

# NASD Notice to Members 01-44

## INFORMATIONAL

## Exchange Act Rules 11Ac1-5 And 11Ac1-6

### SEC Issues Interpretive Guidance Concerning Exchange Act Rules 11Ac1-5 And 11Ac1-6

## 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

- Disclosure Of Order Execution and Order Routing
- Exchange Act Rules 11Ac1-5 and 11Ac1-6

## Executive Summary

NASD Regulation Inc. (NASD Regulation<sup>SM</sup>) is issuing this *Notice to Members* to inform members about interpretive guidance recently issued by the Division of Market Regulation (Division or SEC Staff) of the Securities and Exchange Commission (SEC or Commission) concerning Rules 11Ac1-5 and 11Ac1-6 under the Securities Exchange Act of 1934 (Exchange Act). On June 22, 2001, SEC staff issued two *Staff Legal Bulletins*. *Staff Legal Bulletin No. 12R (Revised)* addresses frequently asked questions about Rule 11Ac1-5. *Staff Legal Bulletin No. 13* addresses frequently asked questions about Rule 11Ac1-6. The SEC also granted five requests for exemptive relief under these rules.

Rule 11Ac1-5 generally requires market centers that trade national market system securities to prepare and make available to the public monthly electronic reports that include uniform statistical measures of execution quality for covered orders.

Rule 11Ac1-5 also requires self-regulatory organizations (SROs) that trade national market system securities to submit to the SEC a new national market system plan (Joint SRO Plan) establishing procedures for market centers to follow in making their monthly reports available to the public. The Joint SRO Plan was submitted on February 20, 2001, and it was approved by the SEC on April 12, 2001.<sup>1</sup>

Rule 11Ac1-6 generally requires broker/dealers that route customer orders in covered securities to make publicly available quarterly reports that disclose venues to which they route non-directed orders. It also requires broker/dealers to disclose the nature of any relationship they have with

those venues, including any payment for order flow arrangements. In addition, broker/dealers must disclose to customers, on request, the venues to which their individual orders were routed.

## Questions/Further Information

Please note that Rules 11Ac1-5 and 11Ac1-6 are SEC rules. Accordingly, questions of interpretation or other concerns about the rules should be directed to the SEC staff. Information regarding these rules also can be found on the SEC Web Site at [www.sec.gov](http://www.sec.gov). In addition, Rules 11Ac1-5 and 11Ac1-6 are discussed in more detail in *Special NASD Notice to Members 01-16* and *NASD Notice to Members 01-30*. Members also may direct general questions concerning this *Notice* to Kathleen O'Mara, Assistant General Counsel, or Philip Shaikun, Assistant General Counsel, NASD Regulation, Inc., at (202) 728-8071.

## Background And Information

On November 17, 2000, the SEC adopted Exchange Act Rules 11Ac1-5 and 11Ac1-6.<sup>2</sup> The SEC's stated goal for adopting Exchange Act Rules 11Ac1-5 and 11Ac1-6 was to make visible the execution quality of the securities markets and order routing performance. Rule 11Ac1-5 generally requires market centers that trade national market system securities to prepare and make available to the public monthly electronic reports that include uniform statistical measures of execution quality for market orders or limit orders received or executed by a market center during regular trading hours.<sup>3</sup> Rule 11Ac1-6 generally requires broker/dealers that route

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customer orders in national market system securities, Nasdaq SmallCap equities, and listed options to make publicly available quarterly reports that disclose venues to which they route non-directed orders. It also requires broker/dealers to disclose the nature of any relationship they have with those venues, including any payment for order flow arrangements. This rule specifically requires posting of 11Ac1-6 information 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. In addition, broker/dealers must disclose to customers, on request, the venues to which their individual orders were routed.

Since the adoption of these rules, the SEC and NASD Regulation have received many calls from industry members with a broad range of questions regarding the implementation and operation of these SEC rules. The SEC's staff addresses the most frequently asked questions regarding Rules 11Ac1-5 and 11Ac1-6 in *Staff Legal Bulletin Nos. 12R* and *13*. Also, the SEC Staff has provided as Appendices to *Staff Legal Bulletin No. 12R* a table with Rule 11Ac1-5 sample statistics for a single security "A" in May 2001 and the text of the Joint SRO Plan adopted pursuant to Rule 11Ac1-5. Similarly, the Staff attached as an exhibit to *Staff Legal Bulletin No. 13* a sample format for Rule 11Ac1-6 quarterly reports. Furthermore, in an effort to address specific requests for exemptive relief, the SEC granted five requests for exemptive relief under Rules 11Ac1-5 and 11Ac1-6. All of this information has been posted

on the SEC Web Site and should be reviewed by members. We are providing a summary of these actions for your convenience.

### SEC Staff Legal Bulletins

On June 22, 2001, SEC staff issued two *Staff Legal Bulletins*: *Staff Legal Bulletin No. 12R (Revised)* and *Staff Legal Bulletin No. 13*. These legal bulletins set forth the views of the SEC's Staff and are not binding on the Commission.

*Staff Legal Bulletin No. 12R (Revised)* addresses frequently asked questions about Rule 11Ac1-5 and incorporates a discussion of all exemption relief issued to date.<sup>4</sup> The interpretive questions addressed in this bulletin are: (1) format of monthly reports and procedures for making reports publicly available; (2) vendor or SRO assistance in making reports available; (3) the definition of market center in connection with the use of multiple trading venues; (4) integrated broker/dealers acting as market centers and agents solely for purpose of routing to another market center for execution; (5) the definition of covered order and the special handling exclusion; (6) temporary exemption for manually received orders; (7) locked and crossed quotes; (8) trading halts; (9) activity within the Intermarket Trading System; (10) activity within SuperSOES and SelectNet; (11) partial executions and/or partial cancellations; (12) orders left unexecuted and uncancelled at the end of regular trading hours; (13) establishing time of receipt; (14) orders received in same second as a quote change; (15) time of execution for stopped or guaranteed orders; (16) adjusted or voided order executions; (17) calendar month reporting; (18)

phase-in of reporting; (19) exemption for orders received prior to dissemination of quotations by primary listing SRO; (20) filtering potential errors in Consolidated best bid and offer (Consolidated BBO); (21) time of Consolidated BBO; (22) rounding of statistics; (23) modified orders; (24) riskless principal orders; (25) exemption for inactively traded securities; (26) exemption for small market centers; and (27) exemption for block orders.

*Staff Legal Bulletin No. 13* addresses frequently asked questions about Rule 11Ac1-6 and incorporates a discussion of all exemption relief issued to date. The interpretive questions addressed in this bulletin are as follows: (1) format of quarterly reports; (2) identification of significant execution venues; (3) materiality of order percentage figures; (4) introducing broker/clearing firm reporting responsibility; (5) multiple reports by a broker/dealer; (6) definition of customer orders and large order exclusion; (7) definition of customer orders and exclusion from the rule of orders received from other broker/dealers or foreign banks acting as broker/dealers; (8) definition of directed orders addressing impact of default routing instructions; (9) classifying market, limit, and other orders; (10) orders executed in multiple venues; (11) execution venue for riskless principal orders; (12) Nasdaq® execution venues; (13) disclosing payment for order flow; (14) disclosing internalized order flow; (15) procedures for making quarterly reports publicly available; (16) responding to requests from customers for individual information; and (17) written notice to customers concerning availability of quarterly reports and individual information.

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### **SEC Staff Issues Five Exemptive Letters**

On June 22, 2001 the Commission, by the Division pursuant to delegated authority, also granted five requests for exemptive relief under Rules 11Ac1-5 and 11Ac1-6. The SEC granted four requests for exemptive relief under Rule 11Ac1-5 and one request for exemptive relief under Rule 11Ac1-6. Please note exemptions granted pursuant to the letters discussed in this *Notice* are subject to modification or revocation by the Commission at any time. Below is a summary of each of these exemptive letters.<sup>5</sup>

#### ***Exemption Request From 11Ac1-5 By NASD's Small Firm Advisory Board Granted***

Many small firms have expressed concerns about the significant compliance costs and the lack of resources available to small firms to comply with these rules and the potential detrimental effects on liquidity. The NASD Small Firm Advisory Board (SFAB) expressed these concerns to the SEC's Staff in a letter dated April 23, 2001, and was instrumental in obtaining two exemptions from Rule 11Ac1-5:<sup>6</sup> (1) for inactively traded securities;<sup>7</sup> and (2) for small market centers that do not focus their business on the most actively traded securities.<sup>8</sup>

#### ***Exemption Request From 11Ac1-5 By The Nasdaq Stock Market, Inc. Granted***

The Nasdaq Stock Market, Inc. (Nasdaq) requested that the Division issue interpretive guidance and exempt certain orders from Rule 11Ac1-5 in a letter dated June 20, 2001. Specifically, given the significant changes to Nasdaq's SelectNet

system that will accompany the phase-in of the SuperSOES rules in July 2001, Nasdaq made certain requests relating to the application of the Rule to SuperSOES and SelectNet in light of these changes. The Division previously found that SOES (which delivers automatic execution) is a market center and that SelectNet (which merely routes orders) is not. Consequently, Nasdaq must report as a market center on SOES orders. In addition, market centers that received preference orders through SelectNet to access displayed quotes must report on these orders. Essentially, the SEC Staff refined its analysis to recognize the significant changes Nasdaq is making to SelectNet and SOES and on behalf of the Commission granted an exemption under certain circumstances from reporting requirements under Rule 11Ac1-5.<sup>9</sup>

#### ***Exemption Request From 11Ac1-5 By The New York Stock Exchange, Inc. Granted***

The New York Stock Exchange, Inc. (NYSE) requested that the Commission grant two exemptions from Rule 11Ac1-5: (1) that all market centers be exempt from the requirement that the initial monthly reports on trading in May 2001 be made publicly available by the end of June, and (2) that orders with a size of 10,000 shares or greater be exempted from the Rule. The SEC granted a temporary exemption from the requirement that market centers make Rule 11Ac1-5 reports publicly available on an Internet site for trades in exchange-listed national market system securities for the month of May 2001. Market centers, however, are required to prepare a report for transactions occurring during the month of May 2001 and to make the report available for

inspection by SEC staff. Moreover, the SEC determined that reports on trading for the month of June 2001 in listed-securities subject to Rule 11Ac1-5 are to be made publicly available on an Internet site by the end of July in accordance with the Joint SRO Plan.<sup>10</sup> The Commission also exempted from Rule 11Ac1-5 any order with the size of 10,000 shares or greater as requested by the NYSE.

#### ***Exemption Request From 11Ac1-5 By Market Systems, Inc. Granted***

Market Systems, Inc. requested two exemptions from Rule 11Ac1-5. Specifically, Market Systems requested exemptions related to: (1) orders received prior to dissemination of quotations by the primary market for a security, and (2) orders received during a time when the Consolidated BBO reflects a spread that exceeds \$1 plus 5 percent of the midpoint of the Consolidated BBO. As requested, the Commission exempted from the Rule any order that is received prior to the dissemination of the first firm, uncrossed quotations for the relevant security by the primary market and any order received during a time when the Consolidated BBO reflects a spread that exceeds \$1 plus 5 percent of the midpoint of the Consolidated BBO.<sup>11</sup>

#### ***Exemption Request From 11Ac1-6 By First Union Securities, Inc. Granted***

First Union requested that broker/dealers be exempted from reporting under Rule 11Ac1-6 the identity of execution venues that received less than 5 percent of the firm's non-directed order flow. The Commission granted an exemption

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from the disclosure requirements of paragraph (b)(1)(ii) of the Rule with execution venues that only receive a small percentage of non-directed orders. Specifically, a broker/dealer is not required to identify execution venues that received less than 5 percent of non-directed orders for a section of the broker/dealer's quarterly report, as long as it has identified the top execution venues that in the aggregate received at least 90 percent of the broker/dealer's total non-directed orders.<sup>12</sup>

### Effective Dates

The Adopting Release established a three-stage phase-in of compliance with Rule 11Ac1-5. The initial compliance date for the first phase-in of national market system securities subject to Rule 11Ac1-5 was extended on March 9, 2001 from April 2, 2001 to May 1, 2001. The SEC, subsequently, granted a temporary exemption, until July 31, 2001, from the reporting requirements of Rule 11Ac1-5(b)(1) for all orders in securities that are qualified for inclusion in the National Market tier of Nasdaq. Furthermore, as discussed above, the SEC granted a temporary exemption from the requirement that market centers make Rule 11Ac1-5 reports publicly available on an Internet site for trades in exchange-listed national market system securities for the month of May 2001. Reports, however, on trading for the month of June 2001 in listed-securities subject to Rule 11Ac1-5 are to be made publicly available on an Internet site by the end of July.

The Adopting Release established July 2, 2001 as the initial compliance date for Rule 11Ac1-6. Therefore, the first report required under Rule 11Ac1-6 must cover transactions during the first quarter ending September 30, 2001. That quarterly report must be made publicly available by October 31, 2001. Broker/dealers also must respond to customer requests for order-routing information for orders routed on July 2, 2001 and after.

### Endnotes

- 1 Securities Exchange Act Release No. 44177 (April 12, 2001), 66 FR 19814.
- 2 Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (Adopting Release).
- 3 Market orders and limit orders including customer requests for special handling for execution are excluded from the definition of covered orders reportable pursuant to Rule 11Ac1-5. For a complete definition of relevant terms please review Rules 11Ac1-5 and 11Ac1-6.
- 4 *Staff Legal Bulletin No. 12R* revises the prior staff legal bulletin issued on March 12, 2001.
- 5 The SEC previously issued three exemptions under Rule 11Ac1-5. See Letter to Richard G. Ketchum, President, The Nasdaq Stock Market, Inc., from Annette L. Nazareth, Director, Division, SEC, dated March 12, 2001; Letter to Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association, from Annette L. Nazareth, Director, Division, SEC, dated March 12, 2001; and Letter to Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association, from Annette L. Nazareth, Director, Division, SEC, dated April 12, 2001.
- 6 See Letter to Richard Romano, Chair, and Carl P. Sherr, Co-Chair, NASD Small Firms Advisory Board, from Annette L. Nazareth, Director, Division, SEC, dated June 22, 2001.
- 7 The SEC exempted any national market system security that did not average more than five reported transactions per day, as disseminated pursuant to an effective reporting plan, for each of the preceding six months (or such shorter time that the security has been designated a national market system security). An inactively traded security will lose its exemption only after its average daily reported transactions have exceeded five for each of the preceding six months. Orders in exempted securities need not be included in a market center's monthly

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- reports, but a market center is free to include them if it chooses to do so.
- 8 The SEC exempted any market center that reported fewer than 200 transactions per day on average over the preceding six-month period in securities that are covered by the Rule, but only if more than 90 percent of such transactions were in securities that are not included in the Nasdaq-100 Index or the S&P 500 Composite Stock Price Index. Once a market center's average daily reported transactions for the preceding six-month period reach 200, or the percentage of its reported transactions in Nasdaq-100 and S&P 500 securities reaches 10 percent or greater for the preceding six-month period, the market center will cease to qualify for the exemption.
- 9 See Letter to Richard G. Ketchum, President, The Nasdaq Stock Market, Inc., from Annette L. Nazareth, Director, Division, SEC, dated June 22, 2001. The Division agreed with Nasdaq's view that SuperSOES is itself a market center for which Nasdaq must issue monthly reports. The Division also found that orders that are all-or-none ("AON") orders or minimum acceptable quantity ("MAQ") orders received by SuperSOES Participants through SelectNet would not be a "covered order" as defined in paragraph (a)(8) of the Rule. Furthermore, the SEC granted an exemption from the Rule's definition of covered order for preferenced SelectNet orders received by SuperSOES Participants from UTP Exchanges that are not SuperSOES Participants. Finally, the SEC granted a temporary exemption for SuperSOES participants from reporting on SelectNet preferenced orders in the event that SuperSOES is not fully implemented by August 1.
- 10 See Letter to Darla C. Stuckey, Assistant Secretary, New York Stock Exchange, Inc., from Annette L. Nazareth, Director, Division, SEC, dated June 22, 2001.
- 11 See Letter to Theodore Karn, President, Market Systems Inc., from Annette L. Nazareth, Director, Division, SEC, dated June 22, 2001.
- 12 See Letter to Neal E. Sullivan & Gail Marshall-Smith, Bingham Dana LLP (on behalf of First Union Securities, Inc.), from Annette L. Nazareth, Director, Division, SEC, dated June 22, 2001.

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# NASD Notice to Members 01-45—Request For Comment

**ACTION REQUESTED BY  
AUGUST 15, 2001**

## Required Disclosures For Securities Recommendations

NASD Regulation Requests Comment On Proposed Amendments To Rule 2210, Communications With The Public; **Comment Period Expires August 15, 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
- Operations
- Senior Management

### KEY TOPICS

- Analyst Disclosures
- Communication With The Public

### Executive Summary

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) requests comment from National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) members, investors, and other interested parties on a proposed amendment to NASD Rule 2210, Communications with the Public, that would strengthen disclosures required when a member recommends a security in written advertisements and sales literature. The proposed amendment also would require, for the first time, similar disclosures for recommendations made by a research analyst or other associated person during a public appearance. The proposal would define public appearance to include radio or television interviews, seminars, and interactive electronic forums.

For both written recommendations and those made during public appearances, the proposed rule amendment generally would require an associated person or firm to disclose that (1) the analyst responsible for the recommendation has a personal financial interest in the recommended security; (2) the member firm owns five percent or more of the outstanding shares of any class of security of the recommended issuer; and (3) the member firm has received compensation from the issuer of the security for investment banking services. The proposed amendment would further require that all applicable disclosures in advertisements and sales literature be made specifically and prominently (*i.e.*, that they not consist of boilerplate at the end of a research report or in a footnote).

Included with this *Notice* is Attachment A, the text of the proposed rule amendment.

This proposal represents a first step to address issues related to the quality and independence of research and recommendations issued by firms and associated persons. NASD Regulation continues to consider potential additional policies in this area to enhance investor protection.

