresentations of fact to the NASD staff during its investigation of a customer complaint.

Leventis' suspension began May 7, 2001, and will conclude at the close of business May 18, 2001. **(NASD Case #C07010015)**

Stacey Lein Lew (CRD #3215074, Registered Representative, Framingham, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from

association with any NASD member in any capacity for one year. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lew consented to the described sanctions and to the entry of findings that she forged a customer's signature on a Change of Financial Advisor Form without the customer's knowledge or consent. The findings also stated that Lew submitted the form to an investment company, thereby becoming the registered representative of record with respect to the customer's mutual fund holdings.

Lew's suspension began April 16, 2001, and will conclude at the close of business April 15, 2002. **(NASD Case #C11010008)**

Jang Soo Lim (CRD #2881926, Registered Representative, Forest Hills, 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, Lim consented to the described sanction and to the entry of findings that he arranged for \$15,000 in loans to be issued against the life insurance policy of a public customer without the customer's knowledge, authorization, or consent and converted and/or misused the loan proceeds. The findings also stated that Lim forged the customer's signature on checks issued by the insurance company to the customer in connection with the loan. In addition, the NASD found that Lim failed to respond to NASD requests for information. **(NASD Case #C10010019)**

Keith Allen Long (CRD #1049701, Registered Representative, Selinsgrove, Pennsylvania) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for one month, and required to disgorge \$1,498, plus interest, in commissions earned to public customers. The fine payment and satisfactory proof of payment of disgorgements, plus interest, must be provided before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Long consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide his member firm with prior written notice.

Long's suspension began May 7, 2001, and will conclude at the close of business June 6, 2001. **(NASD Case #C9A000037)**

Christopher Patrick Lordi (CRD #2518281, Registered Representative, Deerfield Beach, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lordi failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C07000023)**

Paul Lovrovich (CRD #2575457, Registered Principal, Avenel, 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, Lovrovich consented to the described sanction and to the entry of findings that he

attempted to conceal from his member firm that he had canceled two trades made for his personal account by canceling and re-billing the trades to the account of a relative and then canceling and re-billing the trades to his member firm's error account. According to the findings, at the time Lovrovich canceled the trades, the stock prices of both securities had declined, thereby allowing him to avoid having to pay for the unfavorable trades. The NASD found that the firm paid for the costs of these transactions, incurring a loss of approximately \$1,100. Lovrovich also provided false and misleading information to the NASD during an on-the-record interview. **(NASD Case #C9B010021)**

Gregory Paul Maggipinto (CRD #1042789, Registered Representative, San Jose, California) was fined \$107,734 and barred from association with any NASD member in any capacity. The fine must be paid before any application for reentry into the securities industry will be considered. The sanctions were based on findings that Maggipinto executed unauthorized transactions in a deceased customer's account and fraudulently obtained discretionary trading authority from the customer's survivors by representing that he had been given power of attorney over the account. Maggipinto also failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C01000026)**

Arnold Lopez Magpantay (CRD #2812805, Registered Representative, Sacramento, California) was barred from association with any NASD member in any capacity. The sanction was based on findings

that Magpantay willfully provided false responses on his Form U-4. **(NASD Case #C01000015)**

George Honorato Malagon, Jr. (CRD #2088064, Registered Principal, Fresh Meadows, New York) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Malagon consented to the described sanctions and to the entry of findings that he failed to disclose material facts to a public customer that a reasonably prudent customer would have wanted disclosed in making investment decisions and that Malagon had a duty to disclose. The findings also stated that Malagon executed unauthorized trades in the account of a public customer without discretionary trading authority.

Malagon's suspension began April 16, 2001, and concluded at the close of business May 4, 2001. **(NASD Case #CAF000046)**

Frank Edward Mandrell (CRD #3100112, Registered Representative, West Palm Beach, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Mandrell failed to respond to NASD requests for information. **(NASD Case #C07000078)**

Andrew Dwayne Miller (CRD #2002981, Registered Representative, Canon City, 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, Miller consented to the described sanction and to the

entry of findings that he obtained funds aggregating \$174,820.93 intended for investment and converted the funds to his own use and benefit. **(NASD Case #C3A010011)**

Jeffrey Scott Miller (CRD #2375756, Registered Representative, Bellmore, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he posted communications on an electronic bulletin board concerning customer securities without notifying the customers and without identifying himself as a registered representative. The findings also stated that Miller failed to inform the customers of a potential conflict of interest, and failed to observe high standards of commercial honor, and just and equitable principles of trade. Furthermore, the NASD found that Miller posted a communication on an electronic bulletin board that contained untrue, unwarranted, and misleading statements, made false price predictions without a reasonable basis, and failed to provide the investor with a sound basis for making an investment decision.

