

JUNE 2004

Notices to Members

Notices

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Reported for June

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Notices to Members (December 1996 to current) are also available on the Internet at www.nasd.com.

Special Notice to Members

JUNE 1, 2004

SUGGESTED ROUTING

Legal and Compliance
Senior Management

KEY TOPICS

National Adjudicatory Council

INFORMATIONAL

NAC Nominees

NASD Announces Nominees for Regional Industry
Member Vacancies on the National Adjudicatory Council

Executive Summary

The purpose of this *Special Notice to Members* is to announce the nominees for the National Adjudicatory Council (NAC) from the Midwest and South Regions. The nominees, nominated for a three-year term beginning in January 2005, are listed in Exhibit I. These nominees will be proposed to NASD's National Nominating Committee unless an additional candidate comes forward within 14 calendar days from the date of this *Special Notice*.

We appreciate the interest shown by many members in expressing their desire to serve on the NAC and thank everyone for their continuing support of the self-regulatory process. The Midwest and South Regional Nominating Committees thoroughly reviewed the background of every candidate before selecting their nominees in an effort to secure appropriate and fair representation of both regions.

Contested Election Procedures

If an officer, director, or employee of an NASD member in the Midwest and South Regions has not been proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she should send a written notice to Barbara Z. Sweeney, NASD's Corporate Secretary, at the address below within 14 calendar days after the publishing date (June 1) of this *Special Notice*.

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

04-41

The Contested Nomination Procedures can be found in Article VI of the NASD Regulation By-Laws. If no additional candidate comes forward within 14 calendar days, the Midwest and South Regional Nominating Committees shall certify their candidates to the National Nominating Committee.

Questions/Further Information

Questions concerning this *Special Notice* may be directed to Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, at (202) 728-8062, or via e-mail at: barbara.sweeney@nasd.com.

National Adjudicatory Council Membership and Function

Membership

The NAC consists of 14 members—seven Industry members and seven Non-Industry members. Two Industry members are nominated by NASD's National Nominating Committee and are appointed by the Board of Directors of NASD Regulation, Inc., as at-large members. Five Industry members each represent one of the following geographic regions:

Midwest Region: Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin (Districts 4 and 8)

New York: New York (the counties of Nassau and Suffolk, and the five boroughs of New York City) (District 10)

North Region: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City), Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia (Districts 9 and 11)

South Region: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, the Canal Zone, Puerto Rico, and the Virgin Islands (Districts 5, 6, and 7)

West Region: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and the former U.S. Trust Territories (Districts 1, 2, and 3)

Two regions (Midwest and South) have vacancies for this election. NAC members for the other three regions (New York, North, and West) are indicated in Exhibit II, along with the year in which their terms expire.

Function

According to the NASD Regulation By-Laws, the NAC is authorized to act for the NASD Board of Governors in matters concerning:

- ◆ appeals or reviews of disciplinary proceedings, statutory disqualification proceedings, or membership proceedings;
- ◆ the review of offers of settlement; letters of acceptance, waiver, and consent; and minor rule violation plan letters;
- ◆ the exercise of exemptive authority; and
- ◆ other proceedings or actions authorized by the Rules of NASD.

The NAC also considers and makes recommendations to the Board on enforcement policy and rule changes relating to the business and sales practices of NASD members and associated persons.

EXHIBIT I

Nominees for NAC Industry Member Vacancies

Midwest (Districts 4 and 8)

Timothy P. Henahan
Baker & Co., Incorporated
Cleveland, OH

South (Districts 5, 6 and 7)

W. Dennis Ferguson
Sterne, Agee Capital Markets, Inc.
Boca Raton, FL

EXHIBIT II

NAC Members with Terms Expiring in January 2005

(Midwest Region)

Douglas L. Kelly
A.G. Edwards & Sons, Inc.
St. Louis, MO

(South Region)

Barbara L. Weaver
Howard Weil, Incorporated
New Orleans, LA

NAC Members with Terms Expiring in January 2006

(North Region)

A. Louis Denton
Philadelphia Corporation for Investment Services
Philadelphia, PA

NAC Members with Terms Expiring in January 2007

(New York)

Judith R. MacDonald
Rothschild, Inc.
New York, NY

(West Region)

Neal E. Nakagiri
Associated Securities Corporation
Los Angeles, CA

Special Notice to Members

JUNE 2004

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Operations
Registration
Senior Management

KEY TOPICS

District Elections

INFORMATIONAL

District Elections

NASD Informs Members of Upcoming District Committee and District Nominating Committee Elections

Executive Summary

The purpose of this *Special Notice to Members* is to inform members of the upcoming nomination and election process to fill forthcoming vacancies on NASD District Committees and District Nominating Committees.

Information on District Committee and District Nominating Committee members currently serving through 2005, 2006, and 2007 is included in Attachment A. Information on District Election Procedures is included in Attachment B. A blank candidate profile sheet is also included (Attachment C).

Nomination Process

Individuals from member firms of all sizes and segments of the industry are encouraged to submit names for consideration for membership on the 11 District Committees and District Nominating Committees. In this election, each District Committee will have three vacancies to fill, with the exception of District 10, which will have four. The term of office for District Committee members is three years. Each District Nominating Committee will have five vacancies to fill for a one-year term. Members are requested to submit candidates' names to the appropriate District Director by submitting a cover letter and completed candidate profile sheet (Attachment C) by July 26, 2004.

04-42

To serve as a member of a District Committee or District Nominating Committee, an individual must: (1) be employed by an NASD member eligible to vote in the District for District Committee elections; and (2) work primarily from such NASD member's principal office or a branch office that is located within the District where the individual will serve on a Committee. NASD believes this will ensure that local interests are represented on Committees. Also, please note that individuals who have served two consecutive terms are no longer eligible to be re-elected; however, NASD encourages current and former committee members to assist NASD by soliciting candidates for both committees.

Completed forms will be provided to all members of the appropriate District Nominating Committee for review. It is anticipated that on or before September 3, 2004, each District Director, acting on behalf of the District Nominating Committee, will notify the Secretary of NASD of each candidate nominated by the District Nominating Committee and the position to which the candidate is nominated.

Members are reminded of the importance to accurately maintain their Executive Representative name and e-mail address information, as well as their firm's main postal address.¹ This will ensure that member mailings, such as election information, will be properly directed. Failure to keep this information accurate may jeopardize the member's ability to participate in District elections as well as other member votes. To update the Executive Representative name and e-mail address, firms should access the NASD Contact System, located on NASD's Web site at www.nasdr.com/ncs.asp

To update postal address information, the firm must file a Form BD Amendment via the Web CRD system. For assistance updating either of these systems, you may contact our Call Center at (301) 590-6500.

Questions/Further Information

Questions concerning this *Special Notice* may be directed to the District Director noted or to Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, at (202) 728-8062 or via e-mail at barbara.sweeney@nasd.com.

Endnote

- ¹ See also *Notice to Members 04-32* (SEC Approves Amendments to Require Quarterly Review and Update of Executive Representative Contact Information).

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ATTACHMENT A

District 1 Committee and District Nominating Committee Members

Elisabeth P. Owens, District Director

525 Market Street, Suite 300, San Francisco, CA 94105

(415) 882-1201

District 1 Committee — Chair: Robert A. Muh

Members to be elected to terms expiring January 2008: 3

Committee members to serve until January 2005

Gerard P. Gloisten	GBS Financial Corporation	Santa Rosa, CA
Allan L. Herzog	Prudential Securities, Inc.	San Francisco, CA
Robert A. Muh	Sutter Securities, Inc.	San Francisco, CA

Committee members to serve until January 2006

Warren E. Gordon	Charles Schwab & Co., Inc.	San Francisco, CA
William P. Hayes	Wells Fargo Investments, LLC	San Francisco, CA
Francis X. Roche, II	RBC Dain Rauscher, Inc.	San Francisco, CA

Committee members to serve until January 2007

William A. Evans	Stone & Youngberg, LLC	San Francisco, CA
Mansoor Kisat	Citigroup Global Markets, Inc.	Santa Rosa, CA
Arthur E. Raitano	Hoefer & Arnett, Incorporated	San Francisco, CA

District 1 Nominating Committee — Chair: James D. Klein

Committee members to be elected to terms expiring January 2005: 5

Committee Members

Stephen R. Adams	Wells Fargo Investments, LLC	San Francisco, CA
Sally G. Aelion	Emmett A. Larkin Company, Inc.	San Francisco, CA
Robert S. Basso	Correspondent Services Corporation	San Francisco, CA
James D. Klein	UBS PaineWebber, Inc.	San Francisco, CA
L. Robert McKulla	Wachovia Securities	Walnut Creek, CA

District 2 Committee and District Nominating Committee Members

Lani M. Sen Woltmann, District Director

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071 (213) 613- 2601

District 2 Committee — Chair: James E. Biddle

Members to be elected to terms expiring January 2008: 3

Committee members to serve until January 2005

Barbara A. Kelley ¹	Pacific Global Investment Management Company	Glendale, CA
Joan A. Payden	Payden & Rygel	Los Angeles, CA
Joel H. Ravitz	Quincy Cass Associates	Los Angeles, CA

Committee members to serve until January 2006

James E. Biddle ²	The Securities Center Incorporated	Chula Vista, CA
A. William Cohen	Integrated Trading and Investments, Inc.	Las Vegas, NV
Don S. Dalis	UBS PaineWebber Inc.	Newport Beach, CA

Committee members to serve until January 2007

Stephen B. Benton	Financial Network Investment Corporation	Torrance, CA
James M. S. Dillahunty	Fixed Income Securities, LLC	San Diego, CA
John D. Lewis	JDL Securities Corp.	Newport Beach, CA

District 2 Nominating Committee — Chair: Margaret M. Black

Committee members to be elected to terms expiring January 2005: 5

Committee Members

Margaret M. Black	Morgan Stanley	Century City, CA
Diane P. Blakeslee	Blakeslee & Blakeslee, Inc.	San Luis Obispo, CA
Miles Z. Gordon		Indian Wells, CA
Richard B. Gunter	Wedbush Morgan Securities	Los Angeles, CA
Steven K. McGinnis		Irvine, CA

1 Ms. Kelley was appointed to fill a vacancy created by the resignation of Guy Williams. Ms. Kelley's term expires in January 2005.

2 Mr. Biddle was appointed to fill a vacancy created by the resignation of Donna Bartlett Lawson. Mr. Biddle must stand for election to serve out the remaining term, which expires in January 2006.

District 3 Committee and District Nominating Committee Members

Joseph M. McCarthy, District Director

370 17th Street, Suite 2900, Denver, CO 80202 (303) 446-3100

James G. Dawson, District Director

Two Union Square, 601 Union Street, Suite 1616, Seattle, WA 98101-2327 (206) 624-0790

District 3 Committee — Chair: John W. Goodwin

Members to be elected to terms expiring January 2008: 3

Committee members to serve until January 2005

Gregory R. Anderson	TIAA/CREF Individual & Institutional Services, Inc.	Denver, CO
Robert E. Frey, Jr.	KMS Financial Services, Inc.	Seattle, WA
John F. York	Strand, Atkinson, Williams & York, Inc.	Portland, OR

Committee members to serve until January 2006

Gene G. Branson	Partners Investment Network, Inc.	Spokane, WA
Bridget M. Gaughan	SunAmerica Financial Network, Inc.	Phoenix, AZ
John W. Goodwin	Goodwin Browning & Luna Securities, Inc.	Albuquerque, NM

Committee members to serve until January 2007

Curtis J. Hammond	Morgan Stanley Dean Witter	Bellevue, WA
J. Keith Kessel	AFS Brokerage, Inc.	Greenwood Village, CO
Arlene M. Wilson	D.A. Davidson & Co.	Great Falls, MT

District 3 Nominating Committee — Chair: Anthony B. Petrelli

Committee members to be elected to terms expiring January 2005: 5

Committee Members

Elyssa S. Baltazar	Morgan Stanley Dean Witter, Inc.	Denver, CO
L. Hoyt DeMers	Wells Fargo Investments, LLC	Seattle, WA
Steven R. Larson	Richards, Merrill & Peterson, Inc.	Spokane, WA
Kathryn A. Supko	Northwestern Mutual Investment Services, LLC	Boise, ID
Anthony B. Petrelli	Neidiger, Tucker, Bruner, Inc.	Denver, CO

District 4 Committee and District Nominating Committee Member

Thomas D. Clough, District Director

120 West 12th Street, Suite 900, Kansas City, MO 64105

(816) 802-4708

District 4 Committee — Chair: Frank H. Kirk

Members to be elected to terms expiring January 2008: 3

Committee members to serve until January 2005

Frank H. Kirk	Wachovia Securities, Inc.	Kansas City, MO
James H. Warner	The Warner Group	Sioux City, IA
Vacancy ³		

Committee members to serve until January 2006

Michael D. Burns	USAllianz Securities, Inc.	Minneapolis, MN
Deborah M. Castiglioni	Cutter & Company, Inc.	Chesterfield, MO
Kevin P. Maas	PrimeVest Financial Services, Inc.	St. Cloud, MN

Committee members to serve until January 2007

Joseph P. Fleming	Piper Jaffray & Co.	Minneapolis, MN
Richard M. Hurwitz	Benefit Finance Securities, LLC	St. Louis, MO
Mark T. Lasswell	Wells Fargo Brokerage Services, LLC	Minneapolis, MN

District 4 Nominating Committee — Chair: L.C (Jack) Petersen

Committee members to be elected to terms expiring January 2005: 5

Committee Members

Gene M. Diederich	A.G. Edwards & Sons, Inc.	Overland Park, KS
Timothy J. Lyle	Cambridge Investment Research, Inc.	Fairfield, IA
E. John Moloney	Moloney Securities Co., Inc.	St. Louis, MO
L. C. (Jack) Petersen	Kirkpatrick, Pettis, Smith, Polian, Inc.	Omaha, NE
Pamela R. Ziermann	Dougherty & Company, LLC	Minneapolis, MN

³ This vacancy was created by the resignation of William R. Giovanni. The term expires in January 2005.