### Request For Comment

NASD Regulation requests comment on the proposed amendment. Comments must be received by **August 15, 2001**. Members and interested persons can submit their comments using the following methods:

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

If you decide to submit comments using both the checklist and one of the other methods listed above, please indicate that in your submissions. 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*

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

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

## Questions/Further Information

As noted, written comments should be submitted to Barbara Z. Sweeney. Questions concerning this *Notice to Members—Request For Comment* may be directed to Thomas M. Selman, Senior Vice President, Investment Companies/Corporate Financing, at (240) 386-4533; Joseph P. Savage, Counsel, Investment Companies Regulation, at (240) 386-4534; or Philip Shaikun, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8071.

## Background

This proposed rule amendment is the result of ongoing efforts to address the potential conflicts of interest presented by analyst recommendations. To address these concerns, the proposed rule change would require more meaningful, understandable, and conspicuous disclosures of these potential conflicts of interest in both written and oral recommendations. NASD Regulation believes that heightened disclosure by analysts will increase transparency for investors who consider analyst recommendations as part of their decision to purchase, sell, or hold a security.

In December 2000, the NASD Regulation Board of Directors authorized NASD Regulation staff to work with the staffs of the

Securities and Exchange Commission and other organizations to develop uniform disclosure standards for securities recommendations by financial services firms and their employees. The Board felt strongly that, in order to best protect investors, such standards should apply to all financial services providers on an equal basis.

Given the need to address these problems, however, NASD Regulation has determined to take this step and propose disclosure standards applicable to NASD member firms and their associated persons. NASD Regulation continues to believe that uniform standards should apply to all securities professionals. NASD Regulation welcomes comment from interested parties on the scope of persons and firms that should be subject to the types of disclosure requirements that are discussed in this *Notice* and contained in the proposed rule text.

Currently, NASD Rule 2210(d)(2)(B), Communications with the Public, requires certain disclosures when a member makes a security recommendation in advertisements and sales literature. However, those rules do not apply when similar recommendations are made during public appearances, such as radio and television interviews. The proposed rule amendment would strengthen the disclosures required in advertisements and sales literature that contain recommendations. It also would extend similar disclosure requirements for public appearances, appropriately tailored to recognize the practical constraints of making disclosures in radio, television, and similar forums.

## Disclosures In Advertisements And Sales Literature

NASD Rule 2210(d)(2)(B) currently requires members to disclose, when applicable, in advertisements and sales literature

1. that the member makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, or that the member or associated persons will sell or buy the recommended security from customers on a principal basis;
2. that the member or its officers or partners own options, rights or warrants to purchase any securities of the recommended issuer (unless the extent of such ownership is nominal);
3. that the member was manager or co-manager of any public offering of the recommended issuer's securities within the last three years;
4. information supporting the recommendation (or to offer to furnish such information upon request);
5. for corporate equities, the price at the time the recommendation was made; and
6. when presenting past recommendations, all of the member's or associated person's recommendations for similar securities and time periods.

Notably, the current rule does not require an analyst or member firm to disclose ownership interest in a recommended equity security; rather, it only requires a member to disclose if an officer, partner or the member firm owns *options*,

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*rights or warrants* to purchase any of the recommended issuer's securities. To strengthen these disclosures, the proposed rule amendment would add several additional requirements.

First, the proposal would require the person or persons responsible for a recommendation to disclose *any* financial interest that they have in a recommended security. We would like to receive comment on whether and to what extent the nature of that financial interest (including, but not limited to, ownership of [or short positions in] stock, options, rights, warrants and futures) should be disclosed. This disclosure obligation also would apply to any discretionary account managed by the person or persons responsible for the recommendation.<sup>1</sup>

Second, the proposal would require member firms to disclose if they own five percent or more of the total outstanding shares of any class of securities of the recommended issuer. The ownership threshold recognizes that an analyst or firm is less likely to be influenced in its recommendation where a firm has a relatively small stake in an issuer. The five percent threshold is consistent with Sections 13(d) and 13(g) of the Securities Exchange Act of 1934, which requires broker/dealers, among others, to notify the SEC whenever they own five percent or more of any class of registered securities. Furthermore, since those filings are public, the information should be readily available to associated persons who make recommendations either in writing or during public appearances.

NASD Regulation requests comment on this five percent ownership threshold for firm ownership of the issuer's shares.

NASD Regulation staff specifically seeks comments as to whether a lower threshold – or no threshold at all – would be more appropriate. Should this threshold be set, for example, at three percent or one percent?

Third, the proposed amendment would eliminate the requirement to disclose that the member managed or co-managed within the last three years a public offering by the issuer of the recommended security. Instead, the proposal would require disclosure that the member has received compensation from the recommended issuer for any investment banking services provided to the issuer within the last 12 months. This proposed change recognizes the fact that, in addition to acting as underwriters, investment banks today provide a variety of advisory and other financial services to issuers for which they receive compensation. It also limits the time frame that triggers the disclosure to one more likely to give rise to a conflict of interest.

NASD Regulation requests comment on this approach. In particular, NASD Regulation seeks comment on whether, in addition to disclosure of "an investment banking relationship," members should be required to describe the specific *nature of the services* for which compensation has been received from the issuer within the prior year. Disclosure of the specific nature of the investment banking services rendered would give investors more detailed information to assess the relationship between the analyst's firm and the issuer and thus may assist investors in putting recommendations in a broader context. NASD Regulation solicits comment on whether this additional, more detailed

disclosure is desirable or would create unintended or unforeseen consequences.

Finally, the proposal would mandate that all required disclosures in advertisements and sales literature be made *specifically and prominently*. This language is intended to prohibit the use of boilerplate in footnotes and other inconspicuous locations in advertisements and sales literature, so that investors can more readily ascertain the existence and degree of any potential conflicts of interest. To that end, NASD Regulation would expect the type size of required disclosures to be no smaller than the body of the document itself and in close proximity to the securities recommendation. NASD Regulation also considers the clarity of the language and the intended audience when assessing whether disclosure meets a prominence standard.

### Disclosures During Public Appearances

The proposed amendment also would require analysts to provide similar disclosures when a security is recommended during a public appearance. The proposal defines public appearance as "participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity." The amendment would require associated persons who make recommendations during public appearances to disclose any financial interest held by that person or any discretionary account he or she manages; ownership by the firm of five percent or more of the total outstanding shares of any class of equity securities or the issuer; and that the issuer is "a client of the firm with which the [person

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recommending the security] is associated.” The term “client” means an issuer from which the firm has received compensation for investment banking services provided to the issuer within the last 12 months.

Notably, none of the other six requirements for written recommendations contained in current Rule 2210(d)(2)(B) (and listed above) would apply to recommendations during public appearances. The staff believes that the more narrow disclosures for public appearances contained in the proposed rule change strike a reasonable balance between meaningful disclosure and the practical limitations imposed during short television interviews and similar public appearances. NASD Regulation specifically seeks comment on whether disclosures in a public appearance should be broader or should include one or more of the six disclosures outlined above for written materials. In addition, similar to the proposal for written materials, the current proposal as it applies to public appearances would not require disclosure of the *nature* of the investment services provided. NASD Regulation solicits comments on whether the nature of the services provided should be disclosed in public appearances. In considering these issues, however, commenters should keep in mind the practical constraints imposed on public appearances in comparison to written materials of the firm. Comment is also requested on the level of firm ownership calling for disclosure.

### Endnote

- 1 The proposed rule would apply to portfolio managers of investment companies and other discretionary accounts only in those instances where those managers are also associated persons of an NASD member.

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## ATTACHMENT A

### Proposed Amendment to Rule 2210(d)(2)(B) Recommendation Provisions

*Proposed new rule text is underlined; proposed deleted rule text is bracketed.*

(B) Recommendations.

(i) Advertisements and sales literature. In making a recommendation in advertisements and sales literature, whether or not labeled as such, a member must have a reasonable basis for the recommendation and must specifically and prominently disclose any of the following situations which are applicable:

a. that the member usually makes a market in the securities being recommended, or in the underlying security if the recommended security is an option, or that the member or associated persons will sell to or buy from customers on a principal basis;

b. that [the member and/or its officers or partners own] any officer or partner of the member owns options, rights or warrants to purchase any of the securities of the issuer whose securities are recommended, unless the extent of such ownership is nominal;

c. that the member [was manager or co-manager of a public offering of any securities of the recommended issuer within the last three years.] has received compensation from the recommended issuer for investment banking services provided to the issuer within the last twelve months;

d. that the person or persons principally responsible for the recommendation, or any discretionary account managed by such person or persons, has a financial interest in any security of the recommended issuer, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position); and

e. that the member owns (or through the exercise of options or warrants would own) 5 percent or more of the total outstanding shares of any class of equity securities of the recommended issuer.

(ii) Public appearances. In any public appearance, an associated person making a recommendation (whether or not labeled as such) must disclose any of the following situations which are applicable:

a. that the recommended issuer is a client of the member with which the person is associated;

b. that the associated person, or any discretionary account managed by such person, has a financial interest in any security of the recommended issuer, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position); and

c. that the member owns (or through the exercise of options or warrants would own) 5 percent or more of the total outstanding shares of any class of equity securities of the recommended issuer.

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“Public appearance” consists of participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.

(iii) [(ii)] With respect to recommendations in advertisements and sales literature, the member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.

(iv) [(iii)] A member may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.

(v) [(iv)] Also permitted is material which does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent year, if this list contains all the information specified in subparagraph (iv) [(iii)]. Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

# NASD Notice to Members 01-45—Request For Comment

## ATTACHMENT B

### Request For Comment Checklist

We have provided below a checklist that members and other interested parties may use in addition to or in lieu of written comments. This checklist is intended to offer a convenient way to participate in the comment process, but does not cover all aspects of the proposal described in the *Notice*. We therefore encourage members and other interested parties to review the entire *Notice* and provide written comments, as necessary.

### Instructions

Comments must be received by **August 15, 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](mailto:pubcom@nasd.com)
- mailing in written comments
- submitting comments online at the NASDR Web Site ([www.nasdr.com](http://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*

### Proposed Amendments to Rule 2210, Communications With The Public

1. Should associated persons and their firms be required to disclose potential conflicts of interest when recommending a security in a television, radio, or other public appearance?  
 Yes    No    See my attached written comments
2. If you answered “yes” to number 1, is the definition of “public appearance” in the proposed rule appropriate?  
 Yes    No    See my attached written comments
3. Should the same disclosure rules apply to recommendations made during public appearances as for recommendations in advertisements and sales literature?  
 Yes    No    See my attached written comments

4. Should members and associated persons who make securities recommendations have to disclose that the firm has received compensation for investment banking services provided to the issuer within the last 12 months?  
 Yes    No    See my attached written comments
5. If you answered “yes” to 4, is it sufficient disclosure during a public appearance to state only that the issuer of the recommended security is a “client” of the firm?  
 Yes    No    See my attached written comments
6. Should members and associated persons who make securities recommendations have to disclose the nature of investment banking services for which the firm has received compensation from the issuer of the recommended security during the past 12 months?  
 Yes    No    See my attached written comments

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7. Should the person or persons responsible for a recommendation have to disclose that he or she has a financial interest in a recommended security?
- Yes  No  See my attached written comments
8. Should the person or persons responsible for a recommendation have to disclose that a discretionary account they manage has a financial interest in a recommended security?
- Yes  No  See my attached written comments
9. Should the person or persons responsible for a recommendation have to disclose the nature of a financial interest that they, or discretionary accounts they manage, have in the recommended security?
- Yes  No  See my attached written comments
10. Should a member have to disclose an ownership interest of five percent or more of the total outstanding shares of any class of equity securities of a recommended issuer?
- Yes  No  See my attached written comments
11. Should a member have to disclose an ownership interest of less than five percent of the total outstanding shares of any class of equity securities of a recommended issuer?
- Yes  No  See my attached written comments

### Contact Information

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

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

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

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

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

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

### Are you:

An NASD Member

An Investor

A Registered Representative

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

## INFORMATIONAL

# Limit Order Protection

## SEC Approves Extension Of Limit Order Protection Principles To Certain OTCBB Securities On A Pilot Basis

## 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
- Registered Representatives
- Trading & Market Making

## KEY TOPICS

- Limit Order Protection
- OTCBB

## Executive Summary

On February 8, 2001, the Securities and Exchange Commission (SEC) approved new National Association of Securities Dealers, Inc. (NASD®) Rule 6541 (Rule), which, on a pilot basis, applies the basic customer limit order protection principles that presently apply to Nasdaq® securities to certain designated securities that are quoted on the OTC Bulletin Board (OTCBB). The Rule, in general, will prohibit member firms that accept customer limit orders in these securities from trading "ahead" of their customers for their own account at prices equal or superior to the limit orders, without executing them at the limit price. The text of the Rule is contained in Attachment A.

The Rule extends the principles that are incorporated in IM-2110-2 (Manning Interpretation) for the first time to some OTCBB stocks, although the Rule differs in application from the Manning Interpretation in certain specific respects. Specifically, Rule 6541: (i) contains a lower size threshold for the order size at which firms may negotiate terms and conditions regarding the acceptance of limit orders; (ii) prescribes a longer maximum time limit (5 minutes) within which execution of a customer order will be deemed to be "contemporaneous" with an execution for the firm's account; (iii) will apply from 9:30 a.m. to 4:00 p.m. with no option for applicability between 4:00 p.m. and 6:30 p.m.; (iv) extends protection to limit orders that are marketable at the time of receipt; and (v) prescribes a different minimum level of price improvement that a firm must provide in order to trade ahead of a customer limit order. This *Notice*

contains a series of questions and answers that are designed to clarify the application of the Rule to various circumstances.

The Rule will become effective on August 1, 2001, for a pilot period until February 8, 2002, although the minimum price improvement standard set forth in subsection (b) will be effective on a pilot basis from August 1, 2001 until November 1, 2001. The Rule will initially apply to 300 securities, and will be phased in over a period of two weeks, as described in Attachment B to this *Notice*. During the pilot period, an additional 25 securities may be selected for inclusion in the pilot program, which will be identified in advance in later communications.

## Questions/Further Information

Questions concerning this *Notice* may be directed to Jeffrey Davis, Nasdaq Office of General Counsel, at (202) 728-8461; the NASD Regulation Market Regulation Department; or visit [www.otcbb.com](http://www.otcbb.com).

## Background And Information

The SEC has approved a Nasdaq rule change that will, on a pilot basis, apply limit order protection to a select subset of securities traded on the OTCBB.<sup>1</sup> The text of this Rule is contained in Attachment A.

NASD-IM-2110-2, the Manning Interpretation, currently prohibits NASD member firms from trading ahead of customer limit orders in Nasdaq securities. A member firm, upon acceptance of a customer's limit order, undertakes a fiduciary duty to its customer and cannot then trade for its own account at prices more favorable than the

## NASD Notice to Members 01-46

customer's order. In general, under the Manning Interpretation, unless a specific exception applies, a member firm holding a customer limit order may not trade for its own account at a price equal or superior to the limit price, unless it contemporaneously executes the customer order at the limit price.

Nasdaq believes that it is now appropriate to extend the principles of the Manning Interpretation to the OTCBB. NASD Rule 6541, which will apply limit order protection to a select subset of OTCBB securities, will be instituted as a pilot program. While NASD members will be under no obligation to accept limit orders, those willing to do so will be prohibited from trading ahead for their own accounts in the securities covered by the pilot program at prices equal or superior to any customer limit orders held by the firm, regardless of whether those orders are from their own customers or from customers of firms who have routed those orders to the member for execution.<sup>2</sup>

The pilot program will apply to 325 OTCBB securities.<sup>3</sup> Nasdaq has selected or will select securities for the pilot that it believes will afford it the best opportunity to test the effects of the Rule on a wide range of OTCBB securities. The securities fall into the following categories:

- the 200 most actively traded OTCBB securities.
- 100 securities have been selected as a representative cross-section of the remaining OTCBB securities.
- up to 25 securities will be selected at a later date on a case-by-case basis based on a determination that these securities are highly liquid and

widely held, or where they have recently been delisted from Nasdaq or an exchange.

The Rule will be implemented in a series of phases, beginning with the 200 actively traded securities, and proceeding to the 100 representative securities. The final 25 securities will be named in subsequent communications. The list of securities, ticker-symbols, and their respective phase-in dates are contained in Attachment B.

Nasdaq will monitor the operation of the Rule and its effect on the OTCBB market throughout the pilot period. Prior to the end of the pilot, Nasdaq will evaluate the impact of the Rule, report its findings to the SEC and, thereafter, determine the appropriate course of action.

Unless otherwise indicated, the Rule applies the Manning Interpretation to the OTCBB, as well as relevant guidance contained in *NASD Notices to Members*<sup>4</sup> or SEC releases.<sup>5</sup> The questions and answers that follow describe how these principles will apply to securities that are subject to the pilot program. In addition, members should be cognizant of their best execution responsibilities when receiving customer orders for any OTCBB or other security.

Nasdaq recognizes that there are certain operational and other characteristic differences between the OTCBB and the Nasdaq National Market and SmallCap Market. Accordingly, the Rule contains provisions that differ from the application of the Manning Interpretation in four significant respects.

First, under paragraph (b), members are not obligated to execute a customer limit order if

they provide the required price improvement over the limit price. For customer limit orders priced at or inside the current inside spread, the minimum price improvement required is, at least, the lesser of (i) one cent or (ii) one-half of the current inside spread.<sup>6</sup> For customer limit orders priced outside the current spread by \$.01 or less, the incoming order must be executed at or better than the inside bid (for held buy orders) or offer (for held sell orders). Unlike the Manning Interpretation, under the Rule, customer limit orders priced more than \$.01 away from the inside receive no Manning protection and, therefore, no price improvement is required with respect to those orders.

The "current inside spread" for these purposes is considered to be the difference between the best reasonably available bid and offer. Accordingly, members must use the same diligence in finding the best prices when trading OTCBB securities as they do when trading Nasdaq National Market and SmallCap securities, and they may not rely exclusively on OTCBB quotes in determining the inside spread when there are other quotations available in another system of general circulation that regularly disseminates quotations of identified broker/dealers. What is "reasonably available" is a fact and circumstances analysis, and is separate from the analysis, required by the three-quote rule.