Miller's suspension began May 7, 2001, and concluded at the close of business May 11, 2001. **(NASD Case #CMS010031)**

Daniel Lewis Minor (CRD #1075162, Registered Representative, St. Joseph, Missouri) 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, Minor consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm.

Minor's suspension began April 16, 2001, and will conclude at the close of business May 15, 2001. **(NASD Case#C04010010)**

Gregory Vincent Morgan (CRD #2334270, Registered Representative, Baldwin, New York) was fined \$50,000, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$69,230, plus interest, in restitution to a public customer for effecting unauthorized securities transactions. In addition, Morgan was barred from association with any NASD member in any capacity for making unsuitable recommendations and engaging in excessive trading, and failing to respond to NASD requests for information. The sanctions were based on findings that Morgan effected unauthorized securities transactions in the account of a public customer. Morgan also made unsuitable recommendations, including recommendations to trade excessively, to a public customer. In addition, Morgan failed to respond to NASD requests for information.

Morgan's bar became effective March 20, 2001. **(NASD Case #C9B000024)**

Jay Lynn Murphy (CRD #343227, Registered Representative, Van Nuys, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without

admitting or denying the allegations, Murphy consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to, and to receive written approval from, his member firm prior to engaging in such activities. **(NASD Case #C02010006)**

Rachel Ellen Neufeld (CRD #2699457, Registered Representative, Collingswood, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$40,000 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, Neufeld consented to the described sanctions and to the entry of findings that she participated in private securities transactions and failed to provide her member firm with written notice of the proposed transactions, her proposed role therein, and whether she had received, or might receive, selling compensation in connection with the transactions. The findings also stated that Neufeld engaged in business activity for compensation outside the scope of employment with her member firm and failed to provide her member firm with prompt written notice.

Neufeld's suspension began May 7, 2001, and will conclude at the close of business May 6, 2003. **(NASD Case #C9A010008)**

Becky Maria Nunez (CRD #2313048, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any

capacity. The sanction was based on findings that Nunez executed unauthorized transactions in the account of a public customer and failed to respond to NASD requests for information. **(NASD Case #C10000174)**

Richard Bruce O'Callaghan (CRD #1707271, Registered Representative, Freehold, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$27,500 and suspended from association with any NASD member in any capacity for one year. 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, O'Callaghan consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on a Form U-4, and provided false and misleading testimony to the NASD during an on-the-record interview.

O'Callaghan's suspension began May 7, 2001, and will conclude at the close of business May 6, 2002. **(NASD Case #C9B010024)**

Peter David Ragofsky (CRD #2066034, Registered Representative, Brooklyn, New York) was barred from association with any NASD member in any capacity and ordered to pay \$15,956, plus interest, in restitution to public customers. The sanctions were based on findings that Ragofsky effected unauthorized transactions in the accounts of public customers. **(NASD Case C10000086)**

Juanita Rios (CRD #4175638, Associated Person, Wilmington, Delaware) was fined \$10,000 and suspended from association with any NASD member in any capacity

for 30 business days for providing a false response on her Form U-4 and barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The fine must be paid before reassociating with a member firm. The sanctions were based on findings that Rios failed to respond to NASD requests for information and provided a false response on her Form U-4 application for registration.

Rios' bar became effective March 29, 2001. **(NASD Case #C9A000041)**

Martin Lee Rising (CRD #1011762, Registered Representative, Paradise Valley, Arizona) submitted an Offer of Settlement in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for one month. Rising is also required to demonstrate to the NASD, not more than 90 days after the issuance of the Order of Acceptance of the Offer of Settlement, that an offer of rescission has been made to investors in an offering of securities. Without admitting or denying the allegations, Rising consented to the described sanctions and to the entry of findings that in connection with a private placement, he failed to return investor funds when the minimum sales contingency was not satisfied, and continued to solicit and accept purchases of the securities in a private placement after the minimum sales contingency was not satisfied and the funds received from investors were in the possession and control of the firm prior to the satisfaction of the minimum sales contingency. The findings also stated that Rising distributed offering materials to prospective investors

that contained material misrepresentations.