District 5 Committee and District Nominating Committee Members

Warren A. Butler, Jr., Regional Director

1100 Poydras Street, Energy Centre, Suite 850, New Orleans, LA 70163 (504) 522-6527

District 5 Committee — Chair: John J. Dardis

Members to be elected to terms expiring January 2008: 3

Committee members to serve until January 2005

John J. Dardis	Jack Dardis & Associates, Ltd.	Metairie, LA
Philip J. Dorsey	Dorsey & Company, Inc.	New Orleans, LA
James T. Ritt	Morgan Keegan & Company, Inc.	Memphis, TN

Committee members to serve until January 2006

Victor E. Blaylock	BancorpSouth Investment Service, Inc.	Jackson, MS
Carolyn R. May	Benchmark Investments, Inc.	Little Rock, AR
F. Eugene Woodham	Sterne, Agee & Leach, Inc.	Birmingham, AL

Committee members to serve until January 2007

Jennifer Carty Scola	Carty & Company, Inc.	Memphis, TN
R. Patrick Shepherd	Avondale Partners, L.L.C.	Nashville, TN
Donald Winton	Crews & Associates, Inc.	Little Rock, AR

District 5 Nominating Committee — Chair: Duncan F. Williams

Committee members to be elected to terms expiring January 2005: 5

Committee Members

David A. Daugherty	James Baker & Associates	Oklahoma City, OK
James S. Holbrook, Jr.	Sterne, Agee & Leach, Inc.	Birmingham, AL
E. Douglas Johnson, Jr.	Johnson Rice & Company, L.L.C.	New Orleans, LA
Tom R. Steele	Equitable Advisors, Inc.	Nashville, TN
Duncan F. Williams	Duncan-Williams, Inc.	Memphis, TN

District 6 Committee and District Nominating Committee Members

Virginia F. M. Jans, District Director

12801 N. Central Expressway, Suite 1050, Dallas, TX 75243

(972) 701-8554

District 6 Committee — Chair: Sennett Kirk, III

Members to be elected to terms expiring January 2008: 3

Committee members to serve until January 2005

Donaldson D. Frizzell	First Command Educational Foundation	Fort Worth, TX
Sennett Kirk, III	Kirk Securities Corporation	Denton, TX
V. Keith Roberts	Stanford Group Company	Houston, TX

Committee members to serve until January 2006

Brent T. Johnson	Multi-Financial Securities Corporation	Houston, TX
John R. Muschalek	First Southwest Company	Dallas, TX
Robert L. Nash	SWS Securities, Inc.	Dallas, TX

Committee members to serve until January 2007:

Karen Banks	Frost Brokerage Services, Inc.	San Antonio, TX
Cynthia E. Besek	Maplewood Investment Advisors, Inc.	Dallas, TX
Darryl W. Traweek	RBC Dain Rauscher, Inc.	Houston, TX

District 6 Nominating Committee — Chair: Edward M. Milkie

Committee members to be elected to terms expiring January 2005: 5

Committee Members

Christopher R. Allison	M.E. Allison & Co., Inc.	San Antonio, TX
C. Ronald Baker	The (Wilson) Williams Financial Group	Lubbock, TX
William B. Madden	Madden Securities Corporation	Dallas, TX
Edward M. Milkie	Milkie/Ferguson Investments, Inc.	Dallas, TX
David W. Turner	Wachovia Securities, LLC	Fort Worth, TX

District 7 Committee and District Nominating Committee Members

David Paulukaitis, Associate Director

One Securities Centre, Suite 500, 3490 Piedmont Road, NE, Atlanta, GA 30305
(404) 239-6128

District 7 Committee — Chair: Jeffrey P. Adams

Members to be elected to terms expiring January 2008: 3

Committee members to serve until January 2005

Jeffrey P. Adams	Balentine & Company	Atlanta, GA
Richard G. Averitt, III	Raymond James Financial Services, Inc.	St. Petersburg, FL
Roark A. Young	Young, Stovall and Company	Miami, FL

Committee members to serve until January 2006

Joseph B. Gruber	FSC Securities Corporation	Atlanta, GA
Dennis S. Kaminski	Mutual Service Corporation	West Palm Beach, FL
James A. Klotz	FMSBonds, Inc.	North Miami Beach, FL

Committee members to serve until January 2007

Susan J. Hechtlinger	Banc of America Investment Services, Inc.	Charlotte, NC
Landrum H. Henderson, Jr.	Legg Mason Wood Walker, Inc.	Charlotte, NC
Alan L. Maxwell, Jr.	Wachovia Capital Markets, LLC	Charlotte, NC

District 7 Nominating Committee — Chair: Michael D. Hearn, Esq.

Committee members to be elected to terms expiring January 2005: 5

Committee Members

Michael D. Hearn, Esq.	Banc of America Investment Services, Inc.	Charlotte, NC
Kenneth W. McGrath	Popular Securities, Inc.	Hato Rey, PR
C. John O'Bryant, III	PowellJohnson, Private Asset Management	Raleigh, NC
Glenn R. Oxner	Scott & Stringfellow, Inc.	Greenville, SC
John W. Waechter	William R. Hough & Co.	St. Petersburg, FL

District 8 Committee and District Nominating Committee Members

Carla A. Romano, District Director

55 West Monroe Street, Suite 2700, Chicago, IL 60603

(312) 899-4324

District 8 Committee — Chair: Jill R. Powers

Members to be elected to terms expiring January 2008: 3

Committee members to serve until January 2005

Bernard A. Breton	Carillon Investments, Inc.	Cincinnati, OH
Donald A. Carlson	B.C. Ziegler and Company	Chicago, IL
William K. Curtis	M & I Brokerage Services, Inc.	Milwaukee, WI
Gerald L. Oaks	Legg Mason Wood Walker, Inc.	Cincinnati, OH
Jill R. Powers	Oberlin Financial Corporation	Bryan, OH

Committee members to serve until January 2006

Wilbur H. Burch	Newbridge Securities Corporation	Saginaw, MI
Thomas M. McDonald	Wayne Hummer Investments, L.L.C.	Chicago, IL
James J. Roth	Pershing A BNY Securities Group Co.	Oak Brook, IL

Committee members to serve until January 2007

Michael E. Bosway	City Securities Corporation	Indianapolis, IN
Robert J. Michelotti	Ferris, Baker Watts Incorporated	Auburn Hills, MI
Lora Rosenbaum	Northwestern Mutual Investment Services, LLC	Milwaukee, WI

District 8 Nominating Committee — Chair: Mary D. Esser

Committee members to be elected to terms expiring January 2005: 5

Committee Members

William C. Alsover, Jr.	Centennial Securities Company, Inc.	Grand Rapids, MI
Mary D. Esser	Cressman Esser Securities, Inc.	Naperville, IL
Gregory W. Goelzer	Goelzer Investment Management	Indianapolis, IN
Rodney Trautvetter	Harris Investor Services LLC	Chicago, IL
Bruce J. Young	Mesirow Financial, Inc.	Chicago, IL

District 9 Committee and District Nominating Committee Members

John P. Nocella, District Director

1835 Market Street, Suite 1900, Philadelphia, PA 19103 (215) 963-1992

Gary K. Liebowitz, District Director

581 Main Street, 7th Floor, Woodbridge, NJ 07095 (732) 596-2025

District 9 Committee — Chair: Michael B. Row

Members to be elected to terms expiring January 2008: 3

Committee members to serve until January 2005

James E. Bickley	Cresap, Inc.	Horsham, PA
Michael B. Row	Pershing LLC	Jersey City, NJ
Michael S. Mortensen	PNC Investments	Pittsburgh, PA

Committee members to serve until January 2006

Richard Grobman	Oppenheimer & Co., Inc.	Philadelphia, PA
W. Dean Karrash	Burke, Lawton, Brewer & Burke	Spring House, PA
Gregg A. Kidd	Pinnacle Investments Inc.	East Syracuse, NY

Committee members to serve until January 2007

John Bluher	Knight Equity Markets, L.P.	Jersey City, NJ
Barry M. Cash	UBS Financial Services, Inc.	Fishkill, NY
Peter P. Jenkins	Credit Suisse First Boston LLC	Baltimore, MD

District 9 Nominating Committee — Chair: Lenda P. Washington

Committee members to be elected to terms expiring January 2005: 5

Committee Members

J. Lee Keiger, III	Davenport & Company, LLC	Richmond, VA
John P. Meegan	Parker/Hunter Incorporated	Pittsburgh, PA
Lance A. Reihl	1717 Capital Management Co.	Newark, DE
Howard B. Scherer	Janney Montgomery Scott LLC	Philadelphia, PA
Lenda P. Washington	GRW Capital Corporation	Washington, DC

District 10 Committee and District Nominating Committee Members

Hans L. Reich, Regional Director

One Liberty Plaza, 49th Floor, 165 Broadway, New York, NY 10006 (212) 858-4180

District 10 Committee — Chair: Jennifer A. Connors

Members to be elected to terms expiring January 2008: 4

Committee members to serve until January 2005

Jennifer A. Connors	ITG Inc.	New York, NY
Christopher R. Franke	J.P. Morgan Securities Inc.	New York, NY
Joan E. Hoffman	Deutsche Banc A.G.	New York, NY
Bertram J. Riley Sr.	Petersen Investments, Inc.	New York, NY
Mark W. Ronda	Fahnestock & Co. Inc.	New York, NY

Committee members to serve until January 2006

Margaret M. Caffrey ⁴	Schonfeld & Company, LLC	Jericho, NY
Raymond C. Holland, Sr.	Triad Securities Corp.	New York, NY
Andrew H. Madoff	Bernard L. Madoff Investment Services LLC	New York, NY
Richard J. Paley	Daiwa Securities America, Inc.	New York, NY

Committee members to serve until January 2007

Richard Berenger	Sky Capital, LLC	New York, NY
Lon T. Dolber	American Portfolios Financial Services, Inc.	Holbrook, NY
George T. Mimura	Nomura Securities International, Inc.	New York, NY
Howard R. Plotkin	Lehman Brothers Inc.	New York, NY

District 10 Nominating Committee — Chair: Judith R. MacDonald

Committee members to be elected to terms expiring January 2005: 5

Committee Members

William Behrens	Northeast Securities, Inc.	New York, NY
Ruth S. Goodstein	UBS Financial Services, Inc.	New York, NY
Judith R. MacDonald	Rothschild, Inc.	New York, NY
Charles V. Senatore	Fidelity Brokerage Services, LLC	New York, NY
Stephen C. Strombelline	BNP Paribas Securities Corp.	New York, NY

⁴ Ms. Caffrey was appointed to fill a vacancy created by the resignation of Vicki Holleman. Ms. Caffrey must stand for election to serve out the remaining term, which expires in January 2006.

District 11 Committee and District Nominating Committee Members

Frederick F. McDonald, District Director

260 Franklin Street, Suite 1600, Boston, MA 02110

(617) 261-0805

District 11 Committee — Chair: Thomas J. Horack

Members to be elected to terms expiring January 2008: 3

Committee members to serve until January 2005

Michael C. Braun	Moors & Cabot, Inc.	Boston, MA
Andrew F. Detwiler	Vandham Securities Corp.	Boston, MA
Thomas J. Horack	John Hancock Life Insurance Company	Boston, MA

Committee members to serve until January 2006

Mark R. Hansen	State Street Global Markets, LLC	Boston, MA
Lee G. Kuckro	Advest, Inc.	Hartford, CT
Wilson G. Saville ⁵	Barrett & Company	Providence, RI

Committee members to serve until January 2007

David K. Booth	Jefferson Pilot Securities Corp.	Concord, NH
Thomas F. Hollenbeck	J.P. Morgan Invest, LLC	Boston, MA
Curtis L. Snyder, Jr.	American Technology Research, Inc.	Greenwich, CT

District 11 Nominating Committee — Chair: John D. Lane

Committee members to be elected to terms expiring January 2005: 5

Committee Members

Richard J. DeAgazio	Boston Capital Services, Inc.	Boston, MA
John D. Lane	Lane Capital Markets LLC	Fairfield, CT
John I. Fitzgerald	Leerink Swann & Company	Boston, MA
Robert V. Rodia	People's Securities, Inc.	Bridgeport, CT
Gregory D. Teese	Equity Services, Inc.	Montpelier, VT

⁵ Mr. Saville was appointed to fill a vacancy created by the resignation of Gregg A. Kidd. Mr. Saville must stand for election to serve out the remaining term, which expires in January 2006.