The second difference between the Rule and the Manning Interpretation is that, under paragraph (c), a member may negotiate special terms for acceptance of limit orders, including an agreement that the firm may trade ahead, with respect to orders that are for an "institutional account" as defined in Rule

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3110(c)(4), or that are for at least 10,000 shares and greater than \$20,000 in value. Under the Manning Interpretation, the comparable dollar value that qualifies for this exception is \$100,000. This difference reflects the lower average dollar amount for OTCBB trades.

Third, under paragraph (d) of the Rule, in order for a transaction with a customer to be considered "contemporaneous" with a trade for the member's own account, it must be executed as quickly as possible, but in no case later than five minutes after the proprietary transaction. Under the Manning Interpretation, "contemporaneous" has been interpreted to require an execution as quickly as possible, but, absent reasonable and documented justification, within one minute.<sup>7</sup> Nasdaq believes the longer time period is justified because there presently is no automated order delivery and execution system for OTCBB securities, and executions generally take longer than is the case for Nasdaq securities. Consistent with the approach under the Manning Interpretation, however, the five-minute standard is intended to be an outside limit, absent extraordinary circumstances, and not a normal practice.

Further, the program will apply only from 9:30 a.m. to 4:00 p.m., in contrast to the option available to customers for the application of the Manning Interpretation to Nasdaq securities until 6:30 p.m. This difference reflects the fact that quotes by market makers on the OTCBB are required to be firm only until 4:00 p.m.

Members should also note that the Rule requires that protection be provided to limit orders that are marketable at the time of receipt,

unlike the Manning Interpretation, which specifically excludes such orders from its requirement.

Nasdaq will consider the appropriateness of all of these provisions, and whether they should be modified, as it evaluates the Rule's operation prior to the end of the pilot period.

The following questions and answers help to illustrate the scope of the pilot program and the application of the Rule.

### I. Scope Of The Pilot Program

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#### **Question 1: When is NASD Rule 6541 effective?**

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**Answer 1:** NASD Rule 6541 will operate on a pilot basis from August 1, 2001 to February 8, 2002. The price improvement requirements set forth in paragraph (b) will operate on a pilot basis from August 1, 2001 until November 1, 2001.

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#### **Question 2: What OTCBB securities are covered by the Rule?**

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**Answer 2:** Nasdaq intends to apply the pilot program to 325 OTCBB securities. A security subject to the Rule will have the identifier "##" following its name as it appears on the Nasdaq Workstation II. Of the 325 OTCBB securities, 200 are the most actively traded OTCBB securities based on their respective average daily trading volume over the period from January and February of 2001. An additional 100 securities were selected as a representative cross-section of all remaining OTCBB securities.

Attachment B to this *Notice* lists the 300 securities, their ticker-symbols, and respective phase-in dates. The remaining 25 securities will be selected on a case-by-case basis after the initial phase-in period has been completed. Nasdaq will provide members appropriate notice before incorporating any of the remaining 25 securities into the pilot program.

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#### **Question 3: What time during the trading day will members be subject to Rule 6541?**

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**Answer 3:** The requirements of the Rule will only apply from 9:30 a.m. until 4:00 p.m. If the OTCBB's market hours are shortened due to holidays or other events, the hours of the Rule's application would be adjusted accordingly.

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#### **Question 4: Does Rule 6451 apply to NASD members that no longer submit bid and offer quotations to the OTCBB for a security covered by the pilot program?**

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**Answer 4:** Provided at least one market maker is submitting quotations to the OTCBB for a security covered by the pilot program, the Rule applies to all NASD members effecting transactions in that security with customers, regardless of the place of execution. For example, if Market Maker A (MMA) and Market Maker B (MMB) both submit quotations for ABCD security on the OTCBB, and MMA later ceases to submit quotations for ABCD on the OTCBB and trades ABCD through Pink Sheets Electronic Quotation Service (or any other quotation medium), MMA must still protect limit orders it accepts in accordance with the requirements of the Rule.<sup>8</sup>

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### **Question 5: Must an NASD member accept a customer's limit order?**

**Answer 5:** No. Rule 6541 specifically provides that the NASD does not impose any obligation upon members to accept and handle limit orders from any customer.

### **Question 6: If a non-market maker holds a customer's limit order, can it trade ahead of that limit order?**

**Answer 6:** No. Rule 6541 specifically states that "members" are prohibited from trading ahead of customer limit orders that a member accepts in securities quoted on the OTCBB.

## II. Treatment Of Orders

### **Question 7: Basic Obligation**

- Inside Market for OTCBB Security—ABCD
- 5 bid—5.50 ask
- Market Maker A (MMA) holds an undisclosed customer limit order (from its own firm or a customer limit order from another broker/dealer) to buy 1,500 shares at 5.25.
- MMA receives a market order to sell 1,000 shares from another customer.
- What must MMA do?

If MMA executes the market order to sell at a price equal to or less than 5.25, Rule 6541 requires that MMA protect the limit order at its price. Therefore, the limit order would have to be executed at its price. The remaining 500 shares

of the limit order would continue to reside undisplayed on MMA's book, and MMA could not trade ahead of that order without executing it at the limit order price.

### **Question 8: Market Maker and Order Entry Firm**

- Inside Market for OTCBB Security—ABCD
- 5 bid—5.50 ask
- Market Maker A (MMA) holds an undisclosed customer limit order (from its own customer or from another broker/dealer) to buy 1,500 shares at 5.25.
- MMA is quoting publicly 5 bid.
- Broker/dealer B (BD-B) telephones MMA to sell 1,000 shares at the market for BD-B's own account (i.e., non-customer limit order) where MMA has no agreement or understanding to treat BD-B's orders as customer orders or otherwise provide them with best execution.
- What must MMA do?

**Answer 8:** MMA may execute BD-B's market order to sell at MMA's published quote of 5. MMA does not owe a best execution obligation to a non-customer where no understanding or expectation of treatment as a customer has been reached by MMA and BD-B. Broker/dealers are not considered customers for the purposes of this obligation.

If MMA executes BD-B's order at 5, MMA, however, has traded through the customer limit order it holds. Under Rule 6541, therefore, MMA must execute 1,000 shares of the customer limit order at the limit price of 5.25.

### **Question 9: Limit Order Protection on the Other Side of the Market**

- Inside Market for OTCBB Security—ABCD
- 8 bid—8.20 ask
- Market Maker A (MMA) holds a customer limit order to buy priced at 8.10 and a limit order from another customer to sell priced at 8.10
- MMA buys ABCD at 8 and immediately executes as principal the limit order to buy.
- Would MMA then also have to execute the limit order to sell because it sold ABCD at a price equal to the price of the limit order to sell?

**Answer 9:** Once the firm has executed the limit order it has traded through, it has satisfied its obligation under Rule 6541. Where Rule 6541 obligates a member to execute a limit order on one side of the market, that Rule does not trigger an obligation to execute another limit order on the opposite side of the market.

### **Question 10: Are member-to-member limit orders subject to Rule 6541?**

**Answer 10:** Yes. Customer limit orders received by one member firm and then sent to another member firm, typically a market maker in the security, for handling and execution must be protected. For example, in Question 8, MMA must protect the customer limit order regardless of whether the order is from its own customer or the customer of another broker/dealer. In the same example, if MMA sends the customer limit order to another market maker, MMA would not be able to trade

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through the customer limit order without violating the Rule. Members must monitor the status of the order and not trade ahead of it until the order has been executed.

Moreover, order-entry firms that forward customer orders to market makers for execution will continue to be subject to their duties of best execution and will owe a fiduciary duty to their customers with respect to those orders. Accordingly, member firms should routinely monitor the handling of their customer limit orders to ensure that the executing broker is complying with the Rule.<sup>9</sup>

### III. Minimum Price Improvement

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#### **Question 11: Minimum Price Improvement to Avoid Rule 6541 Violation**

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- Inside Market for OTCBB Security—ABCD
- 8 bid—8.50 ask
- Market Maker A (MMA) receives a customer limit order to buy at 8.25 for 2,000 shares.
- MMA receives a market order to sell 2,500 shares.
- May MMA offer the market order price improvement over the 8.25 limit order and execute the market order for its own account? If so, what is the minimum amount of price improvement allowable?

**Answer 11:** MMA is allowed to execute the market order at a price better than the limit order. Rule 6541 states that the minimum amount of price improvement that

would permit a market maker to avoid a violation of the Rule is the lesser of \$0.01 (1 cent) per share or one-half the current inside spread. Because one-half of the current inside spread for ABCD ( $0.50 \times .50 = 0.25$ ) is greater than \$0.01, MMA could trade ahead of the limit order at 8.26 without violating the Rule.

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#### **Question 12:**

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- Inside Market for OTCBB Security—ABCD
- 5 bid—5.01 ask
- Market Maker A (MMA) receives a customer limit order to buy at 5.004 for 2,000 shares.
- MMA receives a market order to sell 1,000 shares and immediately executes that order on a proprietary basis.
- May MMA offer the market order price improvement over the 5.004 limit order and execute the market order for its own account? If so, what is the minimum amount of price improvement allowable?

**Answer 12:** Since MMA has executed within \$0.01 off the customer limit order priced inside-the-spread, MMA would be obligated to protect that order and execute 1000 shares of the customer limit order at a price of 5.004. If MMA wished to avoid a Manning obligation with respect to that 5.004 buy limit order, MMA would have to execute its proprietary trade at a price at least \$0.005 better than that limit order and execute at 5.009, because \$0.005 represents one-half of the correct inside spread.

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#### **Question 13:**

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- Inside Market for OTCBB Security—ABCD
- 10 bid—10.01 ask
- Market Maker A (MMA) receives a customer limit order to buy at 9.993 for 2,000 shares.
- MMA receives a market order to sell 700 shares and immediately executes that order on a proprietary basis at 10.
- Is MMA obligated to execute the held limit order?

**Answer 13:** No. Since the market maker's 700 share proprietary order was executed at a price (10.00) that is at least equal to the inside bid, it would not be obligated to execute that limit order. Similarly, if the market remained at 10.00 to 10.01 and MMA held a customer limit order to sell priced at 10.016, MMA could trade proprietarily with an incoming buy order without triggering a Manning obligation with respect to the 10.016 outside-the-spread limit order if the market maker executes its proprietary trade at a price of at least 10.01.

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#### **Question 14:**

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- Inside Market for OTCBB Security—ABCD
- \$0.026 bid—\$0.032 ask
- Market Maker A (MMA) receives a customer limit order to buy at 0.03 for 500 shares.
- MMA receives a market order to sell 700 shares and immediately executes that order on a proprietary basis at \$0.032.
- Is MMA obligated to execute the held limit order?

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**Answer 14:** Yes. Since MMA has executed within \$0.01 of the inside-the-spread buy limit order of 0.03, MMA would be obligated to protect that order and execute it at a price of 0.03. If MMA wished to avoid a Manning obligation with respect to the held 0.03 buy limit order, MMA would have to execute its proprietary trade at a price at least \$0.003 better than that limit order and execute at 0.033.

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**Question 15: For purposes of the price improvement exception from Rule 6541, what does "inside spread" mean?**

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**Answer 15:** Rule 6541(b) states that for the purposes of the Rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security. The determination of what is "reasonably available" is largely factual and best determined on a case-by-case basis; Nasdaq would expect, however, that members would monitor not only the OTCBB quotations distributed as part of the Nasdaq Level 1 service, but also quotations for those same securities in Pink Sheets Electronic Quotation Service (and any other system of general circulation to broker/dealers that disseminates real-time quotations of identified broker/dealers in securities quoted on the OTCBB).

For example, if the current inside spread quoted on the OTCBB is 8—8.20, and the current inside spread quoted on the Pink Sheets Electronic Quotation Service is 7.75—8.10, then the current "inside spread" for the purposes of the Rule is 8—8.10.

### IV. Marketable Limit Orders

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**Question 16: Limit Orders that are Marketable at Time of Receipt**

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- Inside Market for OTCBB Security—ABCD.
- 5 bid—5.20 ask.
- Market Maker A (MMA) has a market order to sell ABCD for 1,000 shares.
- MMA then receives a customer limit order to sell 1,000 shares at 5.
- MMA fills the market order to sell at 5 for 1,000 shares.
- The inside bid for ABCD moves to 5.05.
- MMA does not execute the customer limit order.
- Did MMA violate the Rule by not executing the customer limit order?

**Answer 16:** Yes. While IM-2110-2 specifically excludes from its coverage limit orders that are marketable at the time of receipt, Rule 6541 provides no similar exclusion. Accordingly, MMA is prohibited from trading ahead of the customer limit order, regardless of whether the limit order was marketable at the time of receipt. Nasdaq will monitor the treatment of marketable limit orders during the operation of the pilot program to determine whether marketable limit orders in OTCBB securities should be treated as market orders for purposes of determining execution priority and be excluded from the requirements of the Rule.

### V. Contemporaneous Execution Of Limit Order

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**Question 17: Once a member is obligated to execute a limit order, how quickly must it execute the limit order?**

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**Answer 17:** If a member trades through a limit order that it has accepted, a member must contemporaneously execute such limit order. To meet this obligation, a member must execute the limit order as quickly as possible. The limit order must at least be executed within five minutes after the member has traded at a price equal to or superior to that of the customer limit order. The Rule is not intended to allow members to wait for five minutes before executing the customer limit order. Under normal market conditions, a member should be able to execute the customer limit order well before the expiration of the five minute period. If extraordinary circumstances beyond the member's control (e.g., OTCBB systems problems, telephone outages, volume-related queues) cause the member to exceed the five-minute time period, the member should continue to attempt to execute the order as quickly as possible while sufficiently documenting the particular conditions or circumstances causing the delay.

### VI. Net Trades

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**Question 18: Member's Obligation Regarding a Net-Price Limit Order**

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- Inside Market for OTCBB Security—ABCD
- 5 bid—5.50 ask

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- Market Maker A (MMA) accepts a 500 share order to buy from a customer, who states that he or she wants to trade with total transaction costs not to exceed 5.50.
- MMA charges a markup of 0.10.
- What must MMA do?

**Answer 18:** First, the member must inform the customer at the time of order entry that the limit order will be held and protected at 5.40 (5.50—0.10). Accordingly, the member must not buy for its own account at 5.40 or below, without filling the customer's order at the protected price, up to the number of shares that the member has traded.

For example, assume that while holding the 500-share limit order to buy at 5.40, MMA receives and executes a market order to sell 500 shares in that security that the member purchases at its bid of 5. Because MMA bought 500 shares at a price better than the 500-share customer limit order at 5.40, MMA must sell 500 shares to the customer placing the limit order at 5.40. MMA must report the trade through the Automated Confirmation Transaction (ACT) service at 5.40, with the price exclusive of any markup or other remuneration. On the confirmation sent to the customer, the member must disclose the reported trade price, 5.40, the price to the customer, 5.50, and the difference between them, 0.10, as the member's remuneration for the transaction.

Members are not permitted to report trade prices in such net transactions in a manner inconsistent with the stated

agreement between the customer and the member. Thus, in net transactions, after the customer and the member have agreed to the actual limit price at which a limit order is protected, it is not permissible for a member to report a trade with the customer at a price higher (lower) than the agreed-upon price in the context of a buy (sell) limit order and report a smaller markup (or markdown) on the confirmation.

### VII. Negotiated Terms and Conditions Of Certain Limit Orders

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#### **Question 19: Does Rule 6541 apply to institutional accounts?**

**Answer 19:** Rule 6541 does not apply if an institutional account meets the definition of "institutional account" in Rule 3110(c)(4) and the member firm handling the order has made the terms and conditions of how the member will handle the limit order clear to the institutional account customer. An "institutional account" is limited to a bank, savings and loan association, insurance company, or registered investment company, SEC or state registered investment adviser, or any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.

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#### **Question 20: Does Rule 6541 apply to large transactions?**

**Answer 20:** Rule 6541 does not apply if the member firm has agreed to the terms and conditions as to how the member will handle the large limit order. A member may negotiate terms and conditions for the handling of a limit order for an OTCBB security of

at least 10,000 shares that has a value greater than \$20,000 or on orders for "institutional accounts." The member firm cannot impose terms and conditions on orders for accounts that do not meet the definition of "institutional account" or orders that are not appropriately sized. These exceptions to the Rule apply whether they are accounts of the member firm's own customers or are accounts of another member firm's customers.

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#### **Question 21: How should member firms disclose the terms and conditions to their respective customers?**

**Answer 21:** As noted, the Rule allows member firms to accept limit orders subject to terms and conditions only with respect to institutional accounts or orders that are 10,000 shares or more, as long as the value of that order is \$20,000 or more. While the Rule does not dictate the means by which members must disclose the terms and conditions, such terms and conditions under which institutional accounts or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the member firm, and the member must be prepared to demonstrate compliance with the condition.

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#### **Question 22: How should member firms disclose the terms and conditions to customers of another member firm?**

**Answer 22:** The member firm imposing the terms and conditions of the limit order must ensure that those terms and conditions are clearly communicated to the customer.

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The means for disclosure and communication may be arranged between the market maker holding the limit order and the member firm initially accepting the limit order from the customer. If the firm holding the order chooses to rely on the order-entry firm for disclosing and explaining the terms and conditions and securing the customer's acceptance, the market maker must reasonably determine that an order-entry firm's disclosure and acceptance procedures are effective and being followed.