Rising's suspension will begin June 1, 2001, and will conclude June 30, 2001. **(NASD Case #C3A000012)**

Samuel Michael Rodio, II (CRD #2919945, Registered Representative, Katy, Texas) 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, Rodio consented to the described sanction and to the entry of findings that funds in the amount of \$5,312.98 were withdrawn from the account of public customers without their knowledge, authorization, or consent, and a check in the same amount and in the name of the customers was issued to and received by Rodio. The NASD determined that Rodio failed to deliver the check, and, instead, endorsed it and deposited the funds into his personal bank account, without the customers' knowledge, authorization, or consent. Rodio also failed to respond completely to NASD requests for information and documentation. **(NASD Case #C06000039)**

Andrew Calvin Rothstein (CRD #1187031, Registered Representative, Jackson, 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, Rothstein consented to the described sanction and to the entry of findings that he arranged for a \$3,000 check to be issued from a public customer's annuity account, endorsed the check, and converted the funds for

his own use and benefit, without the customer's knowledge or consent. Rothstein also failed to respond to NASD requests for information. **(NASD Case #C9B010014)**

Brad Lee Running (CRD #1490783, Registered Representative, Owatonna, Minnesota) 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 10 business days. Without admitting or denying the allegations, Running consented to the described sanctions and to the entry of findings that he negotiated and entered into a settlement agreement with public customers to pay them \$6,317.27 to resolve their verbal complaint about the decline in value of their account, without the knowledge or consent of his member firms.

Running's suspension began April 16, 2001, and concluded at the close of business April 27, 2001. **(NASD Case #C04010009)**

Julian Gaspar Russo (CRD #407793, Registered Representative, East Islip, New York) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Russo consented to the described sanction and to the entry of findings that he received \$13,000 from public customers for investment purposes but failed to invest the funds, thereby, misusing the customers' funds.

Russo's suspension began April 16, 2001, and will conclude at the close of business April 15, 2003. **(NASD Case #C05000036)**

Robert Joseph Sampson (CRD #1051109, Registered Representative, Rochdale, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sampson consented to the described sanction and to the entry of findings that he misappropriated at least \$87,000 in cash proceeds from the accounts of public customers and improperly converted the proceeds for his own use and benefit. **(NASD Case #C11010009)**

Daniel Carmine Santoro (CRD #2211387, Registered Representative, Douglaston, New York) 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 \$2,422.05 in restitution to his former member firm. Without admitting or denying the allegations, Santoro consented to the described sanctions and to the entry of findings that he converted \$25,000 from a public customer by obtaining a check payable to the customer and depositing it in his personal checking account without the customer's knowledge or authorization. The findings stated that Santoro forged the required signature on the check so that he could deposit it into his personal bank account. The NASD also found that Santoro caused credit cards to be opened under the names and social security numbers of public customers, directed the bills be sent to his home address, and named himself as the secondary card holder without their knowledge or authorization. **(NASD Case #C10010043)**

Gerard Vincent Sherlock, Sr. (CRD #2629144, Registered Representative, Cherry Hill, 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 three months. 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, Sherlock consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, without prior written notice to, or approval from, his member firms.

Sherlock's suspension began May 7, 2001, and will conclude at the close of business August 6, 2001. **(NASD Case #C3A010004)**

Paul Carl Sildatke (CRD #2910292, Registered Principal, Morris Plains, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sildatke failed to respond to NASD requests for information. **(NASD Case #C9B000028)**

Geiger Merrill Smith, Jr. (CRD #427616, Registered Representative, Newtown Square, Pennsylvania) 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, Smith consented to the described sanctions and to the entry of findings that he sold a variable universal life insurance policy to a public customer, and induced

another registered representative to be the agent on record for the sale and agreed to share the commissions because Smith's earnings were subject to a garnishment order. The findings also stated that the policy never took effect and Smith induced a registered representative at another firm to place the policy through that agent's firm and to remit the bulk of the commission to Smith.