ATTACHMENT B

Procedures for Electing District Committee and District Nominating Committee Members

1. Each NASD District shall maintain a District Nominating Committee in the manner specified in Article VIII of the By-Laws of NASD Regulation, Inc.
2. The Secretary of NASD has sent the foregoing written notice to each District Nominating Committee member and each District Director identifying the members of the District Committee and the District Nominating Committee whose terms expire in January 2005. The notice describes the election procedures to be followed in filling these positions.
3. The Secretary of NASD and the Member Regulation Department will e-mail a reminder to all members of their responsibility, and obligation, to keep current and accurate the information on their Executive Representatives. The e-mail will contain a reference to the NASD Contact System, located on NASD's Web site at www.nasdr.com/ncs.asp, for changing a firm's Executive Representative name, email and postal address. This e-mail will note that failure to keep this information accurate may jeopardize the member's ability to participate in the district elections, as well as in other member votes.
4. The Secretary of NASD will send a *Notice to Members* announcing the forthcoming elections to the Executive Representative of all NASD members eligible to vote in each district. The *Notice to Members* will identify: (a) the number of positions that need to be filled in each district; and (b) the incumbent members of each District Committee. Persons associated with an NASD member who are interested in serving on the District Committee or the District Nominating Committee within their district, must complete a candidate profile sheet and submit it to the District Director. The completed candidate profile sheets will be provided to all members of the appropriate District Nominating Committee for review. During this stage of the election process, the District Nominating Committee identifies and solicits candidates to nominate for election to the District Committee and the District Nominating Committee.
5. Soon after the expiration of the time allotted in the *Notice to Members* to submit names and candidate profile sheets for consideration, the District Nominating Committee will meet to determine its slate of candidates for the election. NASD staff will provide the District Nominating Committee members with information considered to be relevant to the nomination process, including:
 - ◆ analytical data pertaining to the district's membership; and
 - ◆ candidate profile sheets.

-
6. In determining its slate of candidates for the election, the District Nominating Committee will review the background and qualifications of the proposed candidates, and endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and various classes and types of NASD members engaged in the investment banking or securities business within the district. The slate must include one candidate for each position to be filled on the District Committee and on the District Nominating Committee.
 7. On or before September 3, 2004, the District Director, acting on behalf of the District Nominating Committee, will notify the Secretary of NASD of each candidate nominated by the District Nominating Committee and the position to which the candidate is nominated.
 8. On or before October 1, 2004, the Secretary of NASD will send a *Notice to Members* to the District Committees and the Executive Representatives of NASD members eligible to vote in each district, identifying the nominees for the District Committees and the District Nominating Committees.

If the District Nominating Committee nominates only one candidate for each position on the District Committee and the District Nominating Committee and no additional candidate comes forward by delivering written notice to the appropriate District Director within 14 calendar days after the date of the *Notice to Members* identifying the nominees, the candidates nominated by the District Nominating Committee are considered duly elected.

9. If an officer, director, or employee of an NASD member was not nominated by the District Nominating Committee and wants to be considered for election to the District Committee or the District Nominating Committee as an additional candidate, he/she must notify the District Director in writing within 14 calendar days after the date of the *Notice to Members* referenced in item 8 above. The District Director must make a written record of the time and date of the receipt of such notification.
10. Promptly following receipt of the additional candidate's timely notice, the Secretary of NASD will provide to the additional candidate a list of all NASD members eligible to vote in the district, their mailing addresses, and their Executive Representatives.
11. An additional candidate is considered nominated if a petition signed by the Executive Representative of at least 10 percent of the NASD members eligible to vote in the district is filed with the District Nominating Committee within 30 calendar days after the mailing date of the list to the additional candidate referenced in item 10 above.
12. If an additional candidate secures the required petition within the 30-day designated timeframe, the election is considered a contested election. The Secretary of NASD will send a *Notice to Members* to the Executive Representatives of NASD members eligible to vote in the district announcing the names of all candidates and describing the contested election procedures.

Additional information pertaining to the District Committee and District Nominating Committee Election Procedures may be found in Article VIII of the By-Laws of NASD Regulation.

ATTACHMENT C Candidate Profile Sheet**Current Employment**

Name: _____ CRD#: _____

Firm: _____ #RRs at Firm: _____

Title/Primary Responsibility: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

E-mail: _____

Prior Employment (List the most recent first. Feel free to include extra pages if necessary.)

Firm: _____

Title/Primary Responsibility: _____

Firm: _____

Title/Primary Responsibility: _____

General Areas of Expertise (please check all that apply)

- Compliance/Legal
 Corporate Finance
 Financial/Operational
 Institutional Sales
- Investment Advisory
 Retail Sales
 Trading/Market Making
 Other

Product Expertise (please check all that apply)

- Corporate Bonds
 Direct Participation Programs
 Equity Securities
 Municipal/Government Securities
- Investment Company
 Options
 Variable Contracts Securities
 Other

Memberships/Positions Held in Trade or Business Organizations

Past NASD Experience and Dates of Service (please check all that apply)

Committee Member (Identify committee: _____) Approx. Dates: _____

Arbitrator Approx. Dates: _____

Mediator Approx. Dates: _____

Expert Witness (arbitrations; disciplinary proceedings): Approx. Dates: _____

Other: Approx. Dates: _____

Educational Background

School: _____ Degree: _____

School: _____ Degree: _____

Notice to Members

JUNE 2004

SUGGESTED ROUTING

Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

Affidavits
Arbitration
Central Registration Depository System
(CRD® or CRD system)
Customer Dispute Information
Dispute Resolution
Expungement
Rule 2110
Rule 2130

GUIDANCE

Expungement

Members' Use of Affidavits in Connection with Stipulated Awards and Settlements to Obtain Expungement of Customer Dispute Information under Rule 2130

Executive Summary

On December 16, 2003, the Securities and Exchange Commission (SEC) approved Rule 2130 governing the expungement of customer dispute information from the Central Registration Depository System (CRD® or the CRD system).¹ As described in further detail below, Rule 2130 applies to any request made to a court of competent jurisdiction to expunge customer dispute information from the CRD system that has its basis in an arbitration or civil lawsuit filed on or after April 12, 2004.²

This *Notice* addresses members' obligations under Rule 2130 regarding the use of affidavits in connection with settlements that are incorporated into stipulated awards to obtain expungement of customer dispute information from the CRD system under Rule 2130. For a more detailed discussion of Rule 2130's requirements, members and other interested parties should review *Notice to Members (NtM) 04-16* (March 2004) (Expungement). NASD also has published questions and answers about Rule 2130 on its Web site at www.nasd.com.

Questions/Further Information

Questions concerning this *Notice* may be directed to Richard E. Pullano, Associate Vice President/Chief Counsel, Registration and Disclosure, at (240) 386-4821; Jean I. Feeney, Vice President and Chief Counsel, NASD Dispute Resolution, at (202) 728-6959; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

04-43

Background

Rule 2130 reflects NASD's commitment to maintaining a CRD system that provides public investors and regulators access to accurate information about firms and brokers and maintains the integrity of the arbitration process. Rule 2130 recognizes the interests of: (1) NASD, the states, and other regulators in retaining broad access to customer dispute information to fulfill their regulatory responsibilities and investor protection obligations; (2) the brokerage community and others in a fair process that recognizes their stake in protecting their reputations and permits expungement from the CRD system when appropriate; and (3) investors in having access to accurate and meaningful information about firms and brokers with which they conduct, or may conduct, business.³ All of these groups have a common interest in a CRD system that contains accurate and meaningful information.

Rule 2130 protects the ability of all CRD users to obtain meaningful data about members and registered persons by permitting customer dispute information to be expunged from the CRD system only when arbitrators and a court have affirmatively found that: (1) the information, claim, or allegation is factually impossible or clearly erroneous; (2) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or (3) the claim, allegation, or information is false.

Stipulated Awards and Settlements

NASD has recently become aware of instances in which claimants and respondents appear to be settling customer claims for monetary compensation to the claimant in return (at least in part) for a customer affidavit that absolves one or more of the respondents of responsibility for any alleged wrongdoing.⁴ These affidavits, attested to in connection with settlements that often are incorporated into stipulated awards, appear to be inconsistent on their face with the initial claim and terms of the settlement.

NASD cautions its members and their associated persons that when they submit affidavits in which the content is the product of a bargained-for consideration as opposed to the truth, members and/or their associated persons subject themselves to a panoply of applicable sanctions, including possible disciplinary action for violation of NASD Rules, including Rule 2110, and other penalties, including possible criminal sanctions.⁵

NASD is taking the following actions in response to this issue. First, arbitrators will be receiving training that alerts them to this concern. As further described in *NtM 04-16*, with respect to cases filed on or after April 12, 2004, arbitrators must make affirmative findings based on one (or more) of the standards in Rule 2130 in order for NASD to waive participation in the court confirmation process. The training required of arbitrators who consider expungement relief will make clear that arbitrators are expected to consider whether a financial settlement indicates some culpability on the part of the respondent, thereby precluding them from making an affirmative finding that one or more of the standards for expungement in Rule 2130 have been met. The training also will advise arbitrators to consider the original claim, any other evidence presented, and the settlement terms in assessing the credibility of a supporting affidavit.

Second, when advised by the parties of a request for court confirmation of an arbitration award containing expungement relief, NASD will require the party requesting a waiver under Rule 2130 to provide, in addition to the arbitration award, a copy of the claim and all settlement documents and affidavits. Under Rule 2130, parties are required to name NASD and serve NASD with all appropriate documents. Upon request, NASD may waive the parties' obligation to name NASD as a party. NASD will not, however, waive its participation in the court confirmation proceeding unless and until NASD staff has reviewed all appropriate documents and determined that the expungement relief is based on one or more of the standards in Rule 2130. Thus, parties will be required to submit these documents notwithstanding any confidentiality provision in the settlement documents. NASD staff will review these documents to determine if granting a waiver is appropriate under the specific circumstances of the case. If NASD decides not to waive the requirement to be named as a party in the court confirmation process, the party seeking expungement would then name NASD as a party, NASD would appear in court to oppose the expungement, and the court would decide whether or not to order expungement.

Third, as stated above, NASD believes that abusing NASD's dispute resolution system by negotiating settlements with customers in return for exculpatory affidavits that the member or associated person knows or should know are false or misleading contravenes Rule 2110, which requires members and their associated persons, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.⁶ Accordingly, members and associated persons who engage in this conduct may be subject to disciplinary action by NASD's Department of Enforcement.

Endnotes

- 1 SEC Order Granting Approval of Proposed Rule Change and Amendment No. 1, Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2, Thereto, Relating to Proposed NASD Rule 2130 Concerning the Expungement of Customer Dispute Information From the Central Registration Depository System, 68 Fed. Reg. 74667 (Dec. 24, 2003) Exchange Act Release No. 48933 (File No. SR-NASD-2000-168 (Dec. 16, 2003), 68 Fed. Reg. 74667 (Dec. 24, 2003).
- 2 All requests to expunge customer dispute information from the CRD system arising from arbitrations or civil lawsuits filed before April 12, 2004, including any settlements arising therefrom, will continue to be subject to the terms of the moratorium in effect as of January 19, 1999, as discussed in *Notice to Members 99-09* (February 1999).
- 3 Although public investors do not have access to the CRD system, the information in that system is available to investors through NASD BrokerCheck and individual state disclosure programs.
- 4 Because these cases were filed before April 12, 2004, they are not subject to the requirements of Rule 2130, including the notice requirements contained therein. As further discussed in *NtM 04-16*, under Rule 2130, members and associated persons seeking a court order to expunge information must name NASD as an additional party and serve NASD with all appropriate documents unless NASD waives that requirement.
- 5 NASD further cautions that individuals not subject to NASD jurisdiction who submit false affidavits also are subject to significant sanctions from the arbitration panel or court, law enforcement agencies, state bar association or other attorney disciplinary bodies (in the case of attorneys), or others.
- 6 As a general matter, in connection with settling arbitration claims and/or other complaints, members may not engage in any conduct that impedes the ability of NASD or any other securities industry regulator to investigate potential violations of NASD rules or the securities laws. Such conduct would include the use of impermissible confidentiality provisions in settlement agreements, the imposition of a requirement that customers withdraw complaints to NASD or other securities regulators as a condition to settlement, and procuring, as a condition to settlement, affidavits or other statements from customers that falsely or misleadingly repudiate or otherwise contradict prior claims or complaints made by such customers. Members are advised to review *Notice to Members 04-44* for further discussion of these issues.