### Endnotes

- 1 Exchange Act Release No. 34-43944 (February 8, 2001).
- 2 Order entry firms that forward customer orders to dealers for execution will continue to be subject to their duties of best execution and will owe a fiduciary duty to their customers with respect to those orders. Accordingly, firms should routinely monitor the handling of their customer limit orders to ensure that the executing broker is complying with the provisions of the Rule.
- 3 A security subject to NASD Rule 6541 will have the identifier "##" following its name as it appears on the Nasdaq Workstation II.
- 4 *See, e.g., Selected NASD Notices to Members: 95-43, 95-67, 96-10.*
- 5 *See Securities Exchange Act Release Nos. 34297 (June 29, 1994) (SR-NASD-93-58); 35751 (May 22, 1995) (SR-NASD-94-62); 41990 (October 7, 1999) (SR-NASD-99-44).*
- 6 The SEC approved Nasdaq's proposal to, among other things, amend the Manning Interpretation in connection with the transition to decimal trading for Nasdaq NM and SmallCap stocks. Pursuant to that pilot program, which extends until March 2, 2002, the minimum price improvement with respect to securities traded under the Decimals Implementation Plan for the Equities and Options Markets would be one cent. *See Securities Exchange Act Release No. 44030 (March 2, 2001) (SR-NASD-01-09).*
- 7 *NASD Notice to Members 95-67 (Question and Answer No. 5); NASD Notice to Members 98-78.*
- 8 Subsection (e)(2) of Rule 6541 states that the Rule applies regardless of whether the subject security is additionally quoted in a separate quotation medium. This provision is intended to clarify that market makers will not be permitted to avoid their obligations under the Rule by trading via another quotation medium.
- 9 *See NASD Notice to Members 01-22.*

© 2001, National Association of Securities Dealers, Inc. (NASD). All rights reserved. Notices to Members attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

# NASD Notice to Members 01-46

## ATTACHMENT A

### 6541. Limit Order Protection

- (a) Members shall be prohibited from "trading ahead" of customer limit orders that a member accepts in securities quoted on the OTCBB. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.
- (b) Members may not avoid such obligation specified in paragraph (a) through the provision of price improvement, unless:
  - (1) for customer limit orders priced at or inside the current inside spread, the price improvement is for a minimum of the lesser of \$.01 or one-half (1/2) of the current inside spread; or
  - (2) for customer limit orders priced outside the current inside spread by \$.01 or less, the market maker executes the incoming order at or better than the inside bid (for held buy orders) or offer (for held sell orders).
  - (3) for customer limit orders priced more than \$.01 outside the inside spread, no obligation is imposed under subsection (a) above.

For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.

- (c) Notwithstanding subparagraph (a) of this rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:
  - (1) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or
  - (2) for 10,000 shares or more, and greater than \$20,000 in value.
- (d) Contemporaneous trades

A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price.
- (e) Application
  - (1) This rule shall apply only to OTCBB securities specifically identified as such through the Nasdaq Workstation service.
  - (2) This rule shall apply, regardless of whether the subject security is additionally quoted in a separate quotation medium.
  - (3) This rule shall apply from 9:30 a.m. to 4:00 p.m. Eastern Time.
  - (4) This rule shall be in effect until February 8, 2002.

| Issue Symbol | Issue Name                                     | Phase-In Date   |
|--------------|--|-----------------|
| TWIC         | 2-Infinity, Inc.                               | August 1, 2001  |
| ABRX         | Able Laboratories, Inc.                        | August 1, 2001  |
| ACCR         | Access Power, Inc.                             | August 1, 2001  |
| AQCI         | Acquatic Cellulose International Corp          | August 1, 2001  |
| ACTFF        | ActFit.com Inc                                 | August 1, 2001  |
| AIGI         | Adair International Oil & Gas, Inc.            | August 1, 2001  |
| ADVC         | Advanced Communications Technologies, Inc.     | August 1, 2001  |
| ADOT         | Advanced Optics Electronics, Inc.              | August 1, 2001  |
| APPI         | Advanced Plant Pharmaceuticals                 | August 1, 2001  |
| ADVR         | Advanced Viral Research Corp.                  | August 1, 2001  |
| DINE         | Advantica Restaurant Group, Inc.               | August 1, 2001  |
| ATTP         | Affordable Telecommunications Technology Corp. | August 1, 2001  |
| AIRG         | Airtech International Group, Inc.              | August 1, 2001  |
| EBNK         | Alpha Trade.com                                | August 1, 2001  |
| ABRG         | Ambra Resources Group, Inc.                    | August 1, 2001  |
| ACEN         | American Communications Enterprises            | August 1, 2001  |
| ADGI         | American Diversified Group, Inc.               | August 1, 2001  |
| BKMD         | American Federal Savings Bank Rockville Md     | August 15, 2001 |
| AMHI         | American Healthchoice Inc                      | August 15, 2001 |
| AIPN         | American International Petroleum Corporation   | August 1, 2001  |
| AMJC         | American Jewelry Corp                          | August 1, 2001  |
| ATEG         | American Technologies Group, Inc.              | August 1, 2001  |
| ARET         | AmeriResource Technologies, Inc.               | August 1, 2001  |
| AMEU         | Ameurotech Corporation                         | August 1, 2001  |
| ANCO         | ANACOMP, Inc.                                  | August 1, 2001  |
| AMDI         | Applied Medical Devices Inc                    | August 1, 2001  |
| AQCB         | Aqua Clara Bottling and Distribution, Inc.     | August 1, 2001  |
| AVBC         | Aqua Vie Beverage Corporation                  | August 1, 2001  |
| AQSE         | Aquasearch, Inc.                               | August 1, 2001  |
| ARCS         | Arc Wireless Solutions, Inc.                   | August 1, 2001  |
| AREE         | Arete Industries Inc                           | August 1, 2001  |
| ARYN         | Arxher Sys Inc                                 | August 1, 2001  |
| ASDG         | ASD Group, Inc.                                | August 15, 2001 |
| ASIQ         | ASI Entertainment Inc.                         | August 15, 2001 |
| ASPG         | Aspen Group Resources Corporation              | August 1, 2001  |
| AUTO         | Autoinfo Inc                                   | August 15, 2001 |
| AXGI         | Auxer Group, Inc. (The)                        | August 1, 2001  |
| AVATW        | Avatex Corporation WT 3/7/05                   | August 15, 2001 |
| AVSG         | Avid Sportswear & Golf Corp.                   | August 1, 2001  |
| BHUS         | Bach-Hauser, Inc.                              | August 1, 2001  |
| BNNY         | Barneys New York, Inc.                         | August 15, 2001 |
| BASEA        | Base Ten Systems, Inc. CL A                    | August 15, 2001 |
| BASEB        | Base Ten Systems, Inc. Conv CL-B               | August 15, 2001 |
| BRCO         | Beard Company (The)                            | August 15, 2001 |
| BMRB         | Benchmark Bankshares, Inc.                     | August 15, 2001 |
| BIKO         | BICO Inc.                                      | August 1, 2001  |
| BIFPF        | BioForest Pacific Inc                          | August 15, 2001 |
| BIOQ         | BIOQUAL, Inc.                                  | August 15, 2001 |
| BSII         | Bio-Solutions International Inc                | August 15, 2001 |
| BMII         | Blagman Media International, Inc.              | August 1, 2001  |
| BNTI         | Braintech, Inc.                                | August 1, 2001  |
| BBAN         | BroadBand Wireless International Corporation   | August 1, 2001  |
| CLFC         | California Center Bank (Los Angeles)           | August 15, 2001 |
| CNOW         | Call Now Inc                                   | August 15, 2001 |
| COWP         | Canal Capital Corp                             | August 15, 2001 |
| CGYC         | Carnegie International Corporation             | August 1, 2001  |
| CAYO         | CathayOnline Inc.                              | August 1, 2001  |
| CLRT         | Celerity Systems, Inc.                         | August 1, 2001  |
| CESR         | Central Sierra Bank Sn Andr                    | August 15, 2001 |
| CLSI         | Clancy Systems International Inc               | August 1, 2001  |

LOP Stocks

| Issue Symbol | Issue Name                                   | Phase-In Date   |
|--------------|--|-----------------|
| CMDI         | Comprehensive Medical Diagnostics Group Inc  | August 1, 2001  |
| CNLPM        | Connecticut Light & Power \$2.06 PFD E       | August 15, 2001 |
| CNLTP        | Connecticut Light & Power \$2.20 PFD         | August 15, 2001 |
| CSGI         | ConSyGen, Inc.                               | August 1, 2001  |
| CRHEQ        | Coram Healthcare Corporation                 | August 1, 2001  |
| CMOZ         | Cosmoz.com, Inc.                             | August 1, 2001  |
| COTF         | Cottage Investments Inc.                     | August 1, 2001  |
| CPCF         | CPC Of America Inc                           | August 15, 2001 |
| CYII         | Cycomm International, Inc.                   | August 1, 2001  |
| DNTK         | Dauphin Technology Inc                       | August 1, 2001  |
| DAVL         | Davel Communications, Inc.                   | August 15, 2001 |
| DLNK         | DecisionLink Inc.                            | August 1, 2001  |
| DHTT         | Diamonds Hitts Production Inc                | August 1, 2001  |
| DVDT         | Digital Video Display Technology Corp.       | August 1, 2001  |
| DRCT         | Direct III Marketing, Inc.                   | August 15, 2001 |
| DNAP         | Dnaprint Genomics Inc                        | August 1, 2001  |
| DOTX         | Dotronix, Inc.                               | August 15, 2001 |
| DPCI         | DP Charters, Inc.                            | August 1, 2001  |
| DRPDF        | Dura Products International, Inc.            | August 1, 2001  |
| EDIS         | Earth Search Sciences Inc                    | August 1, 2001  |
| EFTI         | EarthFirst Technologies, Inc.                | August 1, 2001  |
| EFTI         | EarthFirst Technologies, Inc.                | August 15, 2001 |
| AHRX         | EarthFirst Technologies, Inc.                | August 15, 2001 |
| EAUC         | E-Auction Global Trading Inc.                | August 15, 2001 |
| ECEC         | ECOM ECOM.COM INC                            | August 1, 2001  |
| ECNC         | eConnect                                     | August 1, 2001  |
| EDIG         | E-Digital Corporation                        | August 1, 2001  |
| MYIQ         | EduLink, Inc.                                | August 1, 2001  |
| ELIN         | eLinear Inc                                  | August 15, 2001 |
| EMCD         | Emission Control Devices Inc                 | August 15, 2001 |
| ENNT         | E-Net Financial.com Corporation              | August 15, 2001 |
| ENVA         | Enova Systems Inc.                           | August 1, 2001  |
| ETPB         | Enterprise Bank (Allison Park, PA) CL A      | August 15, 2001 |
| EPEA         | E'Prime Aerospace Corporation                | August 1, 2001  |
| EUGS         | Eurogas Inc                                  | August 1, 2001  |
| EVTV         | e-Video TV, Inc.                             | August 15, 2001 |
| EONE         | Evolve One Inc.                              | August 1, 2001  |
| FTWB         | F2 Broadcast Network Inc.                    | August 1, 2001  |
| FASC         | First American Scientific Corp               | August 1, 2001  |
| FNCB         | First National Community Bancorp, Inc. Dunmr | August 15, 2001 |
| FONX         | Fonix Corporation                            | August 1, 2001  |
| FVEN         | Forever Enterprises Inc.                     | August 15, 2001 |
| FRLK         | Forlink Software Corp., Inc.                 | August 15, 2001 |
| FRMO         | FRMO Corporation                             | August 15, 2001 |
| FTLAQ        | Fruit of the Loom, Inc.                      | August 1, 2001  |
| GOII         | G/O International, Inc.                      | August 15, 2001 |
| GASE         | Gasco Energy Inc                             | August 15, 2001 |
| GWAY         | Gateway Industries, Inc.                     | August 15, 2001 |
| GACI         | Global Acquisition, Inc.                     | August 15, 2001 |
| GONT         | Go Online Networks Corporation               | August 1, 2001  |
| MYNG         | Golden Eagle International, Inc.             | August 1, 2001  |
| GLCP         | Greenland Corporation                        | August 1, 2001  |
| HRZIQ        | Harnischfeger Industries, Inc.               | August 1, 2001  |
| HLTLA        | Harrell Hospitality Group, Inc. CL A         | August 15, 2001 |
| HRCT         | Harcourt Companies, Inc. (The)               | August 1, 2001  |
| HVAR         | Havana Republic, Inc. (The)                  | August 1, 2001  |
| HIVC         | Hiv-Vac Inc                                  | August 1, 2001  |
| BYIT         | Household Direct.com, Inc.                   | August 1, 2001  |
| IDNW         | iDial Networks Inc.                          | August 1, 2001  |
| NTSE         | ilink Telecom, Inc.                          | August 1, 2001  |

LOP Stocks

| Issue Symbol | Issue Name                              | Phase-In Date   |
|--------------|---|-----------------|
| ISCO         | Illinois Superconductor Corporation     | August 1, 2001  |
| IMDS         | Imaging Diagnostic Systems, Inc         | August 1, 2001  |
| ITEC         | Imaging Technologies Corporation        | August 1, 2001  |
| ICHC         | InChorus.com                            | August 1, 2001  |
| IECS         | Industrial Ecosystems Inc               | August 1, 2001  |
| INFG         | Infinite Graphics Incorporated          | August 15, 2001 |
| IFTA         | Infotopia, Inc.                         | August 1, 2001  |
| IACG         | Interactive Group, Inc.                 | August 15, 2001 |
| OBJX         | Interactive Objects Inc                 | August 15, 2001 |
| IICP         | Intercell International Corp            | August 1, 2001  |
| INTXA        | Interiors, Inc.                         | August 1, 2001  |
| IMOT         | Intermost Corporation                   | August 15, 2001 |
| IBUI         | Internet Business's International, Inc. | August 1, 2001  |
| ELAW         | Internet Law Library Inc                | August 1, 2001  |
| INVT         | Investamerica Inc                       | August 1, 2001  |
| ITMUF        | itemus inc.                             | August 1, 2001  |
| ITEQ         | ITEQ, Inc.                              | August 1, 2001  |
| ITNI         | I-Transaction.net Inc                   | August 1, 2001  |
| IVOC         | Ivoice.com Inc.                         | August 1, 2001  |
| TALL         | IVP Technology Corporation              | August 1, 2001  |
| JNOT         | Jagnotes.Com Inc                        | August 1, 2001  |
| KAHI         | Kaire Holdings Incorporated             | August 1, 2001  |
| KKRS         | Kanakaris Wireless                      | August 1, 2001  |
| KLYS         | Kelly's Coffee Group, Inc.              | August 1, 2001  |
| KSWW         | KSW INC                                 | August 15, 2001 |
| LTVCQ        | L T V Cp                                | August 1, 2001  |
| LGOV         | Largo Vista Group, Ltd.                 | August 1, 2001  |
| LMTI         | Laser Master International Inc          | August 15, 2001 |
| LRCM         | LearnCom Inc.                           | August 1, 2001  |
| LCST         | LecStar Corporation                     | August 1, 2001  |
| LEVC         | Levcor International, Inc.              | August 15, 2001 |
| LXXN         | Lexon, Inc.                             | August 15, 2001 |
| LBMT         | Liberty Mint Ltd.                       | August 1, 2001  |
| LSATA        | Liberty Satellite & Technology Inc.     | August 1, 2001  |
| LNXWF        | LinuxWizardry Systems Inc.              | August 1, 2001  |
| LITH         | Lithium Technology Corp                 | August 1, 2001  |
| LOWGQ        | Loewen Group Inc. (The)                 | August 1, 2001  |
| LMRI         | Logistics Management Res                | August 1, 2001  |
| MFLM         | Magellan Filmed Entertainment Inc.      | August 1, 2001  |
| MAGC         | Magicinc.com                            | August 1, 2001  |
| MJXC         | Majestic Companies Ltd (The)            | August 1, 2001  |
| MNGX         | MangoSoft, Inc.                         | August 1, 2001  |
| MHTX         | Manhattan Scientifics, Inc.             | August 1, 2001  |
| MARB         | Marathon Bancorp                        | August 15, 2001 |
| MPANQ        | Mariner Post-Acute Network, Inc.        | August 1, 2001  |
| MKLD         | Markland Technologies, Inc.             | August 1, 2001  |
| SCEP         | Medisys Technologies Inc                | August 1, 2001  |
| MDCH         | Meditech Pharmaceuticals, Inc.          | August 1, 2001  |
| MPSC         | Mid-Power Service Corporation           | August 15, 2001 |
| MIGR         | MigraTEC, Inc.                          | August 1, 2001  |
| MNMN         | Monument Resources, Inc. (Colo)         | August 15, 2001 |
| XDSL         | mPhase Technologies, Inc.               | August 1, 2001  |
| MPTV         | MPTV, Inc.                              | August 1, 2001  |
| MMCI         | Multimedia Concepts International, Inc. | August 15, 2001 |
| NAHC         | NAHC Inc.                               | August 1, 2001  |
| NRES         | National Residential Properties Inc.    | August 1, 2001  |
| NSCT         | National Scientific Corp                | August 1, 2001  |
| NHTC         | Natural Health Trends Corp.             | August 1, 2001  |
| NAWL         | Naturewell Inc.                         | August 1, 2001  |
| NCTI         | NCT Group, Inc.                         | August 1, 2001  |