Smith's suspension began May 7, 2001, and concluded at the close of business May 11, 2001. **(NASD Case #C9A010005)**

Daniel Christopher Stearns (CRD #1888242, Registered Representative, Colonie, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$17,000, of which \$12,000 represents disgorgement of commissions, and suspended from association with any NASD member in any capacity for two months. Without admitting or denying the allegations, Stearns 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.

Stearns' suspension will begin June 1, 2001, and will conclude at the close of business July 31, 2001. **(NASD Case #C11010013)**

Christopher Lynn Thomas (CRD #3152007, Registered Representative, Pembroke Pines, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that he failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C07000077)**

Vincent Bernard Tolbert (CRD #2343655, Registered Representative, Killeen, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Tolbert 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 of the customer. Tolbert also failed to respond to NASD requests for information. **(NASD Case #C06000034)**

Alto Lee Tompkins, Jr. (CRD #2882915, Registered Representative, Chicago, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Tompkins provided false responses on his Form U-4. **(NASD Case #C8A000065)**

Robert Frank Toth (CRD #2320179, Registered Principal, Rosedale, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Toth failed to respond to NASD requests for testimony and documents. **(NASD Case #CAF000014)**

Juan Carlos Vega (CRD #2150200, Registered Representative, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to cooperate with the NASD in any related investigation and hearing. Without admitting or denying the allegations, Vega consented to the described sanctions and to the

entry of findings that he rendered substantial assistance to his member firm and its CEO by executing orders and carrying out all basic trading functions relating to the trading activities of the common stock of a company that were designed to deceive or defraud public customers in spite of a general awareness that his role was improper.

Vega's suspension began April 16, 2001, and will conclude at the close of business June 14, 2001. **(NASD Case #CAF010006)**

Stephen Morris Wilkinson (CRD #718506, Registered Representative, Pace, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Wilkinson instructed a public customer to complete checks totaling \$23,345.31 to be used to purchase shares in mutual funds. Instead of arranging an electronic transfer of the customer's funds to the mutual funds, Wilkinson filled in his own name as payee on the checks, endorsed them, and deposited them into his own bank account. Wilkinson also failed to respond to an NASD request for information. **(NASD Case #C07000074)**

Craig Henry Woodward (CRD #1955883, Registered Representative, West Palm Beach, 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 Woodward's financial status, no monetary sanction was imposed. Without admitting or denying the allegations, Woodward consented to the described sanction and to the entry of findings that he issued press releases on the Internet in the name of a corporation in,

which he was the sole owner, that contained misrepresentations regarding the corporation. The findings also stated that Woodward issued a press release on the Internet regarding another company and failed to disclose that he owned shares of the company.

Woodward's suspension began April 16, 2001, and will conclude at the close of business October 15, 2001. **(NASD Case #C07990068)**

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of April 13, 2001. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Mark Joseph Chavez (CRD #2411119, Registered Principal, Boca Raton, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Chavez failed to respond to NASD requests for information.

Chavez has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C07000084)**

Luther Allen Hanson (CRD #1956960, Registered Representative, Charleston, West Virginia) was suspended from association with any NASD member in any capacity for 90 days, required to requalify as a general securities representative within six months, and directed to disgorge \$79,105.62 in commissions to public customers.

If it is proven that any customers have recouped their investments, the commissions relating to such customers shall be converted to a fine to be paid to the NASD. The sanctions were based on findings that Hanson participated in the offer and sale of securities without prior written notice to, or approval from, his member firm.

This case has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. **(NASD Case #C9A000027)**

Paul John Hoyer (CRD #2318477, Registered Representative, Corona Del Mar, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hoyer failed to respond to NASD requests for information.

Hoyer has appealed this action to the NAC, and the sanction is not in effect pending consideration of the appeal. **(NASD Case #C02000037)**

Jack Harry Stein (CRD #1233359, Registered Representative, West Palm Beach, Florida) was fined \$25,000 and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Stein made unsuitable recommendations to a public customer.