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Notice to Members

JUNE 2004

SUGGESTED ROUTING

Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

Affidavits
Arbitration
Central Registration Depository System
(CRD® or CRD system)
Confidentiality Provisions
Dispute Resolution
Rule 2110
Settlement Agreements

GUIDANCE

Settlement Agreements

Impermissible Confidentiality Provisions and Complaint
Withdrawal Provisions in Settlement Agreements

Executive Summary

The purpose of this *Notice* is to remind members that the use of certain provisions in settlement agreements with customers or other persons that impede, or have the potential to impede, NASD investigations and the prosecution of NASD enforcement actions violates NASD Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Specifically, some member firms continue to use confidentiality provisions that prohibit or restrict the customer or other person from disclosing the settlement terms and the underlying facts of the dispute upon inquiry to NASD or other securities regulators, despite repeated NASD communications cautioning members against this practice.¹ In addition, some member firms require customers to withdraw complaints filed with NASD or other securities regulators as a condition to settlement, or require customers to provide false or misleading affidavits that repudiate or otherwise contradict earlier factual claims made by such customers, in contravention of NASD rules. Accordingly, members and their associated persons are reminded that the use of such confidentiality provisions or complaint withdrawal provisions, or compelling customers or other persons to provide false or misleading affidavits, violates Rule 2110.

Questions/Further Information

Questions concerning this *Notice* generally may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844. Questions concerning appropriate language for settlement agreements may be directed to a member firm's local NASD District Office.

Background

Recent NASD examinations have revealed that, despite repeated cautioning, some members continue to use settlement agreements with customers and other persons that impede NASD investigations and the prosecution of NASD enforcement actions. In this regard, some members require customers and other settling parties to agree to overly broad confidentiality provisions in settlement agreements as a condition of settlement. In addition, some firms require customers and other persons to withdraw pending complaints with NASD or other regulators as a condition to settlement, or require customers or other persons, as a condition to settlement, to submit affidavits or other statements that falsely or misleadingly repudiate or otherwise contradict prior claims or complaints. Member firms and their associated persons are reminded that these practices constitute conduct inconsistent with just and equitable principles of trade in violation of Rule 2110.²

Impermissible Confidentiality Provisions

Although the exact wording of the overly broad confidentiality or nondisclosure provisions may differ, the intended effect of these impermissible provisions is to prohibit, limit, or discourage customers or other persons from disclosing the settlement terms or the underlying facts of the dispute in question to NASD or other securities regulators upon inquiry.

In many instances, the settlement agreements contain confidentiality provisions that require regulatory authorities to obtain a court order or subpoena, or pursue some other legal process, before the parties are permitted to disclose the terms of the settlement or the underlying facts of the dispute to the regulator. Such restrictive language is especially problematic for self-regulatory organizations (SROs), such as NASD, that do not have the legal authority to compel cooperation by customers or other persons not subject to the SROs' jurisdiction.

In other cases, the settlement agreements contain language prohibiting customers or other parties from testifying about the settlement terms or the facts underlying the settlement. Since NASD and other securities regulators rely upon testimony to conduct investigations and prosecute enforcement actions, settlement terms that prevent customers from testifying on a matter also may significantly impede SROs' ability to regulate the securities industry.

Other problematic settlement agreements contain language requiring customers or other settling parties to provide notice to the member firm before providing information to NASD or any other regulatory authority upon inquiry or before testifying about the settlement terms before NASD or other regulators. Again, such language has the potential to discourage customers or other settling parties from cooperating with NASD and other regulators.

Impermissible Complaint Withdrawal Provisions

Although the exact wording of the complaint withdrawal provisions may vary, the intended effect is to make withdrawal of a pending complaint filed with NASD or other regulatory agency a condition of settlement. Like the impermissible confidentiality provisions, such complaint withdrawal provisions have the potential to hamper NASD and other regulators from carrying out their regulatory mandates.

Procuring False or Misleading Affidavits as a Condition to Settlement

It is impermissible, as a condition to settling a customer complaint, for a member to require a settling customer or other person to provide an affidavit or other statement that contains false or otherwise misleading or inaccurate information concerning the facts underlying the customer's complaint. In addition to violating the firm's responsibility under Rule 2110 to observe high standards of commercial honor and just and equitable principles of trade, as well as applicable state and federal criminal laws, such statements have the effect of frustrating or otherwise impeding the ability of NASD and other securities industry regulators to investigate and prosecute violations of NASD rules and the securities laws.³

Acceptable Confidentiality Provisions

It is not NASD's intent to preclude members from entering into settlement agreements that include acceptable confidentiality provisions. As discussed in *Notice to Members 95-87*, confidentiality provisions in settlement agreements should be written to expressly authorize the customer or other person to respond, without restriction or condition, to any inquiry regarding the settlement or its underlying facts by any regulator, including NASD. The following is an example of an acceptable confidentiality provision:

Any non-disclosure provision in this agreement does not prohibit or restrict you (or your attorney) from responding to any inquiry, or providing testimony, about this settlement or its underlying facts and circumstances by, or before, the Securities and Exchange Commission (SEC), NASD, any other self-regulatory organization, or any other federal or state regulatory authority.

Further, a settlement may not be conditioned on the withdrawal of a complaint pending with NASD or any other regulatory authority nor may a settlement be conditioned upon the customer submitting a statement, whether or not under oath, that falsely or misleadingly repudiates or contradicts the factual allegations underlying the original complaint.

Suggested Notice to Parties to a Past Settlement Agreement to Clarify that the Agreement Does Not Prohibit Disclosure to Regulatory Authorities

Members are strongly encouraged to promptly review and correct those settlement agreements that contain confidentiality provisions that prohibit or discourage customers or other persons from disclosing the settlement terms or the underlying facts of the dispute to NASD or any other securities regulator upon inquiry or that require withdrawal of a pending complaint filed with NASD or any other regulatory authority. The following is an example of a notice to customers or other parties to correct past settlement agreements containing impermissible confidentiality or complaint withdrawal provisions:

You are hereby notified that the Settlement Agreement you executed with this firm on [insert date], should not be construed to prohibit or restrict you (or your attorney) from responding to any inquiry, or providing testimony, about this settlement or its underlying facts and circumstances by, or before, the Securities and Exchange Commission (SEC), NASD, any other self-regulatory organization, or any other federal or state regulatory authority, or to require you to withdraw any complaint previously filed with any such regulatory authority.

Conclusion

Members are reminded that the use of overly broad confidentiality provisions or complaint withdrawal provisions in settlement agreements, or compelling customers or other persons to provide false or misleading affidavits, as further described in this *Notice*, constitutes conduct inconsistent with just and equitable principles of trade, which may result in NASD disciplinary proceedings for violation of Rule 2110. Members should immediately review any standard form of settlement agreement to ensure that it does not in any way prohibit or discourage the parties to the agreement from disclosing, or testifying about, the settlement terms and/or the underlying facts of the dispute to, or before, NASD or any other regulator upon inquiry, require withdrawal of pending complaints with any regulatory authority as a condition of settlement, or compel the submission of a false or misleading statement or affidavit concerning the facts underlying the customer's complaint.

Members also should immediately review any past settlement agreements to ensure that they do not contain any such impermissible provisions and are otherwise consistent with this *Notice*. In the event a member identifies any such provisions, the member is encouraged to send a notice to the parties advising them that they are not restricted under the terms of the settlement from speaking with, or otherwise disclosing information regarding the settlement to, any regulatory authority upon inquiry.

Endnotes

- 1 See *Notice to Members 95-87* (October 1995), *Notice to Members 86-36* (May 1986), and NASD Regulatory and Compliance Alerts (June 1994 and July 1995).
- 2 Examples of enforcement actions taken by NASD against members concerning impermissible confidentiality and complaint withdrawal provisions include:
 - ◆ In the Matter of Stratton Oakmont, Inc., 1997 SEC LEXIS 562, 52 S.E.C 1170 (Mar. 12, 1997). The SEC sustained NASD's finding of violations of Article III, Section 1 of the NASD Rules of Fair Practice (the predecessor to NASD Rule 2110) based on unacceptable confidentiality provisions requiring that, prior to cooperating with NASD, a customer provide: (1) ten days advance notice to counsel for Stratton and its account executives; and/or (2) a statement or testimony to Stratton and/or its attorneys and attorneys for the account executives.
 - ◆ In the Matter of William Edward Daniel, Exch. Act Rel. No. 28408, 50 S.E.C. 332, 335-36 (1990). The SEC upheld NASD's finding that registered representative violated Rule 2110 where he conditioned payment of restitution on customer's withdrawal of a complaint filed with NASD. The SEC noted, "an integral aspect of the statutory scheme for regulating broker-dealers and protecting investors is the responsibility of SROs such as NASD to investigate allegations that members and their associated persons have engaged in misconduct and to impose sanctions when appropriate."
- 3 While we understand that members and associated persons may procure affidavits and other statements in connection with applications for expungement under NASD Rule 2130, it is impermissible to submit affidavits, the content of which is the product of bargained-for consideration as opposed to the truth. Members are advised to review *Notice to Members 04-43* in this regard.

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Notice to Members

JUNE 2004

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Senior Management

KEY TOPICS

Deferred Variable Annuities
Disclosure
Sales Practices
Suitability
Supervision
Training

REQUEST FOR COMMENT

Proposed Rule Governing the Purchase, Sale, or Exchange of Deferred Variable Annuities

NASD Seeks Comment on Proposed Rule to Impose Specific Sales Practice Standards and Supervisory Requirements on Members for Transactions in Deferred Variable Annuities; **Comment Period Expires August 9, 2004**

Executive Summary

Deferred variable annuities are complex investment instruments that have both insurance and securities features.¹ On various occasions in the past, NASD has highlighted the unique features of these products for both members and potential investors. With the help of industry participants, for instance, NASD previously issued "best practices" guidelines in *Notice to Members (Notice or NtM) 99-35* (May 1999). Notwithstanding these efforts, some members continue to engage in problematic sales practices in this area, and some investors continue to be confused by certain features of these products.² As a result, NASD seeks comment on a proposed rule (Attachment A) relating to transactions in deferred variable annuities.

In general, *NtM 99-35* served as the basis for the proposed rule. The proposed rule includes suitability, disclosure, principal review, supervisory and training requirements tailored specifically to transactions in deferred variable annuities.

Action Requested

NASD encourages all interested parties to comment on the proposed rule. Comments must be received by August 9, 2004. Members and interested persons can submit their comments using the following methods:

- ▶ mailing in written comments; or
- ▶ e-mailing written comments to pubcom@nasd.com.

Written comments submitted via hard copy should be mailed to:

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

Important Notes: The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the NASD Web Site. Generally, comments will be posted on the NASD Web Site one week after the end of the comment period.³

Before becoming effective, any rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the NASD Board, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.⁴

Questions/Further Information

As noted above, hard-copy comments should be mailed to Barbara Z. Sweeney. Questions concerning this *Notice* may be directed to Thomas M. Selman, Senior Vice President, Investment Companies/Corporate Financing, Regulatory Policy and Oversight (RPO), at (240) 386-4533; or James S. Wrona, Associate General Counsel, Office of General Counsel, RPO, at (202) 728-8270.

Background

NASD has become increasingly concerned about some members' unsuitable recommendations and inadequate supervision of transactions in deferred variable annuities. Based on recent discussions, examinations, and enforcement cases, NASD believes that a rule specifically addressing transactions in deferred variable annuities is needed to ensure that investors are adequately protected.⁵

Deferred variable annuities have many unique features that make them complex investments. In addition to the hybrid nature of deferred variable annuities (*i.e.*, they contain both securities and insurance features), most deferred variable annuities offer numerous choices among a number of complex contract features.⁶ Moreover, the amount that will accumulate and be paid to the investor pursuant to a deferred variable annuity will fluctuate depending on the investment options that the investor chooses.

Investors also can be subject to the following fees or charges: *surrender charges*, which the investor owes if he or she withdraws money from the annuity before a specified period; *mortality and expense risk charges*, which the insurance company charges for the insurance risk it takes under the contract; *administrative fees*, which are used for recordkeeping and other administrative expenses; *underlying fund expenses*, which relate to the investment options; and *charges for special features and riders*, which may include provisions such as a stepped-up death benefit or a guaranteed minimum income benefit. Various sources estimate that average annual expenses of a variable annuity range from 1.3 percent to 2.2 percent of the underlying assets in the account.⁷

In addition, an investor's withdrawal of earnings before he or she reaches age 59^{1/2} is generally subject to a 10 percent penalty under the Internal Revenue Code. Furthermore, while the earnings accumulate on a tax-deferred basis in the variable annuity, when variable annuity earnings are paid out they are taxed as ordinary income, not as capital gains (which may be taxed at a lower rate).

Because of the complex features of these products, NASD has issued a number of *Notices, Investor Alerts, and Member Alerts* that address deferred variable annuities. In particular, in May 1999, NASD issued *NtM 99-35*, which provided guidance to assist members in developing appropriate procedures relating to the purchase, sale or exchange of deferred variable annuities.⁸

Although many members offer deferred variable annuities in a manner consistent with NASD's existing rules (and a large segment adhere to the guidance provided in *NtM 99-35*), certain firms continue to engage in unacceptable sales and supervision practices regarding these products. For instance, variable annuity sales have been the subject of more than 80 NASD disciplinary actions in the past two years. These disciplinary actions involved a wide array of misconduct regarding the sales of variable annuity products, including excessive switching, misleading marketing, failure to disclose material facts, unsuitable sales, inadequate training and supervision of salespeople and deficient written supervisory procedures.⁹ Recent NASD and SEC examinations of variable product sales revealed similar deficiencies.¹⁰ NASD and the SEC, moreover, have received numerous customer complaints indicating that the customers did not understand the unique features of the products and raising suitability concerns based on the customers' investment objectives and liquidity needs.¹¹ NASD's proposed rule would address these continuing deficiencies and provide more comprehensive and targeted protection to investors in deferred variable annuities.