LOP Stocks

| Issue Symbol | Issue Name                                  | Phase-In Date   |
|--------------|---|-----------------|
| NDHI         | ND Holdings, Inc.                           | August 15, 2001 |
| NTMS         | Net Master Consultants, Inc.                | August 15, 2001 |
| NEET         | NetCommerce Inc                             | August 1, 2001  |
| NTXY         | Nettaxi Inc                                 | August 1, 2001  |
| NTVT         | NetVoice Technologies Corporation           | August 15, 2001 |
| NURO         | Neurotech Development Corp                  | August 1, 2001  |
| NSKY         | New Sky Communications, Incorporated        | August 1, 2001  |
| NULM         | New Ulm Telecom, Inc.                       | August 15, 2001 |
| NNUP         | Nocopi Technologies, Inc.                   | August 15, 2001 |
| ORGT         | OrganiTECH USA Inc                          | August 15, 2001 |
| MTMRZ        | Orion Acquisition Corp. II CL B WTS         | August 15, 2001 |
| PDCI         | P D C Innovative Industries Inc             | August 1, 2001  |
| PCES         | Pace Health Management Systems Inc          | August 15, 2001 |
| PLRP         | Pacel Corp                                  | August 1, 2001  |
| PAPO         | Pangea Petroleum Corporation                | August 1, 2001  |
| PMII         | Para Mas Internet, Inc.                     | August 15, 2001 |
| PRAV         | Paradigm Advanced Technologies Inc          | August 1, 2001  |
| PTSC         | Patriot Scientific Corp                     | August 1, 2001  |
| PMGH         | PayForView Media Group Holdings Corporation | August 1, 2001  |
| PCPH         | PC-EPhone, Inc.                             | August 15, 2001 |
| PDSGW        | PDS Gaming Corporation WTS 5/4/03           | August 15, 2001 |
| PFCK         | Peacock Financial Corporation               | August 1, 2001  |
| PEAMF        | Peaksoft Multinet Corp.                     | August 15, 2001 |
| PENC         | Pen Interconnect, Inc.                      | August 1, 2001  |
| PTLD         | Petrol Industries Inc                       | August 15, 2001 |
| PKLB         | Pharmakinetics Labs Inc                     | August 15, 2001 |
| PPRT         | PharmaPrint Inc.                            | August 15, 2001 |
| PHXU         | Phoenix International Industries, Inc./FL/  | August 1, 2001  |
| PHYC         | PhyCor, Inc.                                | August 1, 2001  |
| PUPS         | Pick-Ups Plus, Inc.                         | August 1, 2001  |
| PLCO         | Play Co Toys & Entertainmnt Corp            | August 1, 2001  |
| PWIN         | Playandwin, Inc.                            | August 1, 2001  |
| PDIM         | Prandium Inc                                | August 1, 2001  |
| PNLK         | Pro Net Link Corp                           | August 1, 2001  |
| PEQM         | Process Equipment Inc                       | August 15, 2001 |
| QPRC         | Quest Products Corp                         | August 1, 2001  |
| ROIE         | Return On Investment Corporation            | August 15, 2001 |
| RICX         | Ricex Co (Del)                              | August 15, 2001 |
| RFSV         | Ridgestone Financial Services Inc           | August 15, 2001 |
| RNET         | RnetHealth Inc.                             | August 1, 2001  |
| RTEK         | Rubber Technology International, Inc.       | August 1, 2001  |
| SFAD         | Safe Technolgs International Inc            | August 1, 2001  |
| SAFH         | Saf-T-Hammer Corporation                    | August 1, 2001  |
| STGA         | Saratoga International Holdings Corporation | August 1, 2001  |
| SATX         | SATX, Inc.                                  | August 1, 2001  |
| SQNB         | Sequoia National Bank San Fran Ca           | August 15, 2001 |
| SERC         | Service Bancorp Inc                         | August 15, 2001 |
| SVCDQ        | Service Merchandise Company, Inc.           | August 1, 2001  |
| SHPH         | Shaman Pharmaceuticals, Inc.                | August 1, 2001  |
| SHOY         | Shoney's, Inc.                              | August 1, 2001  |
| SHOP         | Shopsmith Inc                               | August 15, 2001 |
| SIDT         | Si Diamond Technology Inc                   | August 1, 2001  |
| SDWS         | Sideware Systems Inc.                       | August 1, 2001  |
| SIEN         | Siena Holdings, Inc.                        | August 15, 2001 |
| SRAM         | Simtek Corp                                 | August 1, 2001  |
| SYTE         | Sitestar Corporation                        | August 1, 2001  |
| SAGE         | Solomon Alliance Group Inc                  | August 1, 2001  |
| SPST         | Spencer's Restaurants, Inc.                 | August 1, 2001  |
| SPND         | Spindletop Oil & Gas Co                     | August 15, 2001 |
| STPWQ        | Stampede Worldwide, Inc.                    | August 1, 2001  |

LOP Stocks

| Issue Symbol | Issue Name   | Phase-In Date   |
|--------------|--|-----------------|
| SNHS         | Stein's Holdings, Inc.                               | August 15, 2001 |
| SSCP         | stereoscope.com, inc.                                | August 1, 2001  |
| SVEIB        | Stevens International, Inc. CL B                     | August 15, 2001 |
| STRU         | Struthers Inc.                                       | August 1, 2001  |
| SYBD         | Synthetic Blood International, Inc.                  | August 1, 2001  |
| TVCP         | Talk Visual Corporation                              | August 1, 2001  |
| TBMH         | TBM Holdings, Inc.                                   | August 15, 2001 |
| TCPI         | TCPI Inc.  | August 1, 2001  |
| TLXX         | Telynx Inc.  | August 1, 2001  |
| TSSA         | Tessa Complete Health Care, Inc.                     | August 1, 2001  |
| TXMC         | The Tirex Corporation                                | August 1, 2001  |
| TRKR         | The Tracker Corporation of America                   | August 1, 2001  |
| TDHC         | Thermadyne Holdings Corporation                      | August 15, 2001 |
| TTRIF        | Thermo Tech Technologies, Inc.                       | August 1, 2001  |
| TTLN         | Total Entertainment, Inc.                            | August 1, 2001  |
| TPWR         | TrackPower Inc.                                      | August 1, 2001  |
| TSRG         | Trans Energy, Inc.                                   | August 1, 2001  |
| TRPL         | Transportation Logistics International Inc.          | August 15, 2001 |
| TRVL         | Traviang Inc   | August 15, 2001 |
| TRUY         | Treasury International, Inc.                         | August 1, 2001  |
| TRDT         | Trident Media Group, Inc.                            | August 15, 2001 |
| TDNT         | Trident Systems International Inc                    | August 15, 2001 |
| TRLT         | TriLucent Technologies Corporation                   | August 1, 2001  |
| TNAV         | Tri-National Development Corp                        | August 1, 2001  |
| TRDY         | Trudy Corporation                                    | August 1, 2001  |
| USVO         | U S A Video Interactive Corp.                        | August 1, 2001  |
| OFIS         | U.S. Office Products Company                         | August 1, 2001  |
| UFSI         | Ultimate Franchise Systems Inc.                      | August 1, 2001  |
| UCPC         | Unicapital Corp.                                     | August 1, 2001  |
| USTI         | United Systems Technology, Inc. □ 3021 Gateway Drive | August 1, 2001  |
| UTTC         | United Textiles & Toys Corporation                   | August 15, 2001 |
| USXP         | Universal Express, Inc.                              | August 1, 2001  |
| UPGD         | Upgrade International Corporation                    | August 15, 2001 |
| UREC         | Urecoats Industries, Inc.                            | August 1, 2001  |
| USOO         | US 1 Industries, Inc.                                | August 15, 2001 |
| UDIG         | USA Digital, Inc.                                    | August 15, 2001 |
| VCMI         | ValCom Inc   | August 1, 2001  |
| VALH         | Value Holdings, Inc.                                 | August 1, 2001  |
| VNTN         | Venture Net Inc.                                     | August 1, 2001  |
| VRDE         | Veridien Corporation                                 | August 1, 2001  |
| VERC         | Versacom international, Inc.                         | August 15, 2001 |
| VCSY         | Vertical Computer Systems, Inc.                      | August 1, 2001  |
| VABK         | Virginia National Bank                               | August 15, 2001 |
| VDOT         | VirtualSellers.com Inc.                              | August 1, 2001  |
| WSPH         | Wasatch Pharmaceutical Inc                           | August 1, 2001  |
| WTER         | Water Chef Inc                                       | August 1, 2001  |
| WTHL         | Whitehall Enterprises, Inc.                          | August 1, 2001  |
| WILK         | Wilshire Technologies, Inc.                          | August 15, 2001 |
| WGMGY        | World Gaming PLC ADR                                 | August 1, 2001  |
| WHME         | World Homes Inc                                      | August 1, 2001  |
| WLGS         | World Wide Wireless Communications, Inc.             | August 1, 2001  |
| WWWVA        | Worldwideweb Institute.Com Inc                       | August 15, 2001 |
| WOWI         | Wow Entertainment Inc.                               | August 15, 2001 |
| WTCO         | WTC Industries, Inc.                                 | August 15, 2001 |
| ZKEM         | Xechem International, Inc.                           | August 1, 2001  |
| YCCI         | Yes Clothing Company Inc.                            | August 15, 2001 |
| ZPCM         | Zap.com Corporation                                  | August 15, 2001 |
| AXIS         | Z-AXIS CORP  | August 15, 2001 |
| ZENA         | Zenascent CI A                                       | August 15, 2001 |
| ZNIC         | Zonic Corp   | August 15, 2001 |

# NASD Notice to Members 01-47

## INFORMATIONAL

## Publication Of Quotations; Indications Of Interest

### SEC Approves Rule Change Prohibiting Publication Of Quotations Or Indications Of Interest In A Security During A Trading Halt

## 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 and Compliance
- Operations
- Registered Representatives
- Senior Management

## KEY TOPICS

- Quotations
- Trading Halt

### Executive Summary

On June 5, 2001, the Securities and Exchange Commission (SEC) approved an amendment to National Association of Securities Dealers, Inc. (NASD®) Rule 3340 to prohibit publication of quotations or indications of interest in a security during a trading halt. Previously, NASD Rule 3340 expressly prohibited members from directly or indirectly effecting a transaction in a security during a trading halt but did not expressly prohibit members from publishing quotations or indications of interest during a halt.<sup>1</sup>

### Questions/Further Information

The rule change becomes effective on August 13, 2001. Questions regarding this *Notice* may be directed to Kathy O'Mara, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8056.

Attachment A includes the text of Rule 3340, as amended.

### Background And Summary

The amendment to Rule 3340 prohibits members or associated persons from, directly or indirectly, effecting any transaction or publishing a quotation, a priced bid and/or offer, an unpriced indication of interest, or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security for which a trading halt is currently in effect.

NASD Regulation believes that prohibiting the publication of quotations or indications of interest during a trading halt will prevent members from seeking to trade at a time when they cannot execute a trade. Furthermore, the amended rule is designed to protect investors and to ensure the

integrity of quotations by preventing fictitious or misleading quotations.

Staff of The Nasdaq Stock Market, Inc. (Nasdaq®) has received numerous inquiries regarding what effect the rule change may have on Nasdaq's process for resuming trading following a trading halt. As noted in the SEC's approval order, the rule change will not affect the resumption process for Nasdaq National Market Securities (NNM) and Nasdaq SmallCap (SCM) securities. Nasdaq MarketWatch will continue to provide notice of a trading halt to members through the Nasdaq Workstation.

Contemporaneously, all quotes for the security at issue will be eliminated from the Nasdaq Workstation interactive area. Nasdaq's MarketWatch Department will continually update the status of the trading halt and will notify members of the exact time the trading halt will end. In addition, Nasdaq MarketWatch will notify members that they can begin entering quotations in anticipation of the end of the trading halt (the "grace period"). Quotations entered during this grace period are designated as closed by displaying a "g" symbol next to each quotation. The quotations remain closed until the trading halt has ended, at which time the "g" symbol is removed and quotations become firm. This resumption process is used by the Nasdaq MarketWatch for NNM and SCM securities exclusively.<sup>2</sup> Nasdaq MarketWatch does not use this process for OTC Bulletin Board securities or securities traded over-the-counter through the InterMarket.

The release approving the rule changes (SEC Release No. 34-44390; File No. SR-NASD-00-33) may be viewed on the SEC Web Site at [www.sec.gov/rules/sroindx.htm](http://www.sec.gov/rules/sroindx.htm).

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## **NASD Notice to Members 01-47**

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### **Endnotes**

- 1 However, NASD Rules 3310 and 3320, respectively, state that members are required to enter only bona fide quotations and honor such quotations if presented with an order.
- 2 NASD Regulation would not consider the entry of closed quotations into Nasdaq for NNM and SCM securities, in conformity with Nasdaq's resumption process, to be a violation of Rule 3340.

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# **NASD Notice to Members 01-47**

## **ATTACHMENT A**

### **Text Of Amendment To Rule 3340**

*New text is underlined.*

3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect.

# NASD Notice to Members 01-48

## FIPS Changes

### Fixed Income Pricing System<sup>SM</sup> Additions, Changes, And Deletions As Of May 21, 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 & Market Making

#### KEY TOPICS

- FIPS

As of May 21, 2001, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>).

| Symbol  | Name                                 | Coupon | Maturity |
|---------|--------------------------------------|--------|----------|
| ADLA.GR | Adelphia Communications Corp         | 10.250 | 06/15/11 |
| AZLG.GA | Azteca Holdings S.A.                 | 12.500 | 06/15/05 |
| HCA.GD  | HCA The Healthcare Company           | 7.125  | 06/01/06 |
| LU.GA   | Lucent Technologies Inc              | 6.900  | 07/15/01 |
| LU.GB   | Lucent Technologies Inc              | 7.250  | 07/15/06 |
| LU.GC   | Lucent Technologies Inc              | 6.500  | 01/15/28 |
| LU.GD   | Lucent Technologies Inc              | 5.500  | 11/15/08 |
| LU.GE   | Lucent Technologies Inc              | 6.450  | 03/15/29 |
| NWB.GF  | Northwest Airlines Inc               | 8.875  | 06/01/06 |
| PEUC.GA | Pegasus Satellite Communications Inc | 12.375 | 08/01/06 |
| PEUC.GB | Pegasus Satellite Communications Inc | 13.500 | 03/01/07 |
| RYL.GF  | Ryland Group Inc                     | 9.125  | 06/15/11 |
| SBAC.GB | SBA Communications Corp              | 10.250 | 02/01/09 |
| UIS.GJ  | Unisys Corp                          | 8.125  | 06/01/06 |

As of May 21, 2001, the following bonds were deleted from the Fixed Income Pricing System.

| Symbol  | Name                            | Coupon | Maturity |
|---------|---------------------------------|--------|----------|
| APSN.GA | APS Inc                         | 11.875 | 01/15/06 |
| BZH.GA  | Beazer Homes USA Inc            | 9.000  | 03/01/04 |
| CFNI.GC | Contifinancial Corp             | 7.500  | 03/15/02 |
| CFTO.GA | Cafeteria Operations LP         | 12.000 | 12/31/01 |
| CTFG.GA | Cole Taylor Financial Group Inc | 9.000  | 06/15/01 |
| HPCA.GA | Hospital Corp Amer              | 0.000  | 06/01/01 |
| HSE.GA  | HS Resources Inc                | 9.875  | 12/01/03 |
| ICEL.GA | Interceal Inc                   | 12.000 | 05/01/06 |
| ICEL.GB | Interceal Inc                   | 12.000 | 02/01/06 |
| IMD.GC  | IMO Industry Inc                | 11.750 | 05/01/06 |
| NMK.GH  | Niagara Mohawk Power Corp       | 8.500  | 07/01/10 |
| NRWA.GA | Northwest Airlines Inc          | 10.15  | 01/02/05 |
| NWSW.GA | Northwestern Steel & Wire Co    | 9.500  | 06/15/01 |
| OMPT.GA | Omnipoint Corp                  | 11.625 | 08/15/06 |
| OMPT.GB | Omnipoint Corp                  | 11.625 | 08/15/06 |
| PRGY.GA | Pestsec Energy Inc              | 9.500  | 06/15/07 |
| PTEL.GA | Powertel Inc                    | 11.125 | 06/01/07 |
| QHGI.GB | Quorum Health Group Inc         | 8.750  | 11/01/05 |
| SCEP.GG | Southern California Edison Co   | 6.500  | 06/01/01 |
| SELO.GA | Selmer Co Inc                   | 11.000 | 05/15/05 |
| SRV.GF  | Service Corp Intl               | 6.750  | 06/01/01 |
| USXG.GA | US Xchange LLC                  | 15.000 | 07/01/08 |

## **NASD Notice to Members 01-48**

|         |                           |        |          |
|---------|---------------------------|--------|----------|
| VC.GA   | Vencor Inc                | 8.625  | 07/15/07 |
| VCRO.GA | Vencor Operating Inc      | 9.875  | 05/01/05 |
| VSTR.GA | VoiceStream Wire Holdings | 11.875 | 11/15/09 |
| VSTR.GB | VoiceStream Wire Holdings | 10.375 | 11/15/09 |
| VSTR.GC | VoiceStream Wire Holdings | 11.500 | 09/15/09 |
| VX.GA   | Vialog Corp               | 12.750 | 11/15/01 |

As of May 21, 2001, changes were made to the symbols of the following FIPS bonds:

| <b>New Symbol</b> | <b>Old Symbol</b> | <b>New Name/Old Name</b> | <b>Coupon</b> | <b>Maturity</b> |
|-------------------|-------------------|--------------------------|---------------|-----------------|
| WAXM.GA           | WAXX.GA           | Waxman Industries Inc.   | 12.750        | 06/01/04        |

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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# NASD Notice to Members 01-49

## INFORMATIONAL

### Trade Date— Settlement Date

#### Labor 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

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

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, September 3, 2001, in observance of Labor 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> |
|-------------------|------------------------|---------------------|
| Aug. 28           | Aug. 31                | Sept. 5             |
| 29                | Sept. 4                | 6                   |
| 30                | 5                      | 7                   |
| 31                | 6                      | 10                  |
| Sept. 3           | Markets Closed         | —                   |
| 4                 | 7                      | 11                  |

\* 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 July

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of June 2001.

### Firms Fined, Individuals Sanctioned

**Coleman & Company Securities, Inc. (CRD #1486, New York, New York) and Mark Bennett Haiken (CRD #233565, Registered Principal, Great Neck, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$7,500, jointly and severally. The firm was fined an additional \$6,864, which includes the disgorgement of \$3,864 in commissions earned. Haiken was suspended from association with any NASD member in a financial and operations 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 the firm, acting through Haiken, failed to maintain its minimum required net capital while conducting a securities business. The findings also stated that the firm permitted individuals employed by the firm to act in a registered capacity while they had an inactive registration status as a result of their failure to timely complete the Regulatory Element of the NASD's Continuing Education Program.