Stein has appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C07000003)**

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 J. Black, Jr. (CRD #1487059, Registered Representative, Germantown, Tennessee) was named as a respondent in an NASD complaint alleging that he received \$57,839.70 in funds from a public customer, deposited the funds into an account he controlled, and converted the funds to his own use and benefit without the customer's knowledge or consent. The complaint also alleges that Black failed to respond to an NASD request to provide on-the-record testimony. **(NASD Case #C05010024)**

Patrick James Boyce (CRD #2388578, Registered Principal, East Setauket, New York) was named as a respondent in an NASD complaint alleging 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 an untrue statement 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. The complaint also alleges that Boyce

executed unauthorized trades in the accounts of public customers without the discretionary trading authority for the accounts. The complaint further alleges that Boyce made material omissions and misrepresentations and engaged in high-pressure sales tactics in attempting to solicit public customers to purchase stocks. In addition, the complaint alleges that Boyce effected transactions in and/or induced the purchase or sale of securities by means of manipulative, deceptive, and other fraudulent devices and contrivances. **(NASD Case #CAF010007)**

Lee Edward Bridges (CRD #1509183, Registered Representative, McComb, Mississippi) was named as a respondent in an NASD complaint alleging that he engaged in business activities outside the scope of his relationship with a member firm and failed to give prior written notice to his firm. The complaint also alleges that Bridges received \$1,000 from a public customer to open Individual Retirement Accounts (IRAs) on behalf of the customer's minor sisters, neglected to open the IRAs, and, instead, converted the funds to his own use and benefit, without the knowledge or consent of the customer. **(NASD Case #C05010021)**

Dane Stephen Faber (CRD #1020637, Registered Principal, Sausalito, California), Grace Patricia Stoneham (CRD #1068378, Registered Representative, San Francisco, California) and Monty Reasor Myler (CRD #1922281, Registered Principal, Palm Beach Gardens, Florida) were named as respondents in an NASD complaint alleging that they, by the use of instrumentalities of interstate commerce, or of the

mails, made material misrepresentations and omitted to state material facts about a company; effected transactions in, or induced the purchase or sale of, a security by means of a manipulative, deceptive, or fraudulent device; and failed to observe high standards of commercial honor and just and equitable principles of trade. The complaint alleges that each of the respondents solicited indications of interest for a common stock by falsely representing that the company would be selling the stock through an IPO, failed to conduct an adequate inquiry into the company before recommending purchase of the security to public customers, and recklessly disregarded publicly available information that indicated the shares were not being offered through an IPO. The complaint also alleges that the respondents made baseless and improper price predictions and assurances of success about the stock. The complaint further alleges that Faber made unsuitable recommendations to a public customer and made unsuitable transactions in her account in light of her investment objectives, financial situation, and needs. In addition, the complaint alleges that Myler failed to pay an NASD arbitration award. **(NASD Case #CAF010009)**

Mitchell Louis Goldberg (CRD #1386682, Registered Principal, Syosset, New York) was named as a respondent in an NASD complaint alleging that, in connection with the purchase or sale of a security, he intentionally, knowingly, or recklessly employed a device, scheme, contrivance, and artifice to defraud; 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 a public customer. The complaint also alleges that Goldberg effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. In addition, the complaint alleges that, in an effort to induce the customer to ratify unauthorized transactions, Goldberg intentionally and/or recklessly made material, misleading, and false representations that were without a reasonable basis and failed to disclose to the customer material information. The complaint further alleges that Goldberg failed to execute the sell orders of public customers. Moreover, the complaint alleges that Goldberg failed to accurately record on the books and records of his member firm the residential address of a public customer, and circumvented Indiana Blue Sky laws by preparing a new account form for a customer using the home address of the customer's father in another state. **(NASD Case #C10010042)**

Mohamed Imran Hussain (CRD #2287607, Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that he guaranteed a customer against loss. **(NASD Case #C10010046)**

Bruce William Rhodes (CRD #2690462, Registered Representative, Rochester, Illinois) was named as a respondent in an NASD complaint alleging that he received \$795,500 from a public customer with instructions that the funds be used to purchase short-term investments. The complaint alleges that Rhodes failed to follow the customer's instructions by depositing \$692,176.17 of the

customer's funds in an account at his firm and purchasing long-term investments for the customer, and used \$103,323.83 for some purpose other than for the benefit of the customer. The complaint also alleges that Rhodes failed to respond to NASD requests for information. **(NASD Case #C8A010025)**

Nathan James Smith (CRD #1946055, Registered Representative, Chatham, New Jersey) was named as a respondent in an NASD complaint alleging that he failed to respond to NASD requests for information. The complaint also alleges that Smith improperly converted \$200,000 in funds received from a public customer intended for investment purposes to his own use and benefit. **(NASD Case #C9B010019)**