In general, the proposed rule would codify and make mandatory the guidelines issued by NASD in *NtM 99-35*, mentioned above. These requirements represent the industry's best practices with respect to transactions in deferred variable annuities.¹² The proposed rule also would create certain written disclosure and principal review requirements. The proposed rule's key provisions include:

- ◆ **Appropriateness/Suitability.** The proposed rule would require members and persons associated with members to make the following determinations when recommending a deferred variable annuity transaction: (1) the customer has been informed of the unique features of the deferred variable annuity, (2) the customer has a long-term investment objective, and (3) the deferred variable annuity as a whole and the underlying subaccounts are suitable for the particular customer. These determinations would have to be documented and signed by the associated person who makes the recommendation and performs the required analysis.
- ◆ **Disclosure and Prospectus Delivery.** The proposed rule would require members and associated persons to provide the customer a current prospectus and a separate, brief, and easy-to-read (written in "plain English") risk disclosure document that highlights the main features of the particular variable annuity transaction, including, but not limited to, (1) liquidity issues, such as potential surrender charges and the IRS penalty; (2) sales charges; (3) fees, such as mortality and expense charges, administrative fees, charges for riders or special features and investment advisory fees; (4) federal tax treatment of variable annuities; (5) any applicable state and local government premium taxes; and (6) market risk. The risk disclosure document also would have to inform the customer whether a "free look" period applies to the variable annuity contract, during which the customer can terminate the contract without paying any surrender charges and receive a refund of his or her purchase payments.¹³ In addition, the risk disclosure document would require the member or associated person to inform the customer that all applications to purchase or exchange a deferred variable annuity contract are accepted subject to review and approval by a designated registered principal. The member would be required to provide the prospectus and risk disclosure document regardless of whether the transaction had been recommended.¹⁴

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- ▶ **Principal Review.** No later than one business day following the date of execution of the deferred variable annuity application, a registered principal would be required to review and approve the transaction, regardless of whether the transaction had been recommended. In reviewing the transaction, the registered principal would need to take into account whether (1) the customer's age or liquidity needs make a long-term investment inappropriate, such as a customer over a specific age or with a short-term investment objective; (2) the amount of money invested exceeds a stated percentage of the customer's net worth or is more than a stated dollar amount; (3) the transaction involves an exchange or replacement of a deferred variable annuity contract; (4) the customer's account has a particularly high rate of deferred variable annuity exchanges or replacements; (5) the associated person effecting the transaction has a particularly high rate of effecting deferred variable annuity exchanges or replacements; and (6) the purchase of the deferred variable annuity is for a tax-qualified retirement account (e.g., a 401(k) plan, IRA).¹⁵

In addition, when the member or an associated person has recommended the transaction, a registered principal would be required to review and approve the suitability analysis document no later than one business day following the date of execution of the deferred variable annuity application. Finally, when the transaction involves an exchange or replacement of a deferred variable annuity, regardless of whether the transaction has been recommended, a registered principal would need to review and approve a separate exchange or replacement document (which would cover issues specific to exchanges or replacements) no later than one business day following the date of execution of the deferred variable annuity application. The proposed rule would allow a member to use an existing exchange or replacement form authorized by a state insurance commission or other regulatory agency to satisfy the exchange or replacement disclosure provision to the extent that the regulatory agency's form requires disclosure of the information required by NASD's proposed rule. These principal review requirements would permit a customer to review, complete and execute an application for a deferred variable annuity in a one-step process, subject to a designated principal's subsequent review and approval no later than one business day following the date of execution of the deferred variable annuity application.

- ▶ **Supervisory Procedures.** Members would be required to establish and maintain specific written supervisory procedures reasonably designed to achieve and evidence compliance with the standards set forth in the proposed rule.
- ▶ **Training.** Members would need to develop and document specific training policies or programs designed to ensure that associated persons who effect and registered principals who review transactions in deferred variable annuities comply with the requirements of the proposed rule and that they understand the unique features of deferred variable annuities, including liquidity issues, sales charges, fees, tax treatment, and market risks.

Request for Comment

NASD is soliciting comment on its proposed rule covering the purchase, sale, or exchange of deferred variable annuities. NASD requests comment on whether the rule, in general, should be modeled after the “best practices” guidelines discussed in *NtM 99-35*, the current approach, or whether some alternative approach would be more appropriate. For instance, NASD considered, but decided against, modeling the proposal after certain provisions of the options and futures rules. See, e.g., NASD Rules 2860(16) and (19); 2865(16) and (19). Another approach might be to limit the sale of deferred variable annuities to certain categories of investors. Moreover, members could be required to provide a comparison that would indicate the results that comparable products might provide the investor. NASD also seeks feedback on whether the proposed rule should cover all variable annuity transactions, not just deferred variable annuity transactions. In responding to this issue, NASD requests that commenters discuss whether and to what extent certain requirements in the proposed rule would need to be modified.

In addition to seeking comment on NASD’s general approach, NASD requests comment on the proposed rule’s specific provisions. In this regard, NASD encourages comment on the proposed risk disclosure provision. The proposed rule would require members to provide a customer with a risk disclosure document regarding certain features of the specific deferred variable annuity that is the subject of the transaction. As currently drafted, the proposed rule would require, among other items, disclosure of product-specific fees and charges (such as mortality and expense charges, administrative fees, charges for riders or special features, and investment advisory fees), federal and state tax treatment for the deferred variable annuity, and potential market risks. NASD seeks comment in particular on whether the risk disclosure document should focus on information applicable to all deferred variable annuity products sold by the firm rather than product-specific information. If so, commenters should discuss the rationale for this alternative approach and the types of general information that the proposed rule should require members to disclose in order to effectively educate potential investors in deferred variable annuities. Commenters, moreover, should consider whether a combination of some product-specific and some general information would be an appropriate third option for the risk disclosure provision.

NASD also recognizes that the SEC has proposed a rule that would require point of sale disclosure of certain fee information regarding, among other products, variable annuities. See SEC Proposed Rule Regarding Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, Rel. Nos. 33-8358, 34-49148, IC-26341 (Jan. 29, 2004), 69 Fed. Reg. 6438 (Feb. 10, 2004). NASD is interested in commenters' views of the potential interplay of NASD's proposal and the SEC's proposal.

Finally, NASD requests comment on certain standards discussed in the proposed rule's principal review and supervisory procedures provisions. Those provisions state, in part, that principals should analyze—and supervisory procedures should be established to screen for—among other things, transactions involving (1) a customer whose age or liquidity needs may make a long-term investment inappropriate, such as any customer over a specific age or with a short-term investment objective, and (2) an amount of money that exceeds a stated percentage of the customer's net worth or is more than a stated dollar amount. NASD considered imposing bright-line measures for these requirements, for example, a specific percentage of the customer's net worth or specific dollar amount, a specific age ceiling. NASD believes, however, that members are in a better position to determine appropriate standards based on their particular business models, salespeople and customers. As currently drafted, the proposed rule would require that the standards a member adopts be reasonably designed to ensure that transactions in deferred variable annuities are appropriately supervised. Nonetheless, NASD seeks comment on whether NASD should revise the proposed rule so that the rule lists explicit, fixed standards developed by NASD. If so, NASD requests suggestions on the explicit standards that would be appropriate for each category.

NASD has found comments from member firms and the public, as well as state and federal regulators, to be a valuable resource in the decision-making process. NASD encourages all interested parties to comment on the concepts discussed above regarding the proposed rule. NASD will consider the comments it receives in determining whether to submit the proposed rule as a formal rule change to the SEC and, if so, the form that the rule change will take. As noted above, comments must be submitted by **August 9, 2004**.

Endnotes

- 1 Generally speaking, a deferred variable annuity is a contract between an investor and an insurance company. The insurance company promises to make periodic payments to the contract owner or beneficiary at some future time and, should the contract owner die during the accumulation phase, to pay a death benefit to the beneficiary. Deferred variable annuities offer choices among a number of complex contract features. See Joint SEC and NASD Staff Report on Broker-Dealer Sales of Variable Insurance Products (June 2004) (Joint SEC/NASD Staff Report), available at www.nasdr.com/white_paper_0600804.asp ("For example, [variable annuity] contracts may offer various types of death benefits, rebalancing features, dollar cost averaging options, assorted payout structures, and optional riders such as a guaranteed minimum income benefit, estate protection enhancements, or long-term care insurance, in addition to a range of choices among investment options."). Deferred variable annuities, although issued by insurance companies, are securities under the federal securities laws and are sold through broker-dealers. *Id.*
- 2 See Joint SEC/NASD Staff Report, *supra* note 1 (discussing deficiencies found during examinations of and enforcement actions involving variable products, including suitability, marketing, supervision, disclosure, and maintenance of books and records).
- 3 See *NtM 03-73* (Nov. 2003) (NASD Announces Online Availability of Comments). Personal identifying information, such as names or e-mail addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
- 4 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Section 19 of the Exchange Act and rules thereunder.
- 5 See *supra* note 2 and accompanying discussion.
- 6 See *supra* note 1 and accompanying discussion.
- 7 Joint SEC/NASD Staff Report, *supra* note 1 (citing Andrea Coombes, *Perfect Tool—For a Select Few: Variable Annuities Have Limited Use, Schwab Study Finds*, CBS MarketWatch.com, Nov. 8, 2002; John P. Huggard, *Investing with Variable Annuities* §703, at 27 (Parker-Thompson Pub. 2002)).
- 8 In addition to *NtM 99-35*, NASD issued *NtM 96-86* (Dec. 1996), which reminded members that sales of variable annuities are subject to NASD suitability requirements. NASD, moreover, has issued a number of *Investor Alerts* covering the unique features and potential risks of variable annuities. Recently, NASD also issued a *Member Alert* reminding members of their responsibilities regarding hypothetical tax-deferral illustrations in variable annuity communications.
- 9 See Joint SEC/NASD Staff Report, *supra* note 1 (discussing various NASD and SEC disciplinary actions involving variable annuity products).
- 10 *Id.* (explaining results of recent NASD and SEC examinations of broker-dealer sales of variable annuity products).
- 11 *Id.* (discussing customer complaints regarding variable annuity products).
- 12 A number of members helped create the guidelines discussed in *NtM 99-35*, and many have adopted them based on NASD's issuance of the *NtM*. The guidelines in *NtM 99-35*, however, are not mandatory, and some members have not adopted them. As a result, because of continued sales practice and supervision problems related to deferred variable annuities, NASD is proposing the rule described herein.

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- 13 The member or its associated persons would be responsible for providing the prospectus and separate, brief, and easy-to-read (written in “plain English”) risk disclosure document to the investor. NASD does not regulate insurance companies, and the proposed rule applies to member firms. Nonetheless, members would be allowed to use a separate, brief and easy-to-read risk disclosure document prepared by the issuing insurance company if such document conformed to the requirements of the proposed rule. Again, however, it would be the responsibility of the member firm and its associated persons to ensure compliance with all aspects of the proposed rule, including the risk disclosure document.
- 14 Non-recommended transactions would include those for which the member acts only as an order taker. For instance, the proposed rule’s requirements that apply to any transaction, regardless of whether the transaction had been recommended, would include a situation where a customer contacts the member and, without any input from the member, places an order on his or her own for XYZ deferred variable annuity.
- 15 A deferred variable annuity purchased for a tax-qualified retirement account does not provide any additional tax deferred treatment of earnings beyond the treatment provided by the tax-qualified plan itself. Such transactions are of particular concern to NASD, especially in light of certain fees and charges associated with many deferred variable annuities. Thus, principals must ensure that the deferred variable annuity’s other features make the purchase of the deferred variable annuity for the tax-qualified retirement account appropriate.

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ATTACHMENT A

Text of Rule Change

New language is underlined.

* * * * *

Members' Responsibilities Regarding Deferred Variable Annuities

(a) Appropriateness/Suitability

(1) No member or person associated with a member shall recommend to any customer the purchase, sale or exchange of a deferred variable annuity unless such member or person associated with a member has a reasonable basis to believe that (A) the customer has been informed of the material features of the deferred variable annuity; (B) the customer has a long-term investment objective; and (C) the deferred variable annuity as a whole and the underlying subaccounts are suitable for the particular customer based on the information set forth in paragraph (a)(2) of this rule. These determinations shall be documented and signed by the associated person recommending the transaction, in addition to being approved by a registered principal, as required by paragraph (c) of this Rule.

(2) Prior to recommending a deferred variable annuity, a member or person associated with a member shall make reasonable efforts to obtain, at a minimum, information concerning the customer's age, annual income, financial situation and needs, investment experience, investment objectives, liquidity needs, liquid net worth, marital status, number and age of dependents, occupation, risk tolerance, savings, tax status and such other information used or considered to be reasonable by the member or person associated with the member in making recommendations to customers.