Haiken's suspension began June 18, 2001, and concluded at the close of business June 22, 2001. **(NASD Case #C10010059)**

### Firms And Individuals Fined

**Andrew Garrett, Inc. (CRD #36250, New York, New York) and Revan Richard Schwartz (CRD #2748110, Registered Principal, Howard Beach, New York)** 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 Schwartz, served as placement agent for a best efforts "part-or-none" private placement offering and, during the contingency period, failed to ensure that the money or other consideration received was promptly deposited in a separate bank account, as agent or trustee for the persons who had the beneficial interests therein, until it could be determined whether the part or none contingency would be satisfied and the funds were either returned to the entitled persons or released to the issuer. The findings also stated that the respondents failed to ensure that all funds were promptly transmitted to a bank that had agreed in writing to hold all such funds in escrow and to transmit or return the funds directly to the entitled persons when the contingency had occurred. **(NASD Case #C10010071)**

**Patterson Travis, Inc. (CRD #16540, Englewood, Colorado) and David Thomas Travis (CRD #448950, Registered Principal, Aurora, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. The firm was fined an additional \$4,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm

incorrectly reported to Automated Confirmation Transaction Services<sup>SM</sup> (ACT<sup>SM</sup>) that it was acting in a principal capacity for over-the-counter bulletin board (OTCBB) securities transactions when, in fact, it was acting in an agency capacity for its customers. The findings also stated that the firm failed to state the reported price and markup/markdown on customer confirmations. In addition, the NASD found that the firm, acting through Travis, failed to report quarterly to the NASD customer complaints that it received, including one that alleged the misappropriation of funds or securities. **(NASD Case #C10010064)**

**Tarpon Scurry Investments, Inc. (CRD #34635, Hoboken, New Jersey) and Derek Chester Ferguson (CRD #3008808, Associated Person, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$13,000 and Ferguson was censured and fined \$42,649.30 which includes the disgorgement of \$41,649.30 in unlawful profits. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm failed to adequately establish and enforce written procedures to supervise its underwriting business and insure compliance with NASD rules and regulations, in that the firm allowed a non-controlling owner of the firm to participate in the initial public offering (IPO) of a security when the firm was a selling group member of the IPO and the IPO went "hot." The findings also stated that the firm executed limit order transactions outside the national best bid or offer, and failed to immediately execute limit order transactions when they were received even

though the inside bid/ask price was at or better than the limit order price at that time. The NASD also found that the firm received limit orders to buy a security and failed to reflect the orders in its quotes. Furthermore, the NASD found that the firm received a customer limit order, changed its bid, and failed to reflect the earlier open customer limit order. In addition, the findings stated that Ferguson participated in an IPO that went "hot" and profited \$41,649.30 when he sold the stock in the aftermarket. **(NASD Case #C10010075)**

### **Firms Fined**

**Andover Brokerage, L.L.C. (CRD #33848, Montebello, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$22,500, and required to revise its written supervisory procedures concerning short sales. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions in certain securities, all of which were Nasdaq National Market, (NNM) securities, at or below the current inside bid when the current bid was below the preceding inside bid in the security. The findings also stated that the firm executed short sale orders in certain securities and failed to make an affirmative determination prior to executing such transactions, and executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. Furthermore, the NASD found that the firm executed long sale transactions and incorrectly reported each of these transactions to ACT with a short sale modifier; failed to report to ACT the correct symbol indicating whether the firm

executed transactions in eligible securities in a principal or agency capacity; and executed short and long sale orders and failed to properly mark the order tickets as short or long for those orders. Also, the NASD determined 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 short sales. **(NASD Case #CMS010049)**

**Bestvest Investments, Ltd. (CRD #40302, Harper Woods, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$8,000, and fined \$6,000, jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it used the mails or other means or instrumentalities of interstate commerce to effect transactions in securities when its debt-to-debt-equity ratio exceeded 70 percent. The findings also stated that the firm failed to prepare monthly net capital computations, failed to prepare accurate trial balances and net capital computations, and filed inaccurate FOCUS Part IIA reports with the NASD. Furthermore, the NASD determined that the firm failed to establish and maintain a written needs analysis and training plan to provide a continuing and current education program for its registered persons to enhance their securities knowledge, skill, and professionalism for the Firm Element of the NASD's Continuing Education Rules, and failed to administer a continuing education program and maintain records documenting the contents and completion of the programs by its registered persons. **(NASD Case #C8A010035)**

**Interactive Brokers LLC (CRD #36418, Greenwich, Connecticut)** 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 exercised a short sale transaction for a customer in NNM securities, at or below the current inside bid, when the current inside bid was below the preceding inside bid in each of the securities. The findings also stated that the firm executed short sale orders for a customer in certain securities and failed to make an affirmative determination prior to executing such transactions for the customer. Also, 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 short sales. **(NASD Case #CMS010065)**

**J. P. Morgan Securities, Inc. (CRD #15733, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported to the Order Audit Trail System (OATS<sup>SM</sup>) execution reports with respect to equity securities traded on The Nasdaq Stock Market<sup>®</sup> that contained either inaccurate, incomplete, or improperly formatted data and because of such, the OATS system was unable to match the execution reports to the related trade reports to ACT. The findings also stated that the firm failed to transmit order information to OATS that was required to be transmitted in the

electronic form prescribed by the NASD. In addition, the NASD found that a reporting agent responsible for submitting a portion of the firm's OATS data inadvertently disabled the OATS reporting for the firm and as a result of such actions, OATS reports were not transmitted to the NASD. The NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning OATS reporting and the firm failed to report to Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>) transactions in FIPS securities within five minutes after execution. **(NASD Case #CMS010052)**

**Logan Rock (CRD #42691, Arlington, Virginia)** 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 executed short sale transactions in NNM securities, at or below the current inside bid, when the current inside bid was below the preceding inside bid in each of the securities and at a price less than 1/16th above the inside bid when the current inside spread was 1/16th or greater in each of the securities. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning short sales. **(NASD Case # CMS010060)**

**May Davis Group, Inc. (CRD #35622, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written

supervisory procedures relating to the 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 as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, and thereby failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning the SEC and NASD firm quote rules. **(NASD Case #CMS010056)**

**National Securities Corporation (CRD #7569, Seattle, Washington)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report any applicable options positions to the NASD, failed to update its quotes to reflect the customers' limit orders, and incorrectly reported short positions to the NASD. The findings also stated that the firm executed short sale orders in certain securities and failed to make an affirmative determination prior to executing such transactions. The NASD also found that the firm's supervisory system failed to include adequate written supervisory procedures to assure compliance with applicable securities laws and regulations concerning purchases of "B" share mutual funds. In addition, the NASD found that the firm failed to create and implement a supervisory system reasonably designed

to achieve compliance with applicable securities laws and regulations regarding the report of large option positions, the detection of errors or omissions of required quote updates, short interest reporting, and insuring that an affirmative determination is made prior to effecting short sales. **(NASD Case #C3B010011)**

**Spear, Leeds & Kellogg, L.P. (CRD #3466, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that in approving the opening of new customer accounts and making a market for securities, the firm did not enforce its written supervisory procedures by failing to obtain certain new account information required by its written procedures before opening new customer accounts, and failed to detect that its trading department had initiated quotations in securities without the firm's written approval. **(NASD Case #CMS010054)**

### **Individuals Barred Or Suspended**

**Paul Louis Anderson (CRD #2837647, Registered Representative, Rock Hill, South Carolina)** was barred from association with any NASD member in any capacity and ordered to pay \$9,000, plus interest, in restitution to his former employer. The sanctions were based on findings that Anderson credited his personal bank account \$9,000 using his employment position at the bank and his work computer, and withdrew the \$9,000 credited to his account through a series of withdrawals from automated teller machines.

Anderson also failed to respond to an NASD request for information. **(NASD Case #C07010002)**

**Assadour Michael Ashdjian (CRD #3170342, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Ashdjian willfully failed to amend a Form U-4 to disclose a material fact. **(NASD Case #C10010010)**

**Anthony Daniel Bernardo (CRD #1233834, Registered Representative, Granada Hills, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Bernardo consented to the described sanctions and to the entry of findings that he participated in private securities transactions involving purchases of notes by public customers without providing prior written or oral notification to his member firms.

Bernardo's suspension began June 18, 2001, and will conclude September 15, 2001. **(NASD Case #C02010019)**

**Charles Thomas Bernardo, Sr. (CRD #818057, Registered Representative, Northridge, 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, Bernardo consented to the described sanction and to the entry of findings that he participated in private securities transactions involving purchases of notes by public customers without providing prior written or oral notification to his member firms. According to the

findings, the private securities transactions involved purchases of notes by public customers in a securities offering. The NASD found that the customers invested a total of \$1,133,185 in the offering and Bernardo falsely represented to certain customers that he had invested in the offering when, in fact, he had not. **(NASD Case #C02010018)**

**Michael Joseph Bernardo (CRD #2334263, Registered Representative, Granada Hills, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 60 days. Without admitting or denying the allegations, Bernardo consented to the described sanctions and to the entry of findings that he participated in private securities transactions involving purchases of notes by public customers without providing prior written or oral notification to his member firms.

Bernardo's suspension began June 18, 2001, and will conclude August 16, 2001. **(NASD Case #C02010020)**

**Henri Michel Bise (CRD #2949724, Registered Representative, Rio de Janeiro, Brazil)** 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, Bise consented to the described sanctions and to the entry of findings that he exercised discretionary authority in the account of a public customer without the customer's prior written authorization and the prior written acceptance of the account as discretionary by his member firm.

Bise's suspension began June 18, 2001, and concluded at the close of business June 29, 2001. **(NASD Case #C10010066)**

**James Hugh Boughamer (CRD #26869, Registered Representative, Valrico, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$1,500, suspended from association with any NASD member in any capacity for six months, and required to disgorge \$1,200 in commissions to public customers. Without admitting or denying the allegations, Boughamer 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.

Boughamer's suspension began July 2, 2001, and will conclude January 1, 2002. **(NASD Case #C11010022)**

**Robert Lester Cawman (CRD #2456254, Registered Representative, Union, Kentucky)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,000 and suspended from association with any NASD member in any capacity for three months. Cawman also agreed to an undertaking that he will not be associated with any NASD member for one year following the acceptance of the AWC that is unwilling or unable to provide special supervision under terms and conditions substantially identical to those contained in a Special Supervision Agreement entered into by him and his previous member firm. In light of the financial status of Cawman, a fine of \$2,000 was imposed. Without admitting or denying the allegations, Cawman 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 detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions.

Cawman's suspension is deemed to have been served based upon a three-month suspension imposed by the Ohio Division of Securities. **(NASD Case #C8B010010)**

**Joseph Carmello Cernera, Jr. (CRD #2652602, Registered Representative, Manalapan, New Jersey)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. In light of the financial status of Cernera, no monetary sanctions have been imposed. Without admitting or denying the allegations, Cernera consented to the described sanction and to the entry of findings that he engaged in excessive and unauthorized trading in the accounts of public customers. The findings also stated that Cernera exercised discretion in the account of a public customer without prior written authorization from the customer and prior written approval from his member firm to exercise discretion. The NASD also found that Cernera willfully failed to disclose material information on his Forms U-4. **(NASD Case #C3A000033)**

**Michael Paul Cilmi (CRD #1289290, Registered Principal, South Cairo, New York)** was barred from association with any NASD member in any capacity and ordered to pay \$14,559.08, plus interest, in restitution to public customers. The sanctions were based on findings that Cilmi effected unauthorized transactions in the accounts of public customers. **(NASD Case #C10000220)**

**Harvey Jay Cohen (CRD #1754835, Registered Representative, Bensalem, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cohen consented to the described sanction 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 the proposed transactions and his proposed role therein, and stating whether he had received, or might receive, selling compensation in connection with the transactions. **(NASD Case #C9A010015)**

**Denice Eubanks Douglas (CRD #1423457, Registered Representative, Windsor Heights, Iowa)** 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, Douglas consented to the described sanction and to the entry of findings that she willfully failed to update and disclose a material fact on her Form U-4. **(NASD Case #C04010020)**

**Bradford Bailing Dyer (CRD #1020818, Registered Representative, Columbia, Maryland)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two years and required to disgorge \$32,173.17, plus interest, to public customers. In light of Dyer's payment of \$5,000 to public customers in a settlement with the Maryland Securities Division, no fine has been imposed. 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, Dyer consented to the described sanctions and to the entry of findings that he engaged in the offer and sales of securities to public customers and failed to provide his member firm prior written notice of the transactions.

Dyer's suspension began November 11, 1999, and will conclude November 10, 2001. **(NASD Case #C9A000028)**

**Michael Craig Efrusy (CRD #2931976, Registered Principal, Hasbrouck Heights, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 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, Efrusy consented to the described sanctions and to the entry of findings that he failed to disclose on Forms U-5 for registered representatives their involvement in private securities transactions.

Efrusy's suspension began June 18, 2001, and will conclude at the close of business July 17, 2001. **(NASD Case #C10010063)**

**Otto Karl Elser (CRD #1216051, Registered Representative, New Fairfield, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to disgorge \$150,000, representing commissions earned, to public customers. 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, Elser 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 #C11010023)**

**Carlton Perry Fletcher (CRD #2455798, Registered Representative, Queens, 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 10 business days, and ordered to pay \$800, plus interest, in restitution to public customers. Without admitting or denying the allegations, Fletcher consented to the described sanctions and to the entry of findings that he exercised discretion in the account of public customers without their prior written authorization, and/or did not have the account accepted, in writing, as discretionary by his member firm.

Fletcher's suspension will begin July 16, 2001, and will conclude at the close of business July 27, 2001. **(NASD Case #C10010074)**

**James Gaberkorn a.k.a. Gennady Gaberkorn (CRD #1718031, Registered Representative, Brooklyn, 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, Gaberkorn consented to the described sanction and to the entry of findings that he executed transactions in the account of a public customer

without the customer's prior knowledge, authorization, or consent. The findings also stated that Gaberkorn engaged in private securities transactions without providing prior written notice to his member firm. **(NASD Case #C10000187)**

**Fredric Neal Gabler (CRD #2374049, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$75,000, suspended from association with any NASD member in any capacity for two weeks, and required to pay \$6,512.50, plus interest, in restitution to member firms. Without admitting or denying the allegations, Gabler consented to the described sanctions and to the entry of findings that he entered orders to sell shares of a Nasdaq security into an electronic equity matching system and about the time he entered such orders, entered proprietary priced limit orders to buy shares of the same stock into an electronic communications network (ECN) at prices that he knew would improve the national best bid in the security. According to the findings, the full price and size of such orders would be reflected in The Nasdaq Stock Market® as the best prices and sizes at which a market participant was willing to buy shares of the stock, and Gabler knew that an ECN cross in the stock was scheduled to take place within minutes of the time that he entered such orders, and that the price at which the cross was to take place was directly based, in part, on the national best bid in the stock at the time of the cross. The NASD found that by engaging in this course of conduct, Gabler sold shares of the stock through an ECN at prices that were higher than he would otherwise have been able to sell shares of the stock; and that

within minutes after he received the executions of the orders to sell shares of the stock, he canceled or permitted to expire the proprietary priced limit orders that he had placed into the ECN, thereby securing \$6,512.50 in profits.

Gabler's suspension will begin July 16, 2001, and will conclude July 29, 2001. **(NASD Case #CMS010064)**

**Christopher Daniel Geis (CRD #2177608, Registered Representative, Wood-Ridge, New Jersey)** was barred from association with any NASD member in any capacity and required to pay \$57,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Geis converted customer funds to his own use and benefit, without the customer's knowledge or consent. Geis also failed to respond to NASD requests for information. **(NASD Case #C9B000030)**

**Marc Alan Goldberg (CRD #2481041, Registered Representative, Ft. Lauderdale, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Goldberg recommended to public customers the purchase of shares of stock and made price predictions and misrepresentations concerning the stock without having a reasonable basis for such representations to customers. Goldberg also failed to respond to NASD requests for information. **(NASD Case #C07000094)**

**Gregory George Groeller (CRD #2768372, Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, which includes disgorgement of

\$622.40 in commissions received, suspended from association with any NASD member in any capacity for 30 business days, and required to pay \$18,174.15, plus interest, in restitution to public customers. The fine and disgorgement payment and satisfactory proof of payment of the restitution 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, Groeller consented to the described sanctions and to the entry of findings that he engaged in transactions in the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to exercise discretion in the accounts.

Groeller's suspension began June 18, 2001, and will conclude at the close of business July 30, 2001. **(NASD Case #C10010067)**

**Valerie Jane Helton (CRD #2466067, Registered Representative, Leesville, Louisiana)** was fined \$20,251.50, which includes the disgorgement of commissions earned, and suspended from association with any NASD member in any capacity for 180 days for engaging in private securities transactions and barred from association with any NASD member in any capacity for failing to respond. The fine must be paid before reentry into the securities industry. The sanctions were based on findings that Helton engaged in private securities transactions, for compensation, and failed to provide prior written notice to, and receive prior approval from, her member firm. The findings also stated that Helton failed to respond to NASD requests for information.

Helton's bar became effective June 4, 2001. **(NASD Case #C05000067)**

**Bruce Ronald Howe, Jr. (CRD #2731865, Registered Representative, Bismarck, North Dakota)** 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 60 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, Howe consented to the described sanctions and to the entry of findings that he affixed a public customer's signature on forms needed to support insurance applications, without the customer's knowledge or consent.

Howe's suspension began July 2, 2001, and will conclude at the close of business August 30, 2001. **(NASD Case #C04010022)**

**Mohamed Imran Hussain (CRD #2287607, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement in which he was fined \$5,870.98, which includes disgorgement of \$870.98 in commissions received, and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Hussain consented to the described sanctions and to the entry of findings that he guaranteed the value of a public customer's account.

Hussain's suspension will begin July 16, 2001, and will conclude at the close of business August 10, 2001. **(NASD Case #C10010046)**

**Shannon Johnson (CRD #2884555, Associated Person, Montgomery Village, Maryland)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Johnson failed to respond to NASD requests for information. **(NASD Case #C9A990029)**

**Paul Kazak (CRD #2162021, Registered Representative, Brooklyn, New York)** 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 six months, and ordered to pay \$23,730.31, plus interest, in restitution to member firms. 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, Kazak consented to the described sanctions and to the entry of findings that he exercised discretionary trading authority over customer accounts, failed to promptly notify the executing firms of his association with a member firm, and failed to promptly notify his member firm of the existence of the accounts at the executing firms. The findings also stated that Kazak exercised discretionary power over customer securities accounts without the customers' prior written authorization.

Furthermore, the NASD found that Kazak knowingly entered priced limit orders in Nasdaq securities into an electronic communication network through his member firm at prices that would improve the national best bid or offer for such securities, in that the full price and size of such orders would be reflected in the public quotation stream as the best prices and

sizes at which a market participant was willing to buy or sell such securities. The NASD found that after having entered such orders, Kazak entered orders to buy and sell shares of such securities on behalf of customer securities accounts, and routed the orders to market makers whose automated execution systems were programmed to buy or sell such securities on an automated basis at prices equal to the national best bid or offer. The NASD determined that Kazak knowingly engaged in this course of conduct and sold shares of these securities at prices that he would not otherwise have been able to obtain, and he canceled the orders within seconds after he received the executions of the orders and obtained \$23,730.31 in profits.