Guy Anthony Zarrilli (CRD #2194074, Registered Principal, Point Pleasant, New Jersey) was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations to public customers. The complaint also alleges that Zarrilli lacked reasonable grounds to believe that his recommendations were suitable for the customers in light of their ages, need for income, the speculative nature of the transactions, and the size of the transactions in comparison to the value of the accounts. **(NASD Case #C9A010007)**

Matthew Laurence Zimmerman (CRD #1800015, Registered Representative, Morris Plains, New Jersey) was named as a respondent in an NASD complaint alleging that he engaged in unauthorized trading in the accounts of public customers, made untrue statements of material facts, and omitted to

state material facts to customers causing them to lose almost \$55,000 in their accounts, while collecting over \$9,000 in commissions. The complaint also alleges that Zimmerman failed to respond to NASD requests to appear for on-the-record interviews. **(NASD Case #C9B010027)**

Firms Suspended For Failure To Supply Financial Information

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

Beacon Trading, L.L.C.
San Jose, California
(April 12, 2001)

Bemos Investment Advisors, L.L.C.
Deerfield, Illinois
(April 12, 2001)

Bennett, Mullaney & Co., Inc.
Warren, Vermont
(April 12, 2001)

C.B. Hill & Associates, Inc.
Jacksonville, Florida
(April 12, 2001)

Crimson Securities LLC
New York, New York
(April 12, 2001)

Investor's Advocate, LLC
Grand Blanc, Michigan
(April 12, 2001)

Stellar Investments, Inc.
Tampa, Florida
(April 12, 2001)

UFI Securities, Inc.
Dublin, California
(April 12, 2001)

Weston Capital Markets, Inc.
New York, New York
(April 12, 2001)

Firms Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement

Ashland Global Securities, LLC
New York, New York
(March 27, 2001)

Lloyd Wade Securities, Inc.
Dallas, Texas
(April 2, 2001)

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

Testino, Jr., Charles W.
Tucson, Arizona
(April 11, 2001)

Vahab, Ray
New York, New York
(April 11, 2001)

Individuals Barred Pursuant To NASD Rule 9540 Series For Failure To Provide Information Requested Under NASD Rule 8210. (The date the bar became effective is listed after the entry.)

Crenshaw, Michael
Brooklyn, New York
(April 16, 2001)

Hawley, Matthew
Sleepy Hollow, New York
(April 12, 2001)

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.)

Chapman, David R.
Kemblesville, Pennsylvania
(April 10, 2001)

Delia, Carl
Hicksville, New York
(April 11, 2001)

Friedman, Roy H.
Long Beach, California
(March 26, 2001)

Holliman, III, Joe L.
Austin, Texas
(April 2, 2001)

King, Larry Richard
Sacramento, California
(March 21, 2001)

Manzanares, Joseph L.
Denver, Colorado
(April 16, 2001)

Newton, Barry James
Long Beach, California
(April 11, 2001)

Quinn, John T.
Louisville, Kentucky
(March 15, 2001)

Rogers, Jason
Rosedale, New York
(April 2, 2001)

Valasquez, Reynaldo C.
Corpus Christi, Texas
(March 22, 2001)

Washington, Doris Payne
Glen Allen, Virginia
(April 4, 2001)

Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement

The date the registration was suspended is included after entry. If the individual has complied, the listing also includes the date the suspension was lifted.

Bernstein, Andrew S.

Merrick, New York
(March 30, 2001)

Burton, Gregory M.

Locust Valley, New York
(March 28, 2001 - April 16, 2001)

Carroll, Jeffrey C.

Highland Beach, Florida
(March 22, 2001)

NASD Regulation Censures and Fines Stifel, Nicolaus & Company, and Two Individuals for the Unsuitable Sale of Class B Mutual Fund Shares

NASD Regulation has censured and fined Stifel, Nicolaus & Company, Inc. of St. Louis, MO, and two individuals, Michael G. Grimes and his supervisor, William J. Lasko, for violating NASD rules in connection with the sale of Class B mutual fund shares. NASD Regulation found that between June 1996 and May 1998, Grimes made unsuitable sales totaling over \$7 million to 44 customers in Class B mutual fund shares, and that Lasko and the firm failed to supervise Grimes with respect to these unsuitable sales.