(b) Disclosure and Prospectus Delivery

(1) Prior to effecting any purchase, sale or exchange of a deferred variable annuity, regardless of whether the transaction has been recommended, a member or person associated with a member must provide the customer:

(A) A current prospectus; and

(B) A separate, brief and easy-to-read (written in "plain English") risk disclosure document that highlights the main features of the particular variable annuity transaction, including (i) liquidity issues, such as potential surrender charges and tax penalties; (ii) sales charges; (iii) fees, such as mortality and expense charges, administrative fees, charges for riders or special features, and investment advisory fees;

(iv) federal and state tax treatment for variable annuities; and (v) potential market risks. The risk disclosure document also must inform the customer whether a “free look” period applies to the deferred variable annuity contract, during which the customer can terminate the contract without paying any surrender charges and receive a refund of his or her purchase payments. In addition, the risk disclosure document must inform the customer that all applications to purchase or exchange a deferred variable annuity are accepted subject to review and approval by a designated registered principal.

(2) Prior to effecting any exchange or replacement of a deferred variable annuity, a member or person associated with a member must, in addition to the information required by paragraph (b)(1) and regardless of whether the transaction has been recommended, provide the customer with the following information in writing:

(A) A summary of all significant differences, if any, between the existing and proposed deferred variable annuities’ contractual provisions, guarantees, death benefits, withdrawal provisions and/or tax treatment;

(B) Surrender charges, including both those that may be assessed on the surrender of the existing contract and those applicable to the proposed contract;

(C) Costs that are associated with purchasing a new contract, including new sales loads and other start-up expenses; and

(D) The possibility, if any, of modifying or adjusting the existing contract to meet the customer’s objectives rather than exchanging or replacing the contract. A member or person associated with a member may use an existing exchange or replacement form authorized by a state insurance commission or other regulatory agency to satisfy the disclosure requirements of this paragraph to the extent that the regulatory agency’s form requires disclosure of the information required by this Rule. If the regulatory agency does not require disclosure of all of the information required by this Rule, a member or person associated with a member may create and use an addendum to the regulatory agency’s form.

(c) Principal Review

(1) No later than one business day following the date of execution of the deferred variable annuity application, a registered principal shall review and approve the transaction, regardless of whether the transaction has been recommended. In reviewing the transaction, the registered principal shall consider whether (A) the customer’s age or liquidity needs make a long-term investment inappropriate, such as a customer over a specific age (standard established by the member) or with a short-term investment objective; (B) the amount of money invested exceeds a stated percentage of the customer’s net worth or is more than a stated dollar amount (standards established by the member);

(C) the transaction involves an exchange or replacement of a deferred variable annuity contract;

(D) the deferred variable annuity transaction involves a customer whose account has a particularly high rate of deferred variable annuity exchanges or replacements; (E) the associated person effecting the transaction has a particularly high rate of effecting deferred variable annuity exchanges or replacements; and (F) the purchase of the deferred variable annuity is for a tax-qualified retirement account (e.g., 401(k) plan, IRA). Standards established by the member must be reasonably designed to ensure that transactions in deferred variable annuities are appropriately supervised.

(2) When a member or a person associated with a member has recommended the transaction, a registered principal, taking into account the underlying supporting documentation described in paragraph (a)(2) of this Rule, shall review, approve and sign the appropriateness/suitability determination document required by paragraph (a)(1) of this Rule no later than one business day following the date of execution of the deferred variable annuity application. This principal review and approval requirement is in addition to the requirements of paragraph (c)(1) and, if applicable, paragraph (c)(3) of this Rule.

(3) When the transaction involves an exchange or replacement of a deferred variable annuity, regardless of whether the transaction has been recommended, a registered principal must review, approve and sign the exchange or replacement analysis form or addendum described in paragraph (b)(2) of this Rule no later than one business day following the date of execution of the deferred variable annuity application. This principal review and approval requirement is in addition to the requirements of paragraph (c)(1) and, if applicable, paragraph (c)(2) of this Rule.

(d) Supervisory Procedures

In addition to the general supervisory and recordkeeping requirements of Rules 3010 and 3110, a member must establish and maintain specific written supervisory procedures reasonably designed to achieve compliance with the standards set forth in this Rule. In particular, the member must implement procedures to screen for and require a registered principal's review of the following:

(1) A deferred variable annuity investment for a customer whose age or liquidity needs may make a long-term investment inappropriate, such as any customer over a specific age (standard established by the member) or with a short-term investment objective;

(2) A deferred variable annuity investment that exceeds a stated percentage of the customer's net worth or is more than a stated dollar amount (standards established by the member);

(3) A deferred variable annuity exchange or replacement;

(4) A deferred variable annuity investment for a customer whose account has a particularly high rate of deferred variable annuity exchanges or replacements;

(5) A deferred variable annuity transaction where the associated person effecting the transaction has a particularly high rate of effecting deferred variable annuity exchanges or replacements; or

(6) A deferred variable annuity investment for any tax-qualified retirement account (e.g., 401(k) plan, IRA). Standards established by the member must be reasonably designed to ensure that transactions in deferred variable annuities are appropriately supervised.

(e) Training

Members shall develop and document specific training policies or programs designed to ensure that associated persons who effect and registered principals who review transactions in deferred variable annuities comply with the requirements of this Rule and that they understand the material features of deferred variable annuities, including liquidity issues, sales charges, fees, tax treatment, and market risks.

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Notice to Members

JUNE 2004

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Operations
Senior Management

KEY TOPICS

OATS
Rule 6950 Series

GUIDANCE

OATS Reporting Requirements

Mandatory Changes to OATS New Order, Combined New Order/Route, and Combined New Order/Execution Reports

Executive Summary

Given the recent significant increase in Order Audit Trail System (OATS) volume, NASD is implementing several changes to the OATS reporting requirements for orders received and subsequently routed, executed, or canceled in full on the same business day. Specifically, pursuant to the phase-in schedule described below, members will be required to populate two additional fields that are being appended to the New Order and Combined New Order/Route Reports to provide for the reporting of cancellation information within these reports when an order is canceled in full on the same day it was received. These additional fields will eliminate the need to create and submit a separate Cancel Report when an order is canceled in full on the same day it was received. Further, the current optional use of Combined New Order/Route and Combined New Order/Execution reports will become mandatory for orders that are fully routed or executed on the same business day they are received. This will eliminate the need to create and submit separate Route and Execution Reports for these orders. NASD believes these changes will result in more efficient recording, reporting, and processing of OATS information.

To allow firms adequate time to program for these changes, NASD is implementing these new requirements with a phase-in approach. Addition of the new fields relating to cancellation information on the New Order and Combined New Order/Route Reports will be required beginning with the OATS third quarter 2004 release, currently scheduled for October 4, 2004. After October 4, 2004, OATS will reject any New Order Report or Combined New Order/Route Report submitted without the additional cancellation fields. Members, however, will not be required to populate these

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fields until November 1, 2004, at which time the cancellation of any order within 60 seconds of receipt must be reported on the New Order Report or Combined New Order/Route Report using the new fields. Beginning December 1, 2004, the cancellation of any order in full on the same day as receipt must be reported using the new fields on the New Order Report or Combined New Order/Route Report. Finally, also beginning on December 1, 2004, all orders routed or executed in full on the same day the order was received must be reported using a Combined New Order/Route Report or Combined New Order/Execution Report.

In addition, as previously announced, NASD is reminding firms that, also beginning with the OATS third-quarter 2004 release, price and capacity will be required on all OATS Execution and Combined New Order/Execution Reports.¹ A separate *Notice to Members (Notice or NtM)* will be issued shortly detailing the required changes to the OATS Execution Report formats.

Questions/Further Information

Questions concerning this Notice may be directed to:

- ▶ **OATS Helpdesk** (800) 321-NASD
- ▶ **NASD Market Regulation** (240) 386-5126

Background and Discussion

New Formats for New Order and Combined New Order/Route Reports

Under the new reporting requirements, two additional fields are being added to the New Order and Combined New Order/Route Reports. These new fields will be used to report the cancellation of an order in full on the same day it was received.² The two new fields are the Cancel Timestamp and the Canceled By Flag. Use of these new fields will result in the submission of only one Reportable Order Event ("ROE") when reporting a new order and subsequent full cancellation on the same day, rather than two ROEs as currently required.³ The addition of these two fields does not represent any new information being reported to OATS; rather it reduces the overall amount of information reported to OATS since certain information currently contained in Cancel Reports already is being captured in other OATS reports.⁴ It also is changing the format in which the data is required to be reported to NASD.⁵

Under the phase-in plan, the new fields must be added to all New Order and Combined New Order/Route Reports beginning on October 4, 2004, when the OATS third quarter 2004 release goes into production, although the fields need not be populated until November 1, 2004. The new report formats will be available in the OATS testing environment beginning September 20, 2004, so that firms may test their systems prior to submitting data in the new format to the OATS production environment. During the

phase-in period of October 4, 2004 to November 1, 2004, members that choose not to populate these fields must continue to report separate Cancel Reports, as applicable. Beginning November 1, 2004, the cancellation of any order within 60 seconds of receipt must be reported using the new fields rather than through the submission of a separate Cancel Report. NASD Market Regulation will be monitoring firms' submissions to ensure firms are complying with this requirement. Finally, beginning December 1, 2004, the cancellation of any order in full on the same day as receipt must be reported using the new fields. After December 1, 2004, only partially canceled orders or orders canceled after the date of receipt will be permitted to be reported using a separate Cancel Report.

Mandatory Use of Combined New Order/Route and Combined New Order/Execution Reports

Currently, the Combined New Order/Route and Combined New Order/Execution Reports are available for members to report the same day route or same day full execution of an order. The use of these reports currently is optional. To reduce the number of ROEs firms must submit to OATS each day, beginning December 1, 2004, NASD is mandating use of these combined reports for any order routed or fully executed on the same day the order is received. NASD Market Regulation will be monitoring compliance with the requirement. A firm's failure to comply may result in disciplinary action.

Changes to Execution and Combined New Order/Execution Reports

As previously announced, on April 29, 2004, the SEC approved NASD's proposed rule change SR-NASD-2004-023 regarding OATS Execution Reports. The rule change requires firms to add to their OATS Execution Reports the execution price and the capacity in which the member executed the transaction (e.g., agency, principal, riskless principal). These additional fields will be required on all Execution and Combined New Order/Execution Reports beginning with the OATS third quarter 2004 release, currently scheduled for October 4, 2004. Any Execution or Combined New Order/Execution Report submitted to OATS without the new fields on or after October 4, 2004, will be rejected by OATS.

Technical Specifications and Requirements

The *OATS Subscriber Manual* and *OATS Reporting Technical Specifications* provide members with the technical and operational requirements for submitting order reports to OATS. The purpose of *OATS Reporting Technical Specifications* is, among other things, to describe the requirements for order data reporting to OATS, including detailed information on the required data elements. These documents will be updated as appropriate to reflect the new requirements relating to the addition of cancellation information on the New Order and Combined New Order/Route Reports. Members should refer to these documents to obtain the detailed technical specifications for the new reporting requirements.

Question and Answer

Q1. What are the phase-in dates for the new requirements?

A1. Requirement	Phase-in Date
Addition of Cancel Timestamp and Canceled By Flag Fields to New Order and Combined New Order/Route Reports	October 4, 2004
Required population of Cancel information on New Order and Combined New Order/Route Reports for any order canceled within 60 seconds of order receipt	November 1, 2004
Required use of Combined New Order/Route and Combined New Order/Execution Reports for any order fully routed or executed on the same day it was received	December 1, 2004
Required use of cancel fields on New Order and Combined New Order/Route Reports for any order fully canceled on the same day it was received	December 1, 2004

Q2. My firm received an order at 10:02:00 and routed it immediately to an electronic communications network (ECN). The order was canceled in full at 10:02:10. How should we report this order to OATS?

A2. Until November 1, 2004, the firm may continue to report these events as it does today using a separate Cancel Report as applicable. Between November 1, 2004 and December 1, 2004, the firm must either report the cancellation on the New Order Report and submit a separate Route Report or report the cancellation on the Combined New Order/Route Report. Beginning December 1, 2004, this order must be reported using the Combined New Order/Route Report with the additional cancellation fields populated.

Q3. My firm is an ECN that received an order from another firm at 11:30:05. The order was canceled in full at 11:30:35. How should we report this order to OATS?

A3. This order was canceled within 60 seconds of receipt and was not routed. Beginning November 1, 2004, the ECN must report the order and cancellation information using the new fields on the New Order Report.