Kazak's suspension began June 18, 2001, and will conclude at the close of business December 17, 2001. **(NASD Case #CMS010073)**

**Mark Mitchell Krist (CRD #2676768, Registered Representative, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$25,000, suspended from association with any NASD member in any capacity for 60 days, 30 of which were deemed served as a result of a suspension from a member firm, and required to pay \$1,793.75, plus interest, in restitution to member firms. Without admitting or denying the allegations, Krist consented to the described sanctions and to the entry of findings that he knowingly entered priced limit orders in Nasdaq securities into an electronic communication network through his member firm at prices that would improve the national best bid or offer for such securities, in that the full price and size of such orders would be reflected in the

public quotation stream as the best prices and sizes at which a market participant was willing to buy or sell such securities. According to the findings, after having entered such orders, Krist knowingly entered orders to buy and sell shares of securities on behalf of his proprietary trading account at his member firm and routed the orders to market makers whose automated execution systems were programmed to buy or sell such securities on an automated basis at prices equal to the national best bid or offer. The NASD determined that Krist engaged in securities transactions at prices that he would not otherwise have been able to obtain, and within seconds after he received the executions of the orders, he canceled the orders and secured profits of \$1,793.75.

Krist's suspension began June 18, 2001, and will conclude at the close of business July 17, 2001. **(NASD Case #CMS010051)**

**Richard Wayne Kulaszewski (CRD #1972404, Registered Principal, West Belmar, 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, Kulaszewski consented to the described sanction and to the entry of findings that he engaged in a fraudulent scheme to conceal the purchase of warrants of a hot issue by purchasing the warrants through a public customer's account that he controlled and selling the warrants to another customer at a profit. According to the findings, in furtherance of this scheme, Kulaszewski failed to disclose to the customer that the warrants he was selling were securities in which he held a beneficial interest, provided a false

response on a final allocation form for the customer accounts purchasing the warrants, and caused false information to be entered on the customer's account opening form. The findings also stated that Kulaszewski provided false and/or misleading testimony to the NASD during an on-the-record interview. **(NASD Case #C9B010048)**

**Thomas James Kunkle (CRD #2263516, Registered Representative, Chicago, Illinois)** 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, Kunkle consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss in a securities account.

Kunkle's suspension will begin July 16, 2001, and will conclude at the close of business July 20, 2001. **(NASD Case #C8A010032)**

**Yulin Joseph Lee (CRD #2806739, Registered Representative, Irvine, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Lee executed securities transactions for public customers while not registered with the NASD. Lee also failed to respond to NASD requests for information. **(NASD Case #C02990049)**

**Sanford Ira Levy (CRD #308358, Registered Representative, Cincinnati, Ohio)** 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 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, Levy consented to the described sanctions and to the entry of findings that he forged the signatures of public customers or members of the public to documents required to purchase fixed and variable life insurance products.

Levy's suspension began June 18, 2001, and will conclude at the close of business June 17, 2003. **(NASD Case #C8B010011)**

**Donna Ann Lewis (CRD #4006166, Registered Representative, Pasadena, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$1,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Lewis consented to the described sanctions and to the entry of findings that she willfully failed to disclose a material fact on a Form U-4 submitted to the NASD.

Lewis' suspension began June 4, 2001, and concluded at the close of business July 3, 2001. **(NASD Case #C9A010013)**

**James Henry Luther Jr. (CRD #1643047, Registered Representative, Tallahassee, Florida)** was fined \$12,000 and suspended from association with any NASD member in any capacity for one year for free-riding and withholding, and barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The sanctions were based on findings that Luther purchased shares of securities that traded at a premium in the secondary market in violation of the NASD's Free-Riding and Withholding Interpretation.

Luther's bar became effective May 25, 2001. **(NASD Case #C07010001)**

**Daniel Dwight Manoff (CRD #1720001, Registered Representative, Poolesville, Maryland)** was barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an OHO decision. The sanction was based on findings that Manoff made unauthorized use of a co-worker's credit cards.

Manoff has appealed this action to the SEC. Manoff's bar was effective April 26, 2001. **(NASD Case #C9A990007)**

**Richard Joseph Marchand, Jr. (CRD #2451717, Registered Representative, Warren, Rhode Island)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marchand consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C11010024)**

**Vincent Anthony Maresco (CRD #2405771, Registered Representative, Howard Beach, 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, Maresco consented to the described sanction and to the entry of findings that he engaged in the unauthorized purchase of shares of stock for the account of a public customer. The findings also stated that Maresco failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C9B010035)**

**Jason Joel Martin (CRD #4022372, Associated Person, Astoria, 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, Martin consented to the described sanction and to the entry of findings that, while employed by an NASD member firm, he converted \$775 in gift checks and used these funds for his own use and benefit, without the intended recipient's knowledge or consent. **(NASD Case #C9B010042)**

**James Alvin McLean (CRD #1409101, Registered Representative, Lansdowne, 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 two 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, McLean consented to the described sanctions and to the entry of findings that he failed to amend his Form U-4. The findings also stated that McLean participated in outside business activities and failed to provide written notice of such activities to his member firm.

McLean's suspension began July 2, 2001, and will conclude September 1, 2001. **(NASD Case #C9B010046)**

**Brenna Lee McMillan (CRD #4248254, Registered Representative, Apache Junction, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which she was

fined \$7,500 and suspended from association with any NASD member in any capacity for 15 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, McMillan consented to the described sanctions and to the entry of findings that she submitted a Form U-4 to the NASD that contained inaccurate information.

McMillan's suspension began June 4, 2001, and concluded at the close of business June 22, 2001. **(NASD Case #C3A010016)**

**Thomas Keith McNeill (CRD #714999, Registered Principal, Allenwood, New Jersey)** 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 required to requalify by exam as an investment company and variable contracts products principal (IP). If McNeill fails to requalify, he will be suspended from acting in an IP 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, McNeill consented to the described sanctions and to the entry of findings that he failed to register or report on the firm's Form BD a branch office, and failed to file with the NASD sales literature concerning registered investment companies within 10 days of first use or publication by his member firm. The findings also stated that McNeill permitted his firm's use of public communications that failed

to provide a sound basis for evaluating the facts in regard to any particular security or type of security industry discussed or service offered and/or contained exaggerated, unwarranted, or misleading statements or claims.

McNeill's suspension began June 18, 2001, and will conclude at the close of business August 16, 2001. **(NASD Case #C10010062)**

**Jay M. Melhado (CRD #4296787, Associated Person, Toms River, 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, Melhado consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on a Form U-4.

Melhado's suspension began June 4, 2001, and concluded July 3, 2001. **(NASD Case #C9A010012)**

**Bernard James Menke (CRD #1034173, Registered Representative, Davenport, Iowa)** 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, Menke consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to,

and receiving approval from, his member firms.

Menke's suspension began June 18, 2001, and will conclude at the close of business December 17, 2001. **(NASD Case #C04010021)**

**Jeffrey Mitchell (CRD #2113884, Registered Principal, Red Hook, 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 Mitchell, no monetary sanctions have been imposed. Without admitting or denying the allegations, Mitchell consented to the described sanction and to the entry of findings that Mitchell recommended unsuitable trading in the accounts of public customers resulting in excessive trading and churning. The findings also stated that Mitchell recommended unsuitable trading in a margin account of a public customer that resulted in highly concentrated positions in certain stocks causing the customer's account to suffer losses. Mitchell's recommendations constituted a breach of fiduciary obligations to his clients in a manner inconsistent with his clients' financial needs and objectives, ignoring their financial situation and the character of the accounts and creating losses in each of the accounts. **(NASD Case #C11010020)**

**Brandon Corey Negron (CRD #2785979, Registered Representative, Staten Island, 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 15 business days, ordered to requalify as a general securities representative within 90 days from the date the AWC was issued,

and required to pay \$587.31, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Negron consented to the described sanctions and to the entry of findings that he engaged in transactions in the account of a public customer without the customer's consent or authorization.

Negron's suspension began July 2, 2001, and will conclude at the close of business July 23, 2001. **(NASD Case #C10010070)**

**Louis Perosi, Jr. (CRD #360441, Registered Principal, Stroudsburg, Pennsylvania)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that Perosi willfully failed to promptly amend his U-4 to disclose a material fact and provided false testimony to the NASD during an on-the-record interview. The findings also stated that Perosi sold redeemable preferred shares to investors in a private offering and gave prospective investors an offering memorandum that omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaged in acts, practices or a course of business which operated, or could operate, as a fraud or deceit upon persons. The NASD also found that Perosi willfully misrepresented material facts on an amended Form BD. **(NASD Case #C9B000021)**

**James Harry Petrantis (CRD #727455, Registered Principal, Oceanport, New Jersey)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for two

years. In light of the financial status of Petrantis, no monetary sanction has been imposed. Without admitting or denying the allegations, Petrantis consented to the described sanction and to the entry of findings that he effected transactions in common stock at prices that were unfair and unreasonable in relation to the prevailing market price of the securities. Moreover, the NASD found that the prices charged to retail customers were excessive, and Petrantis failed to disclose this fact to the customers.

Petrantis' suspension began June 18, 2001, and will conclude at the close of business June 17, 2003. **(NASD Case #C07940047)**

**Cidney Present (CRD #2726581, [f/k/a William Kelman, CRD #1336707] Registered Representative, St. Augustine, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Present willfully provided false information on his Form U-4 about his identity and concealed the fact that he had been previously registered and sanctioned under his former name. Present also failed to respond to NASD requests for information. **(NASD Case #C07010003)**

#### **Individuals Barred Or Suspended**

**Keith Richard Procovic (CRD #2202049, Registered Representative, Deerfield Beach, Florida)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 business days for unauthorized trading, and barred from association with any NASD member in any capacity for failure to respond. The fine is due and payable upon

reentry into the securities industry. The sanctions were based on findings that Procovic effected the purchase of shares of stock in the joint account of public customers without their knowledge or prior authorization. Procovic also failed to respond to an NASD request for information.

Procovic's bar became effective May 28, 2001. **(NASD Case #C07000087)**

**Andre John Rampulla (CRD #2599771, Registered Representative, Massapequa, 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, Rampulla consented to the described sanction and to the entry of findings that he caused the execution of securities transactions in the account of a public customer without the prior knowledge, authorization, or consent of the customer. **(NASD Case #C10010072)**

**Mark Anthony Rauseo (CRD#2143539, Registered Representative, Malibu Lake, California)** 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 one year, and required to pay \$20,000, plus interest, in restitution to a customer. The fine and proof of payment of restitution must be paid before reassociating with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rauseo consented to the described sanctions and to the entry of findings that he made guarantees against loss in writing to public customers as an inducement to invest in stock.

Rauseo's suspension began June 4, 2001, and will conclude at the close of business June 3, 2002. **(NASD Case #C02010021)**

**Vladimir Rojankovski (CRD #4032100, Registered Representative, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,250, which includes disgorgement of \$750 in unlawful profits, and suspended from association with any NASD member in any capacity for 10 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, Rojankovski consented to the described sanctions and to the entry of findings that he participated in outside business activities and failed to give prior written notice to, and to receive written approval from, his member firm prior to engaging in such activities.

Rojankovski's suspension began June 18, 2001, and concluded at the close of business June 27, 2001. **(NASD Case #C9B010043)**

**Craig Jeffrey Seligman (CRD #2226002, Registered Representative, Hoboken, New Jersey)** 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 90 days, and required to pay \$3,500, plus interest, in restitution to a public customer. The fine payment and satisfactory proof of payment of the restitution 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, Seligman

consented to the described sanctions and to the entry of findings that he effected securities transactions away from his member firm and failed to provide prior written notification to, or obtain written approval from, his member firm.

Seligman's suspension began June 4, 2001, and will conclude September 1, 2001. **(NASD Case #C10010061)**

**Frank Robert Selto (CRD #1990195, Registered Representative, Santa Rosa, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Selto failed to respond to NASD requests for information. **(NASD Case #C01000029)**

**Benedicto Valdez Serna (CRD #1604593, Registered Principal, Jacksonville, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Serna consented to the described sanction and to the entry of findings that he received \$1,000 in cash from a customer for investment in a mutual fund account, and rather than invest the funds as directed by the customer, he converted the funds to his own use and benefit. **(NASD Case #C07010033)**

**William Kevin Shanklin, III (CRD #2624350, Registered Representative, Washington, DC)** 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, Shanklin consented to the described sanction and to the entry of findings that he received \$9,000 from public customers to

be invested in securities, deposited the funds in his personal bank account, and used the funds for his personal benefit. The findings also stated that Shanklin failed to respond to NASD requests for information and documents and failed to appear and testify. **(NASD Case #C9A010016)**

**Gary Dwayne Smith (CRD #2579220, Registered Principal, Burlington, 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, Smith consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to produce documents and to appear to testify. **(NASD Case #C9A010014)**

**Robert Alexander Stewart, Jr. (CRD #1387874, Registered Representative, Cincinnati, Ohio)** 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 60 days, and required to disgorge \$2,200, plus interest, to public customers. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry of findings that he participated in transactions away from his member firm and received compensation for the sales. The NASD found that Stewart failed to provide his member firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to participate in the transactions.

Stewart's suspension began July 2, 2001, and will conclude at the close of business August 30, 2001. **(NASD Case #C8B010005)**

**Jason Corie Strauss (CRD #2711294, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Strauss prepared and submitted a new account form to his member firm on behalf of an individual that he knew, or should have known, did not exist and that the information on the account form was false. **(NASD Case #C10000215)**

**William Harrison Tarrowly (CRD #442715, Registered Representative, Mequon, Wisconsin)** 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, Tarrowly consented to the described sanctions and to the entry of findings that he participated, for compensation, in private securities transactions by participating in the sale of a promissory note to a public customer and failed to give written notice of his intention to engage in such activity to his member firm and failed to receive written approval from the firm prior to engaging in such activity. The findings also stated that Tarrowly negligently misrepresented that the promissory note was fully guaranteed when, in fact, the note was subject to risk of repayment.

Tarrowly's suspension began June 18, 2001, and will conclude at the close of business September 17, 2001. **(NASD Case #C8A010026)**

**Christopher Michael Tomasulo (CRD #1220199, Registered Representative, Staten Island, 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, Tomasulo consented to the described sanction and to the entry of findings that he failed to respond to NASD requests to appear for an on-the-record interview. The findings also stated that Tomasulo engaged in outside business activities and private securities transactions without prior written notice to, or approval from, his member firm. **(NASD Case #C9B010038)**

**Hiep The Trinh (CRD #2458464 Registered Representative, Placentia, 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, Trinh consented to the described sanction and to the entry of findings that he received \$10,000 from a public customer to purchase certain mutual fund shares on her behalf. The findings stated that Trinh did not purchase the mutual fund shares as directed by the customer and, instead, converted the funds for his own benefit. **(NASD Case #C02010024)**

**Henry Abel Turner (CRD #2321042, Registered Principal, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. The fine must be paid before any application for reentry into the securities industry will be considered. Without admitting or denying the allegations, Turner consented

to the described sanctions and the entry of findings that he failed to ensure that his former member firm maintained its required net capital. The findings also stated that the firm, acting through Turner, caused its general ledger and net capital calculation, among other things, to be inaccurate, and failed to submit telegraphic notice of the firm's net capital deficiencies.

Turner's suspension began June 4, 2001, and concluded at the close of business June 13, 2001. (NASD Case #C07010029)

**Gregory Vinterfeld (CRD #2923584, Associated Person, Los Angeles, 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, Vinterfeld consented to the described sanction and to the entry of findings that he provided false responses on his Form U-4 and failed to respond to NASD requests for information. (NASD Case #C02010023)

**Michael Scott Vorsburgh (CRD #2790863, Registered Representative, Seattle, Washington)** 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, Vorsburgh consented to the described sanction and to the entry of findings that he sold shares of stock for the account of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to exercise discretion in the account. The findings also stated that Vorsburgh completed Authorizations to Journal

Securities or Funds without the knowledge or consent of public customers and submitted them to his member firm to transfer approximately \$7,912 from the customers' accounts to the accounts of other customers for Vorsburgh's use and benefit, thereby converting customers' funds for his own use and benefit. To accomplish the conversion, Vorsburgh affixed the signatures of customers to the forms without their knowledge or consent. (NASD Case #C3B010010)

**Gary Alan Vosick (CRD #2650242, Registered Representative, Lebanon, Ohio)** 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 three months, and required to disgorge \$5,740, plus interest, in commissions to public customers. The fine payment and satisfactory proof of payment of the disgorgement, 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, Vosick 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 detailed written notice of the transactions, his role therein, and to receive permission from his firm to engage in the transactions.

Vosick's suspension began July 2, 2001, and will conclude at the close of business October 1, 2001. (NASD Case #C8B010012)

**Kenneth Michael Wade (CRD #2378256, Registered Representative, Roseville, 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, Wade consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior oral or written notification to, and receiving permission from, his member firm. (NASD Case #C02010022)

**Roger John Walstra (CRD #1227710, Registered Representative, DeMotte, Indiana)** 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, Walstra consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C8A010027)

**Gary Lee Wasserman (CRD #1004904, Registered Representative, Westfield, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$30,000. Without admitting or denying the allegations, Wasserman consented to the described sanctions and to the entry of findings that as a result of his intentional failure to report transactions on behalf of his member firm in a timely manner, the firm failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in an NNM security. (NASD Case #CMS010059)

**Gary Theodore Wisniewski (CRD #1856563, Registered Representative, Saugerties, 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 two years, and ordered to disgorge \$6,868.86, representing commissions received, 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, Wisniewski 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.

Wisniewski's suspension began June 18, 2001, and will conclude at the close of business June 17, 2003. **(NASD Case #C11010021)**

### **Individual Fined**

**Frederick Titus Croft (CRD #861905, Registered Principal, Grand Haven, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$35,463.38, which includes the disgorgement of \$33,463.38 in transaction profits. Without admitting or denying the allegations, Croft consented to the described sanctions and to the entry of findings that he purchased shares of stock in IPOs for an account in which he had a beneficial interest. Each purchase involved securities of public offerings that later traded at a premium in the secondary market ("hot issues"). The findings also stated that Croft failed to notify his member firm, in writing, prior to executing any transactions that he had established and maintained a personal securities account with another member firm. In addition, the NASD found that Croft failed to notify, in writing, the

firm with which he maintained the account of his association with another member firm. **(NASD Case #C05010028)**

### **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 June 8, 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*.