As part of a settlement with the NASD, Stifel has agreed to exchange the Class B shares sold to these customers for Class A shares at no charge. The cost of this restitution offer, should every

customer make the exchange, is approximately \$225,000, which will be paid jointly by Stifel and Grimes.

Mutual funds can be offered for sale to investors in different classes. In this case, the Class A shares incurred a front-end sales load, but had lower on-going expenses than Class B shares. Customers who purchased Class B shares did not pay a sales charge at the time of purchase, but may have paid a charge when they sold their shares, unless the held them for six years. B Shares also incurred higher on-going distribution expenses than Class A shares.

Over a two-year period, NASD Regulation found that Grimes engaged in a pattern of making unsuitable recommendations of Class B shares to customers. He recommended that each of 15 customers purchase over \$250,000 in Class B shares, when it would have been more cost-effective for those customers to purchase Class A shares. In fact, the fund had a maximum purchase limitation of \$250,000 in Class B shares. NASD Regulation found that recommendations to purchase over \$250,000 in Class B shares exceeded the maximum purchase limitation and were unsuitable in light of the amount sold, the sales and distribution charges incurred and because the customers could have purchased the A Shares with substantially lower sales charges. Stifel failed to supervise by not having a system in place to detect sales in excess of the maximum purchase limits on the funds it sold.

NASD Regulation found that Stifel and Grimes earned sales commissions of over \$290,000 or four percent of the purchase on

the sale of Class B shares. The sales commissions would have been less than half this amount had they sold Class A shares.

In another instance, NASD Regulation found that Grimes recommended to 29 customers that they liquidate another mutual fund and purchase, in the aggregate, over \$500,000 of Class B shares. Again, the customers were eligible to purchase Class A shares, the more cost-effective purchase at the time because of a temporary marketing promotion offered by the fund that eliminated a sales load at either the time of purchase or the time of sale. Stifel and Grimes earned \$21,000 on the sale of these Class B shares, and would not have earned any sales commission had they sold Class A shares.

As a result of the NASD disciplinary action, Grimes has been suspended for 30 days and will pay a fine of \$30,000. Lasko has been suspended for 10 days in a supervisory capacity, and has been fined, together with the firm, \$25,000. Stifel has agreed to pay a total fine of \$41,000, which includes the violations noted above. Both the firm and the two respondents have neither admitted nor denied the allegations, but have consented to the entry of findings pursuant to the settlement.

NASD Regulation Fines Banc One Capital Markets, Inc. \$1.8 Million For Net Capital, Customer Reserve, and Recordkeeping Violations

NASD Regulation has censured and fined Banc One Capital Markets, Inc., \$1.8 million for inadequate net capital, insufficient customer reserves, and inaccurate books and records. Banc One, a

broker/dealer subsidiary of Banc One Corporation, a bank holding company, entered into a settlement with NASD Regulation in which the firm neither admitted nor denied the allegations.

NASD Regulation found that Banc One operated from February 1999 through August 1999 without a reliable accounting system. The violations occurred after a conversion of Banc One's computerized securities processing and accounting software in early 1999. The conversion caused numerous accounting entries to post incorrectly. As a result, account balances in the firm's general ledger did not match the underlying transaction data balances. Banc One was unable to reconcile these differences promptly, and by March 1999 the dollar amount of the differences exceeded \$1 billion. The total number of unreconciled items increased from 1,000 in April 1999 to over 4,000 by July 1999.

Banc One failed to treat the accounting differences properly when it prepared and reported its net capital and customer reserve computations. Instead of treating each difference on a gross basis, as is required, Banc One calculated its net capital and customer reserve using the aggregate net of all differences. The firm's improper accounting treatment of these differences caused Banc One to operate from February 1999 through August 1999 with net capital deficiencies ranging from \$520 million to \$1.27 billion, and customer reserve account deficiencies ranging from \$380 million to \$1.05 billion.

Although required to do so by federal securities laws, Banc One failed to promptly notify regulators that its books and records were unreliable. The firm also failed to give proper notice that it was conducting a securities business with inadequate net capital, and that its customer reserve account was deficient. Maintaining reliable records, adequate net capital and customer reserves are critical to investor confidence, protection and overall market integrity.