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- Q4. My firm is a market maker that received an order from another firm at 11:30:05 and did not route the order. The order was canceled in full at 11:30:35. How should we report this order to OATS?**
- A4. This order was canceled within 60 seconds of receipt and was not routed. Beginning November 1, 2004, the firm must report the order and cancellation information using the new fields on the New Order Report.
- Q5. My firm received an order at 9:32:00 and routed it to a market maker. The order was canceled in full at 10:02:10. How should we report this order to OATS?**
- A5. This order was canceled in full later than 60 seconds from the time of receipt, but within the same day. Until December 1, 2004, the firm may continue to report these events as it does today. Beginning December 1, 2004, the firm must report all three events, the new order, route and cancellation on the Combined New Order/Route Report.
- Q6. My firm received an order for 100 shares at 11:32:00 and routed it to an ECN. The customer canceled 50 shares at 11:32:10. How should we report this order to OATS?**
- A6. Although part of the order was canceled within the same day of receipt of the order, because the order was not canceled in full, the firm may not use the new cancellation information fields on the New Order Report. The cancel information must be reported by using the separate Cancel Report. However, it is important to note that beginning October 4, 2004, the two new cancellation fields must be appended to all New Order Reports, irrespective of whether the order is ultimately canceled in part or in full.
- Q7. My firm received a limit order for 100 shares on Monday at 14:32:00. The customer canceled the order in full on Tuesday at 9:32:10. How should we report this order to OATS?**
- A7. Because the order was not canceled in full on the same day as the order was received, the firm may not use the new fields on the New Order Report to report the cancellation information. The cancellation information must be reported by using a separate Cancel Report. However, as noted above, as of October 4, 2004, the two new cancellation fields must be appended to the New Order Report.
- Q8. My firm is an ECN that received an order from another firm at 11:30:05. The order was canceled in full at 11:30:35. Can we use the separate Cancel Report to submit this information to OATS?**
- A8. No. Since this order was canceled in full within 60 seconds of receipt, as of November 1, 2004, the order must be reported by providing the cancel information in the New Order Report.

Q9. My firm received an order at 10:02:00 and routed it to an ECN. The order was modified at 10:02:10 and canceled in full at 10:02:45. How should we report this order to OATS?

A9. Because this order was modified prior to cancellation, as of December 1, 2004, the firm must report a Combined New Order/Route Report, to reflect original receipt of the order at 10:02:00 and routing of the order. A Cancel/Replace Report must be submitted to reflect modification of the order at 10:02:10. This must be followed by a separate Cancel Report to show the order was ultimately canceled at 10:02:45.

Q10. My firm is an ECN. On December 2, 2004, we receive an order and execute it in full. How should this be reported to OATS?

A10. Because this order was received and executed in full within the same day, as of December 1, 2004, the order must be reported using a Combined New Order/Execution Report.

Q11. My firm is a market maker. How do we report an order executed within the same day via multiple partial executions?

A11. Since this order is not executed in its entirety at one time, these executions must be reported using separate Execution Reports for each partial execution.

Endnotes

- 1 See Securities Exchange Act Release No. 49628 (April 29, 2004), 69 FR 89 (May 7, 2004) (File No. SR NASD-2004-023) and related OATS announcement www.nasdr.com/3350.asp.
- 2 Partial cancellations, previously modified orders, and cancellations occurring on days subsequent to the order receipt date still will require the submission of a separate Cancel Report.
- 3 Today, members are required to report the cancellation of an order, either in whole or part, using a Cancel Report. See the OATS Subscriber Manual and OATS Reporting Technical Specifications.
- 4 NASD Rule 6954(d)(2) states that when a "Reporting Member," as defined in Rule 6951(n), cancels or receives a cancellation of an order, in whole or part, such member shall record the following information:
 - the order identifier assigned to the order by the Reporting Member;
 - the market participant symbol (MPID) assigned by NASD to the Reporting Member;
 - the date the order was first originated or received by the Reporting Member;
 - the date and time the cancellation was originated or received;
 - if the open balance of an order is canceled after a partial execution, the number of shares canceled; and
 - whether the order was canceled on the instruction of a customer or the Reporting Member.
- 5 NASD Rule 6954(a)(3) requires that a member record each item of information required to be reported under Rule 6954 in such electronic format as prescribed by NASD from time to time.

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Notice to Members

JUNE 2004

SUGGESTED ROUTING

Legal & Compliance
Operations
Registered Representatives
Senior Management

KEY TOPICS

Cost Basis Information
Rule 2110

GUIDANCE

Cost Basis Information

Members' Obligations with Respect to the Transfer of Cost Basis Information

Executive Summary

It has come to NASD's attention that some members may be purposely interfering with the transfer of cost basis information for customers who transfer their accounts to another firm and ask for their cost basis information to be transferred to the new firm. The purpose of this Notice is to remind members that impeding the transfer of cost basis information upon customer request violates NASD Rule 2110, which requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

Questions/Further Information

Questions concerning this *Notice* generally may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

Discussion

Customers need cost basis information to compute gains and losses for tax purposes. Although this information is reported on customer confirmations and account statements, customers who have not kept their confirmations and statements may be unable to gather this information themselves. Thus, some customers may rely on their firms to recreate this information as needed. Customers may have problems in accessing cost basis information when they move their

accounts to another firm. Although the customer's assets may be electronically moved to his or her new firm through the National Securities Clearing Corporation's (NSCC) Automated Customer Account Transfer Service (ACATS), ACATS does not transfer cost basis information.

Some firms participate in the Cost Basis Reporting Service (CBRS), another NSCC service. CBRS is an automated system that gives brokerage firms the ability to transfer customer cost basis information from one firm to another on any asset transferred through ACATS. If a firm participates in CBRS, or has otherwise retained cost basis information electronically and is able to transfer it to another firm "tape-to-tape," it should do so as part of the account transfer process. For any reason other than that a firm does not retain cost basis information in an electronic format that may be transferred, refusing to deliver or impeding the delivery of cost basis information harms the customer and constitutes conduct inconsistent with just and equitable principles of trade.¹ If electronically available in the delivering firm, the transfer of cost basis information to the receiving firm should occur as a matter of course as part of the account transfer process.

This *Notice* is not imposing a requirement on delivering firms to create this information upon customer request if the firm does not already maintain cost basis information in an electronically transferable form. This *Notice* serves only to remind members that if cost basis information is electronically available for transfer, and the customer has decided to change firms, it is a violation of Rule 2110 for a member to refuse to transfer the information upon request or take any steps to interfere with its transfer to the customer's new firm.

Endnotes

- 1 A firm that retains cost basis information in an accessible format electronically or otherwise is also expected to furnish such information to a customer upon request.

Notice to Members

JUNE 2004

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Senior Management
Systems
Trading

KEY TOPICS

OATS
Rule 6954(d)

GUIDANCE

OATS Execution Reporting Obligations

SEC Approves Amendments to Rule 6954 Requiring Members to Record and Report Execution Price and Firm Capacity in OATS Execution Reports; **Effective Date: October 4, 2004**

Executive Summary

On April 29, 2004, the Securities and Exchange Commission (SEC) approved amendments to Rule 6954(d) to require members to record and report execution price and firm capacity as part of their Order Audit Trail System (OATS) Execution Reports.¹ Rule 6954(d), as amended, is set forth in Attachment A. The amendments become effective on October 4, 2004.

Questions/Further Information

Questions regarding this *Notice to Members* may be directed to the Legal Section, Market Regulation, at 240-386-5126, or Office of General Counsel, Regulatory Policy and Oversight, at 202-728-8071. For technical questions regarding OATS Reporting, please contact the OATS Help Desk at 800-321-NASD.

Background and Discussion

On March 6, 1998, the SEC approved NASD Rules 6950 through 6957 (the OATS Rules).² OATS provides comprehensive information regarding orders and transactions that strengthens NASD's ability to conduct surveillance and investigations of member firms for potential violations of NASD rules and the federal securities laws.

When the OATS Rules initially were adopted, it was determined that NASD would obtain execution price and firm capacity information (*i.e.*, the capacity in which the member acted for purposes of the transaction, for example, on an agency, principal or riskless principal basis) from trading information rather than via OATS reports. At that time, the vast majority of trading in NASDAQ securities was reported through NASDAQ's Automated Confirmation Transaction Service (ACT).³ Members are required to input order identifier information into ACT trade reports, and NASD systematically matches the ACT trade reports with corresponding OATS reports to obtain certain trade-related information including, among other things, execution price and firm capacity. Similarly, members using the NASD Alternative Display Facility (ADF) Trade Reporting and Comparison Service (TRACS) are required to record OATS order identifier information in TRACS trade reports, which is then matched with OATS information to obtain execution price and firm capacity.

Recently, however, this "ACT/TRACS matching" process has become less effective, in part because a percentage of trades in NASDAQ securities are no longer reported to ACT or TRACS. Further, if there are any errors in the linking information provided to ACT, TRACS or OATS, the ACT/TRACS matching process is hindered.

Accordingly, the new amendments require that members record and report two additional fields, execution price and firm capacity, as part of their OATS Execution Reports. These fields will be required on all OATS Execution Reports, regardless of where the trade was reported or whether any Reporting Exception Code is included with the Execution Report. To allow members adequate time to program their systems to submit the two additional fields and to coincide with the OATS third quarter 2004 release, these amendments will become effective on October 4, 2004. Any OATS Execution Reports submitted after October 4, 2004 without the execution price and capacity fields populated will be rejected by OATS. More detailed information on these new requirements, including the technical requirements for submission of these two additional data elements, will be provided in the OATS Reporting Technical Specifications, which are available on the NASD Web Site at <http://www.nasdr.com/3310.asp>.

Endnotes

- 1 See Securities Exchange Act Release No. 49628 (April 29, 2004), 69 FR 89 (May 7, 2004) (File No. SR-NASD-2004-023) (SEC Approval Order). See also File No. SR-NASD-2004-093, extending the implementation date of SR-NASD-2004-023 to October 4, 2004.
- 2 See *Notice to Members 98-33* for a complete description of the OATS Rules.
- 3 ACT is an automated system owned and operated by NASDAQ that captures transaction information on a real-time basis.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

6954. Recording of Order Information

(a) through (c) No Change.

(d) Order Modifications, Cancellations, and Executions

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

(1) and (2) No Change.

(3) When a Reporting Member executes an order, in whole or in part, the Reporting Member shall record:

(A) through (G) No Change.

(H) the date and time of execution,⁴[and]

(I) the execution price,

(J) the capacity in which the member executed the transaction (e.g., agency, principal or riskless principal), and

(K) the national securities exchange or facility operated by a registered securities association where the trade was reported.

Notice to Members

JUNE 2004

INFORMATIONAL

SUGGESTED ROUTING

Legal & Compliance

KEY TOPICS

Arbitration

Arbitrators

Dispute Resolution

Arbitrator Classification

SEC Approves Amendments to Rules 10308 and 10312 Regarding Arbitrator Classification, Disclosures, and Challenges; **Effective Date: July 19, 2004**

Executive Summary

The Securities and Exchange Commission (SEC or Commission) has approved amendments to Rules 10308 and 10312 of the NASD Code of Arbitration Procedure (Code) relating to arbitrator classification, disclosures, and challenges.¹

The text of the amendments is set forth in Attachment A. The amendments will be effective on July 19, 2004. Amendments relating to arbitrator classification will apply to arbitrator lists sent out according to Rule 10308(b)(5) on or after July 19, 2004, and to arbitrators appointed on or after July 19, 2004 by the Director of Arbitration under Rules 10308(c)(4)(B), 10308(d)(3), and 10313 when an insufficient number of names remain on the consolidated list. The amendments to the standard for deciding challenges for cause under Rule 10308(d) and Rule 10312(d) will apply to challenges for cause made on or after July 19, 2004.

Questions/Further Information

Questions regarding this *Notice* may be directed to Jean I. Feeney, Vice President and Chief Counsel, NASD Dispute Resolution, at (202) 728-6959, or e-mail jean.feeney@nasd.com.

Discussion

NASD has amended Rules 10308 and 10312 of the Code to:

- (1) modify the definitions of public and non-public arbitrators to further ensure that individuals with significant ties to the securities industry are not able to serve as public arbitrators;
- (2) provide specific standards for deciding challenges to arbitrators for cause; and
- (3) clarify that compliance with arbitrator disclosure requirements is mandatory.

Background

In July 2002, the SEC retained Professor Michael Perino to assess the adequacy of NASD and New York Stock Exchange arbitrator disclosure requirements, and to evaluate the impact of the California Ethics Standards² on the current conflict disclosure rules of the self-regulatory organizations (SROs). The SEC released Professor Perino's report, *Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations* (Perino Report), on November 4, 2002.³

The Perino Report observed that, "Current SRO conflict standards are consistent with model disclosure standards and judicial opinions analyzing arbitrator disclosure requirements," and concluded that undisclosed conflicts of interest were not a significant problem in SRO-sponsored arbitrations. Specifically, the Report concluded that adoption of the California Ethics Standards by SROs would yield very few benefits to parties, but would impose significant costs and could have significant unintended consequences that might reduce investors' perception of the fairness of SRO arbitrations. However, the Perino Report recommended several amendments to SRO arbitrator classification and disclosure rules that, according to the Report, might "provide additional assurance to investors that arbitrations are in fact neutral and fair."

These amendments implement the Perino Report recommendations, as well as several other related changes to the definition of public and non-public arbitrators that are consistent with the Perino Report recommendations.