**Freedom Investors Corp. (CRD #23714, Pewaukee, Wisconsin) and James Russell Fay (CRD #1003069, Registered Principal, Oconomowoc, Wisconsin)** were censured and fined \$40,000, jointly and severally. Fay was also suspended from association with any NASD member in any principal capacity for 90 days and required to requalify by exam before serving in any principal capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm, acting through Fay, conducted a securities business while it failed to maintain the minimum required net capital, prepared inaccurate books and records, and prepared and filed inaccurate FOCUS Part IIA reports. Also, the firm and Fay failed to respond timely to NASD requests for information.

The firm and Fay have appealed this action to the SEC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C8A990071)**

**Jeffrey Booth Hodde (CRD #247308, Registered Principal, Summit, New Jersey)** was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days for unauthorized trading, and barred from association with any NASD member in any capacity for failing to respond. The fine must be paid before Hodde seeks reentry into the securities industry. The sanctions are based on findings that Hodde effected an unauthorized transaction in the account of a public customer and failed to respond to NASD requests for information.

Hodde has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C10010005)**.

**Josephthal & Co., Inc. (CRD #3227, New York, New York)** was censured and fined \$10,000. The sanctions were based on findings that the firm failed to comply with the order of an arbitration panel to produce a document.

Josephthal & Co., Inc. has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #CAF000015)**

**Vadim (a/k/a Steven) Shapiro (CRD #2562368, Registered Representative, Baltimore, Maryland)** was barred from association with any NASD member in any capacity and ordered to pay \$191,175.25, plus interest, in restitution to public customers. The sanctions were based on findings that Shapiro made material misrepresentations and omissions to public customers to induce them to purchase securities. The findings also stated that Shapiro failed to execute customer sell orders.

Shapiro has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C10000207)**

### 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.

**Christopher Aguado (CRD #3089463, Registered Representative, Secaucus, New Jersey)** was named as a respondent in an NASD complaint alleging that he recommended to, and effected for the securities account of, a public customer, the sale and purchase of common stock without having reasonable grounds for believing that such recommendation was suitable for the customer's financial situation and needs in that the recommendation involved investing the entire value of the account in a single speculative stock. **(NASD Case #C9B010045)**

**Henry Wilder Bailey (CRD #713351, Registered Representative, Watkinsville, Georgia)** was named as a respondent in an NASD complaint alleging that he recommended that public customers liquidate certain mutual funds they owned and use the proceeds from those sales to purchase other mutual funds having similar investment objectives. The NASD also alleges that these

recommendations lacked a reasonable basis inasmuch as the customers each incurred additional sales charges as a result of the switches in mutual funds, the mutual funds involved had similar investment objectives, and the customers' investment objectives had not changed. **(NASD Case #C07010037)**

**Benjamin Conde (CRD #2397658, Registered Representative, Fairfield, New Jersey)** was named as a respondent in an NASD complaint alleging that he effected unauthorized transactions in the securities accounts of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C9B010052)**

**Scott Douglas Flynn (CRD #2020872, Registered Principal, Highlands, New Jersey)** was named as a respondent in an NASD complaint alleging that he created and sent a fictitious monthly account statement to a public customer to give the false appearance that a request made by the customer to transfer funds from one account to another had been fulfilled. **(NASD Case #C9B010044)**

**J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California), Richard Leon Newberg (CRD #346857, Registered Principal, Golden Beach, Florida), and Dennis Jay Sturm (CRD #1407180, Registered Principal, Coral Springs, Florida)** were named as respondents in an NASD complaint alleging that the firm, Newberg, and Sturm participated directly, or indirectly, in undertakings involving the purchase of securities from issuers with a view to the distribution of such securities and, thereby, acted as underwriters of the unregistered

shell company and surviving entity securities. The complaint also alleges that this trading, including matched trades, in the securities of the shell companies created the false appearance of trading volume and market interest in the securities; induced other market makers to enter quotes; and allowed the respondents to artificially affect the market price for the securities. The complaint further alleges that the respondents, by the use of any means, instrumentality of interstate commerce, or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. In addition, the complaint alleges that the respondents aided and abetted the manipulative trading of others. The complaint alleges that Sturm, acting on behalf of the firm, certified that no one associated with the firm was directly or indirectly affiliated with the issuer when he knew, or should have known, that controlling shareholders were related to the respondents or other associated persons of the firm and falsely represented that the initial prices were based on trades with third-party brokers, unsolicited third-party transactions, or similar representations.

Moreover, the complaint alleges that Sturm and Newberg maintained, controlled, or had financial interest in accounts at other firms; failed to provide written notice of these accounts to the firm; and failed to provide prompt written notice to the firm that they were engaged in outside business activity for compensation.

The complaint also alleges that Newberg provided false testimony during an NASD investigation. In addition, the complaint alleges that the firm failed to supervise the trading and market making activity conducted by Sturm and Newberg; failed to devise, maintain, and enforce written supervisory procedures designed to focus on the potential for manipulation presented by trading securities in newly trading shell companies and failed to oversee the selection of companies in which the firm made markets and for which it filed Form 211 applications, or to review the accuracy and adequacy of the information in the Form 211 applications. **(NASD Case #CAF010011)**

**Reginald Bernard Knight (CRD #3100095, Registered Representative, West Palm Beach, Florida)** was named as a respondent in an NASD complaint alleging that he knowingly used funds credited to his securities account in error to effect securities transactions for personal profit. **(NASD Case #C07010034)**

**Charles Joseph Smercina (CRD #1915915, Registered Representative, Solon, Ohio)** was named as a respondent in an NASD complaint alleging that he received stock certificates and checks from a public customer to establish an individual retirement account rollover, failed to establish the account, and retained the certificates and checks until he returned them to the customer at a later date. **(NASD Case #C8B010013)**

**Yago Marti Sobrevias (CRD #2642527, Registered Representative, Madrid, Spain)** was named as a respondent in an NASD complaint alleging that he neglected to execute the order of a public customer and, instead,

executed an unauthorized transaction in the customer's account without the prior knowledge, authorization, or consent of the customer. The complaint also alleges that, in order to conceal the unauthorized transaction, Sobrevias prepared and sent false monthly account statements to the customer. The complaint further alleges that Sobrevias provided a letter of guarantee to the public customer that was not authorized by his member firm, and that he did not request authorization to issue the guarantee from its firm. In addition, the complaint alleges that Sobrevias failed to respond to NASD requests for information. **(NASD Case #C05010027)**

#### **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.

**Ameri-First Securities Corporation**  
Dallas, Texas  
(May 14, 2001)

**Chaconia Financial Services, Inc.**  
Providence, Rhode Island  
(May 14, 2001)

**Germano Municipals Corp.**  
Sanibel, Florida  
(June 8, 2001)

**Ginsberg & Garipoli Securities Corp.**  
Alameda, California  
(June 8, 2001)

**W.J. Askin & Co., Incorporated**  
Washington, D.C.  
(June 12, 2001)

#### **Suspensions Lifted**

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

**Clements Company Investment Advisors, Inc.**  
San Diego, California  
(May 21, 2001)

**I.D.A. Financial Services, Inc.**  
Woodland Hills, California  
(June 1, 2001)

**Weston Capital Markets, Inc.**  
New York, New York  
(May 7, 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.)**

**Fernandez, Roger Hannim**  
Vancouver, Washington  
(May 17, 2001)

**Grieg, Tommy A.**  
Santa Maria, California  
(May 30, 2001)

**Nonaka, Douglas Takeshi**  
Aiea, Hawaii  
(May 29, 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.)**

**Chu, Chia Ewi**  
San Jose, California  
(May 23, 2001)

**Gerlach, Mark P.**  
Santa Monica, California  
(May 24, 2001)

**Hartlieb, Michael**  
St. Petersburg, Florida  
(June 4, 2001)

**Joslyn, Chad**  
Macedon, New York  
(May 25, 2001)

**Olton, Brian Murray**  
Concord, California  
(May 25, 2001)

**Ponce, William F.**  
Laguna Niguel, California  
(May 30, 2001)

**Trinidad, Chilannie**  
Buena Park, California  
(May 24, 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.

**Kurczodyna, Joseph Edward**  
Lake Bluff, Illinois  
(May 23, 2001)

**Roon, Robert**  
Palm Beach Gardens, Florida  
(May 24, 2001)

**NASD Regulation Fines All-Tech, Houtkin, and Other Execs \$380,000 for Day Trading and Advertising Violations; Suspends Individuals**

NASD Regulation, Inc. censured and fined All-Tech Direct, Inc., of Montvale, NJ, \$250,000; and fined and suspended Harvey I. Houtkin, Chairman and CEO; Mark D. Shefts, President; and Harry Lefkowitz, Vice President of Operations for violating NASD rules in connection with All-Tech's day-trading business. The Securities and Exchange Commission also announced settlements with All-Tech, Shefts and Lefkowitz at the same time.

In settling this case, All-Tech, Houtkin, Shefts, and Lefkowitz neither admitted nor denied NASD Regulation's findings. The charges were contained in a complaint originally filed in July 2000.

NASD Regulation found that All-Tech, Shefts, and Lefkowitz failed to supervise the activities of employees who routinely arranged loans between customers. The loans, known as "journaling," enabled customers to meet margin calls, allowing them to continue trading. NASD Regulation found that All-Tech employees misrepresented the risks associated with the loans by telling customers the loans were basically guaranteed with virtually no risk. While the journaling occurred nationwide, NASD Regulation focused on five branches and found that, in those five branches, from January 1998 to January 1999, over 4,800 journals were recorded, transferring over \$130 million in loans between customer accounts. At times, non-registered persons arranged loans between customers who were located at different branches and did not know each other. In a number of

instances, the interest to be paid by the borrowing customer to the lending customer was set at an excessive rate. Hundreds of journal forms lacked signatures or included photocopied signatures. On some of the forms non-registered persons signed as branch managers, while on others, traders signed without full authority.

NASD Regulation also found that All-Tech and Houtkin made statements that were misleading, unwarranted, or without a sound basis in a number of print and radio advertisements, on the firm's Web site, during television appearances, and in a book that was given out by the firm as sales literature. The statements included:

- "Most of my customers have enjoyed successes virtually unheard of in the trading community."
- "[A]nyone with the financial capability and desire has the opportunity to participate in the market with the same advantages as a market making pro."
- "If you meet parameters set forth in this guide...your probability of success will be exceptionally high."
- "Electronic Day Trading appeals to executives, retirees, graduating college students and anyone who recognizes the unlimited earnings potential and quality of life which an Electronic Day Trader may achieve."
- "Perhaps three in ten" and "four in ten" people trained as day traders will become successful.

NASD Regulation also found that All-Tech, Houtkin and Shefts violated NASD rules by permitting

a statutorily disqualified person to participate actively in the firm's securities-related activities, even though he had been barred from the securities industry by the SEC in 1988. NASD Regulation further found that the firm, Houtkin, and Shefts violated NASD rules by failing to properly register an individual who assisted in the management of two All-Tech branch offices, held himself out as a broker, and made recommendations to customers.

In addition to the \$250,000 fine, All-Tech was also ordered to retain an outside consultant to review and make recommendations concerning the firm's policies and procedures as they relate to the matters covered by the settlement. Houtkin was fined \$50,000, suspended from associating with any NASD member in all capacities for 15 days and suspended as a principal and supervisor for 105 days. Shefts was fined \$50,000, suspended from associating with any NASD member in all capacities for 30 days and suspended as a principal and supervisor for 90 days. Lefkowitz was fined \$20,000, suspended from associating with any NASD member in all capacities for 60 days and suspended as a principal and supervisor for 60 days.

NASD Regulation previously settled with the three other respondents named in the case. Jeffrey Sadowski was barred from associating with any NASD member, Michael Benson was suspended from associating with any NASD member for 30 days and fined \$5,000, and David Niederkrome was suspended from associating with any NASD member for 10 days and fined \$5,000.

### **NASD Regulation Settles Five Disciplinary Actions Involving Day Trading**

NASD Regulation, Inc. has settled five separate disciplinary actions against firms providing day-trading services to the public. The five actions include findings of violations of the federal securities laws and NASD rules in the following areas:

- Misleading advertising materials
- Registration violations
- Improper loans to customers
- Improper sharing of commissions
- Short-sale violations
- Trade-reporting violations
- Deficient supervisory procedures

Without admitting or denying the allegations, all accepted the sanctions that include censures, the expulsion of one firm, and suspensions and fines against firms and individuals ranging from \$10,000 to \$75,000.

These actions were investigated and filed by NASD Regulation offices in New Orleans and Dallas. They represent a continuing effort on the part of NASD Regulation to address problem areas in day-trading business practices.

#### ***Day-Trading Enforcement Actions***

##### **1. Landmark Securities Corporation and James C. Gillock, III—Case No. C05010022**

Landmark Securities Corporation and James C. Gillock, former president of Landmark—findings

include:

- a. The firm, through Gillock, used advertising materials that contained misleading statements regarding customers' access to the markets; inappropriately implied that customers were employees and that they would earn a high income; and misrepresented the risks of day-trading;
- b. The firm, through Gillock, allowed an individual to supervise day-trading activities while not properly registered;
- c. The firm, through Gillock, loaned funds to a customer for the purpose of meeting a margin requirement;
- d. The firm, through Gillock, paid securities transaction-related compensation to an unregistered entity; and
- e. The firm committed short sale and trade reporting violations.

Landmark was expelled from membership in the Association. Gillock was fined \$50,000 and suspended for two years in a principal capacity and for six months in all capacities. He is further required to requalify as a General Securities Representative by taking and passing the Series 7 examination, prior to acting again in that capacity.

##### **2. Momentum Securities, LLC—Case No. C05010018**

Momentum Securities, LLC—findings include:

- a. The firm used advertising material that failed to disclose risks associated with day trading; exaggerated customers' ability to access the markets; failed to disclose

risks of market fluctuation; failed to disclose possible delays to system access and trade execution; and exaggerated the capabilities of technology-based services offered to customers;

- b. The firm failed to establish, maintain, and enforce adequate written supervisory procedures addressing customer credit parameters and controls to detect entry of orders that exceeded such parameters. These shortcomings resulted in the execution of an order to purchase stock in the amount of approximately \$11.5 million entered in error by a firm customer;
- c. The firm paid securities transaction-related compensation to unregistered entities;
- d. The firm failed to establish, maintain, and enforce adequate written supervisory procedures addressing short-sale and trade reporting; and
- e. The firm committed short-sale and trade-reporting violations.

Momentum was censured and fined a total of \$75,000.

**3. CyBerBroker, Inc. (n/k/a CyBerCorp, Inc.) and Mark K. Stryker—Case No. C05010016**

- a. CyBerBroker, Inc. and Mark K. Stryker, former president of CyBerBroker—The firm, through Stryker, allowed nine individuals to execute customer equity transactions while not properly registered as equity traders.

CyBerBroker and Stryker were each censured, together fined a total of \$16,000 and required to forfeit commissions of \$4,000.

**4. Cornerstone Securities Corporation and Russell A. Grigsby—Case No. C06010010**

Cornerstone Securities Corporation and Russell A. Grigsby, former president of Cornerstone—findings include:

- a. The firm, through Grigsby, loaned funds to five public customers for the purpose of meeting Reg T margin requirements;
- b. The firm executed Nasdaq National Market short sale transactions at or below the inside bid when the current inside bid was below the preceding inside bid;
- c. The firm committed short-sale and trade-reporting violations;
- d. The firm used advertising materials that mitigated the risks of day trading and potential loss of capital; failed to disclose possible delays to system access and trade execution; and improperly implied that a “day trader” serves as an employee of the firm; and
- e. The firm failed to establish, maintain, and enforce adequate written supervisory procedures addressing the NASD’s rules governing advertising.

Cornerstone and Grigsby were both censured and together fined \$35,000.

**5. Summit Trading, Inc. and William N. Sunshine—Case No. C06010008**

Summit Trading, Inc. and William N. Sunshine, president of Summit Trading—findings include:

- a. The firm, through Sunshine, allowed proprietary trades to

be executed through the Small Order Execution System (SOES);

- b. The firm committed short-sale and trade-reporting violations;
- c. The firm, through Sunshine, used advertising materials that contained misleading statements regarding customers’ access to the markets; misrepresented the risks of day trading; and inappropriately implied that customers were employees of the firm; and
- d. The firm failed to establish, maintain, and enforce adequate written supervisory procedures addressing advertising and SOES.

Summit and Sunshine were both censured and fined a total of \$20,000, (\$15,000 of which is a joint fine, and \$5,000 of which is assessed against the firm only).

## For Your Information

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### **Financial Payments**

On Monday, June 25, 2001, NASD Regulation implemented new addresses for all financial payments—including payments to CRD/IARD. The new P.O. Box will facilitate more timely automated processing of payments and is the primary address to which your firm sends all checks/payments via regular delivery. Please note that the P.O. Box for regular delivery payments does not accept courier or overnight packages. There is a second address for courier and overnight deliveries.

The new financial payment addresses are:

#### **Regular Mail**

*NASD Regulation, Inc., CRD-IARD  
P.O. Box 7777-W9995  
Philadelphia, PA 19175-9995*

#### **Courier & Overnight Mail ONLY**

*NASD Regulation, Inc., CRD-IARD  
W9995 c/o Mellon Bank, Rm 3490  
701 Market Street  
Philadelphia, PA 19106*

Provide the following phone number if one is required for the recipient:  
(301) 869-6699

Payments will be processed according to the schedule below:

- Deposits received before 2 p.m., Eastern Time (ET), should be posted in your financial account the next business day.
- Deposits received after 2 p.m., ET, should be posted in your financial account in two business days.

The procedures and information for wire transfers have not changed. You may find the procedures for wire transfers on the NASDR Web Site at: [http://www.nasdr.com/3400\\_wire.htm](http://www.nasdr.com/3400_wire.htm).

For questions regarding the new financial payment addresses, please call the Gateway Call Center Member Firm Registration Hotline at (301) 869-6699.