In resolving this matter and imposing these sanctions, NASD Regulation took into consideration Banc One's cooperation during the investigation, that the firm's reconciliation process showed customer accounts were not impacted, and the steps the firm took to restructure its operations. This case resulted from an investigation conducted by NASD Regulation's Chicago District Office.

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**ACTION REQUESTED BY
JULY 2, 2001**

Rule Modernization Project

NASD Regulation
Requests Comment
On Steps That Can Be
Taken To Streamline
NASD Rules; **Comment
Period Expires on July
2, 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.

- Executive Representatives
- Legal & Compliance
- Senior Management

KEY TOPICS

- Rule Review
- Rule Modernization

Executive Summary

Over the past several years, NASD Regulation, Inc. (NASD Regulation) has conducted a comprehensive review of many of the National Association of Securities Dealers, Inc. (NASD®) rules. NASD Regulation plans to expand and build upon its review to ensure that the NASD rules are as streamlined as possible, and impose the least burden to accomplish their objectives. NASD Regulation recently retained a consultant with particular expertise in analyzing regulations to assist in this review.

One key to the success of NASD Regulation's efforts to modernize the NASD rules will be industry input. NASD Regulation encourages all interested parties to suggest rules that should be the focus of this review. Suggestions that include specific explanations of the burdens imposed by a rule will be particularly helpful. We also invite specific comments about ways that investor protection can be assured through alternative regulatory approaches.

Questions concerning this *Request for Comment* may be directed to Eric J. Moss, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8982.

Background And Discussion

In 1998, NASD Regulation began a review of the NASD's rules to: (1) determine if there are obsolete or otherwise unnecessary rules that could be repealed or that should be modernized in light of technological or industry developments; and (2) determine if particular rules should distinguish between retail and institutional customers in their application. The over-arching principle in this

review is to ensure that NASD rules promote balanced and effective regulation of the securities industry in order to protect investors and ensure market integrity, taking into account burdens and technological advances.

As part of its review, in *Notice to Members 98-81*, NASD Regulation invited members and other interested parties to submit suggestions for its review and consideration. NASD Regulation received 24 comment letters. Many of the recommendations made in the comment letters were presented to NASD Regulation committees, as well as the NASD Regulation Board of Directors. As a result of this undertaking, several important regulatory initiatives have been implemented or are pending at the Securities and Exchange Commission, including amendments to the NASD Corporate Financing Rule, Free Riding and Withholding Interpretation, Three Quote Rule, and Advertising Rules.

NASD Regulation is continuing its review to determine if there are additional steps that should be taken to modernize the NASD rules. NASD Regulation has retained an expert consultant to assist in estimating the burdens of certain NASD rules, both direct and indirect, and evaluating the benefits of such rules. Further, the consultant will help NASD Regulation develop a template and a process for using this kind of analysis on a going-forward basis. In those instances where the regulatory burden of a rule significantly outweighs the benefit, or the rule no longer works efficiently, given new technologies, NASD Regulation will look at revising the rule. NASD Regulation believes that the cost-benefit data that the consultant plans to gather

Special NASD Notice to Members 01-35—Request For Comment

could be particularly beneficial in evaluating whether certain rules unfairly burden small firms. NASD Regulation intends to apply the review process to all of its rules. We recognize, however, that there are some rules for which the benefits may not be readily quantified, but are nevertheless worth preserving.

Request For Comment

NASD Regulation encourages all interested parties to suggest rules that should be the focus of this review. Suggestions that include specific explanations of the burdens imposed by a rule will be particularly helpful. We also invite specific comments about ways that investor protection can be assured through alternative regulatory approaches.

*Barbara Z. Sweeney
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500*

*or e-mail to:
pubcom@nasd.com*

Please see Attachment A for further instructions about submitting comments to NASD Regulation. The only comments that will be considered are those submitted via e-mail or in writing.

Comments must be received by July 2, 2001. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission.

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ATTACHMENT A

Request for Comment Instructions

Comments must be received by **July 2, 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:

Barbara Z. Sweeney
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

NASD Regulation encourages all interested parties to suggest rules that should be the focus of this review. Please provide for each proposed rule change, a statement as to why you believe that the burdens imposed by the rule outweigh the benefits.

See my attached written comments

Contact Information

Name: _____

Firm: _____

Address: _____

City/State/Zip: _____

Phone: _____

E-Mail: _____

Are you:

An NASD Member

An Investor

A Registered Representative

Other: _____