Definition of Public and Non-Public Arbitrators

The Code classifies arbitrators as public or non-public ("industry"). When investors have a dispute with member firms or associated persons in NASD arbitration, they are entitled to have their cases heard by a panel consisting of either a single public arbitrator, or a majority public panel consisting of two public arbitrators and one non-public arbitrator, depending on the amount of the claim.⁴

Rule 10308(a)(5) defines public arbitrators as persons who are qualified to serve as arbitrators and who are not either personally engaged in certain activities that would make them non-public, or the immediate family member of a person engaged in such activities.

The amendments change these definitions in several ways to further ensure that individuals with significant ties to the securities industry are not able to serve as public arbitrators. Specifically, the definition of non-public arbitrator in Rule 10308(a)(4) has been amended to:

- ◆ Increase from three years to five years the period for transitioning from a non-public to a public arbitrator; and
- ◆ Clarify that the term “retired” from the industry includes anyone who spent a substantial part of his or her career in the industry.

In addition, the definition of “public arbitrator” in Rule 10308(a)(5)(A) has been amended to:

- ◆ Prohibit anyone who has been associated with the industry for at least 20 years from ever becoming a public arbitrator, regardless of how many years ago the association ended;
- ◆ Exclude from the definition of public arbitrator those attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator; and
- ◆ Provide that investment advisers may not serve as public arbitrators, and may only serve as non-public arbitrators if they otherwise qualify under Rule 10308(a)(4).

The amendments also change significantly the definition of “immediate family member” in Rule 10308(a)(5)(B) to further ensure that individuals with significant, albeit indirect, ties to the securities industry may not serve as public arbitrators. The Perino Report recommended that NASD expand the definition of “immediate family member” to include parents and children, even if the parent or child does not share a home with, or receive substantial support from, a non-public arbitrator. Although the Perino Report referred only to parents and children, NASD believes that the same rationale applies to stepparents and stepchildren, and therefore has included such relationships in the definition as well. In addition, although the Perino Report did not address the issue, NASD believes that it is consistent with the Perino Report recommendations to include in the definition of the term “immediate family member” anyone, related or not, who is a member of the household of a non-public arbitrator.

Standard for Deciding Challenges for Cause

Rules 10308(d) and 10312(d) of the Code provide that, under certain circumstances, the Director of Dispute Resolution may remove an arbitrator upon request of a party or under the Director's own initiative. Rule 10308(d)(1) provides that, before the first hearing session, if a party objects to the continued service of an arbitrator, the Director may disqualify an arbitrator if the Director determines that the arbitrator should be disqualified. Rule 10312(d)(1) provides that the Director may remove an arbitrator from a panel based on information that must be disclosed pursuant to the rule. Under both rules, once the first hearing session has begun, the Director may only remove an arbitrator based on information that was required to be disclosed under Rule 10312 but was not previously disclosed.

The Code does not provide a specific standard for deciding whether an arbitrator should be removed under these provisions. However, the NASD Arbitrator's Manual states:

A challenge for cause to a particular arbitrator will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.⁵

The Perino Report noted that including this standard in the Code would provide greater transparency with respect to challenges for cause, and would enhance the parties' confidence that all challenges for cause will be granted or denied on the same basis. Therefore, NASD has amended Rule 10308(d) and Rule 10312(d) to provide that, in deciding challenges for cause, the Director will apply the standard described above.

In addition, based on the recommendation of the Perino Report, NASD has amended Rule 10308 to add a new paragraph (f) providing that, consistent with both NASD current practice and the New York Stock Exchange's Guidelines for Classifying Arbitrators, close questions regarding arbitrator classification or challenges for cause brought by a public customer will be resolved in favor of the customer.

Arbitrator Duty to Disclose and Update Conflict Information

Rule 10312(a) of the Code provides that arbitrators “shall be required to disclose” any circumstances which might preclude an arbitrator from rendering an objective and impartial determination, and enumerates specific personal, professional and financial information that “should” be disclosed under the rule. Rule 10312(b) provides that arbitrators “should” make a reasonable effort to inform themselves of any such conflicts. Rule 10312(c) provides that the duties imposed by paragraphs (a) and (b) are ongoing, and that arbitrators must disclose at any stage of the proceeding any such information that arises, is recalled or discovered.

While NASD has always interpreted Rule 10312 to impose a mandatory duty on arbitrators to disclose the required information, and to update their disclosure, the Perino Report noted that the use of the term “should” in paragraphs (a) and (b) of the rule may create the misimpression that disclosing and updating the information are merely recommended, but not required. Therefore, to eliminate any possible misunderstanding or confusion, NASD has amended Rule 10312(a) and (b) to clarify that arbitrators “must” disclose the required information and “must” make reasonable efforts to inform themselves of potential conflicts and update their disclosures as necessary.

Updating of Arbitrator Disclosures

NASD has distributed a survey to all arbitrators on the active roster, asking them to update their disclosures in light of the above amendments to the arbitrator classification rules. Arbitrators who do not respond by the deadline will be made inactive until they have responded, and those who do not respond within a reasonable period thereafter may be removed permanently. After the surveys are returned and reviewed, arbitrators’ disclosure records will be updated to reflect their proper classification under the amendments. Parties should be aware that in open arbitration cases the arbitrator classification amendments will not apply to arbitrators on lists already sent to the parties prior to the effective date, or to arbitrators who are already serving on panels prior to the effective date. These arbitrators will retain their former classification for purposes of these ongoing cases. This will avoid disruption and allow parties to continue with the arbitrators they have selected to hear their cases. Therefore, challenges for cause based solely on an arbitrator’s reclassification will not be granted.

Effective Date

The amendments described in this Notice are effective on July 19, 2004. Amendments relating to arbitrator classification will apply to arbitrator lists sent out pursuant to Rule 10308(b)(5) on or after July 19, 2004, and to arbitrators appointed on or after July 19, 2004 by the Director of Arbitration under Rules 10308(c)(4)(B), 10308(d)(3), and 10313 when an insufficient number of names remain on the consolidated list. The amendments to the standard for deciding challenges for cause under Rule 10308(d) and Rule 10312(d) will apply to challenges for cause made on or after July 19, 2004.

Endnotes

- 1 Exchange Act Release No. 49573 (April 16, 2004) (File No. SR-NASD-2003-095), 69 Federal Register 21871 (April 22, 2004). An additional, technical amendment to Rule 10308 was filed for immediate effectiveness on June 7, 2004 (File No. SR-NASD-2004-087).
- 2 California Rules of Court, Division VI of the Appendix, entitled, "*Ethics Standards for Neutral Arbitrators in Contractual Arbitration.*" See more information on the NASD Web Site at: www.nasdaq.com/ca_arb_notice.asp
- 3 The Perino Report may be found on the SEC Division of Market Regulation Web Site at: <http://www.sec.gov/divisions/marketreg.shtml>.
- 4 The panel composition for intra-industry disputes (not involving any parties who are investors) is governed by Rule 10202. Depending on the nature of the dispute, intra-industry panels may consist of all public arbitrators, all non-public arbitrators, or a majority of public arbitrators. The arbitrator classification provisions of Rule 10308 apply to all such panels.
- 5 As the Perino Report noted, this is essentially the same standard followed by the New York Stock Exchange.

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ATTACHMENT A

New language is underlined; deletions in brackets.

Code of Arbitration Procedure

* * * *

Rule 10308. Selection of Arbitrators

This Rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator.

(a) Definitions

(1)-(3) Unchanged

* * *

(4) "non-public arbitrator"

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(A) is, or within the past [three] 5 years, was:

(i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(ii) registered under the Commodity Exchange Act;

(iii) a member of a commodities exchange or a registered futures association; or

(iv) associated with a person or firm registered under the Commodity Exchange Act;

(B) is retired from, or spent a substantial part of a career, engaging in any of the business activities listed in subparagraph (4)(A);

(C) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last 2 years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) "public arbitrator"

(A) The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and [is not]:

(i) is not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); [or]

(ii) was not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) for a total of 20 years or more;

(iii) is not an investment adviser;

(iv) is not an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A); and

(v) is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(B) For the purpose of this Rule, the term "immediate family member" means:

(i) the parent, stepparent, child, or stepchild, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

[(i)] (ii) a [family member who shares a home with] member of the household of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

[(ii)] (iii) a person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);
or

[(iii)] (iv) a person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

* * *

(6)-(7) Unchanged

(b)-(c) unchanged.

* * *

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

(1) Disqualification By Director

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

(2) Removal by Director

After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator based only on information that is required to be disclosed pursuant to Rule 10312 and that was not previously disclosed.

(3) Standards for Deciding Challenges for Cause

The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

[(3)] (4) Vacancies Created by Disqualification or Resignation

Prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if an arbitrator appointed to an arbitration panel is disqualified or is otherwise unable or unwilling to serve, the Director shall appoint from the consolidated list of arbitrators the arbitrator who is the most highly ranked available arbitrator of the proper classification remaining on the list. If there are no available arbitrators of the proper classification on the consolidated list, the Director shall appoint an arbitrator of the proper classification subject to the limitation set forth in paragraph (c)(4)(B). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).

(e) Discretionary Authority

The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and the Rule 10000 Series to facilitate the appointment of arbitration panels and the resolution of arbitration disputes.

(f) Challenges by Customers

In cases involving public customers, any close questions regarding arbitrator classification or challenges for cause brought by a customer will be resolved in favor of the customer.

* * *

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

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

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

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

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

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

(d) Removal by Director

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

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

(3) The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

(e) Unchanged.

* * *

Disciplinary and Other NASD Actions

REPORTED FOR JUNE

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of May 2004.

Firms Fined, Individuals Sanctioned

Grayson Financial LLC (CRD #11764, Red Bank, New Jersey), Joseph LaRocca (CRD #1144173, Registered Principal, Locust Point, New Jersey), and Joseph William Hagan (CRD #1980623, Registered Principal, Colts Neck, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. LaRocca was fined \$5,000 and suspended from association with any NASD member in any principal or supervisory capacity for 30 business days. Hagan was fined \$5,000 and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through LaRocca and Hagan, failed to enforce adequately its written supervisory procedures regarding the review of cancelled/rebilled transactions in public customer accounts. The findings also stated that LaRocca and Hagan failed to contact firm customers in sufficient numbers when a pattern of cancels/rebills appeared in customer accounts to determine if the trades had been properly authorized. NASD also found that the firm, acting through LaRocca and Hagan, failed to document properly the supervisory review of cancels/rebills and utilize "Cancel/Rebill Forms" as required by firm written supervisory procedures. In addition, NASD found that the firm failed to report complaints to NASD pursuant to NASD Conduct Rule 3070(c). Furthermore, NASD found that the firm, acting through LaRocca, failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with NASD Conduct Rule 3070.

LaRocca's suspension began May 17, 2004, and will conclude at the close of business June 28, 2004. Hagan's suspension will begin July 5, 2004, and will conclude at the close of business July 16, 2004. (NASD Case #C9B040029)

MMS Securities, Inc. (CRD #43120, Troy, Michigan) and Michael Lawrence Garivaglia (CRD #2120445, Registered Principal, Bloomfield Hills, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$45,000. Garivaglia was fined \$5,000 and suspended from association with any NASD member in any managerial or supervisory capacity for 30 days. Without admitting or denying the allegations, the firm and Garivaglia consented to the described sanctions and to the entry of findings that Garavaglia, on behalf of his member firm, sent a letter to its customers informing them that the firm intended to cease its stock purchase program and was transferring its business to another firm, and that if the

customers wanted to transfer their securities accounts to another member firm they had to complete various forms. The letter further stated that, if they did not return the other firm's account forms or instruct the firm, in writing, to transfer their account to the other member firm, all of the customer's account holdings would be sold by the firm and a check would be mailed to the customer. The firm, acting through Garivaglia, executed sales transactions in the accounts of public customers who requested that the securities in their account be transferred to another firm, without the customers' knowledge, authorization, or consent. The findings stated that the firm failed to prepare and maintain an accurate securities record or ledger and also failed to evidence possession and control of customer fully paid securities based on the failure to maintain accurate records of the location of these securities in violation of Securities and Exchange Commission (SEC) and NASD rules. In addition, NASD found that Garavaglia, acting through the firm, failed to employ two general securities principals, in violation of NASD Membership and Registration Rule 1021. Furthermore, NASD found that the firm received complaints, expressing grievances involving the firm or persons associated with the firm from customers with whom the firm had engaged or had sought to engage in securities activities, and failed to report timely such customers grievances to NASD as statistical and summary information.

Garivaglia's suspension began May 17, 2004, and concluded at the close of business June 15, 2004. (NASD Case #C8A040019)

Firm and Individual Fined

Max International Broker/Dealer Corp. (CRD #46039, New York, New York) and Nigel Gilbert (CRD #2801498, Registered Principal, Montclair, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$12,500, jointly and severally. The firm was fined an additional \$2,500. Without admitting or denying the allegations, the firm and Gilbert consented to the described sanctions and to the entry of findings that the firm, acting through Gilbert, permitted individuals to act in capacities that required registration while their registration status with NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also stated that the firm, acting through Gilbert failed to report settled arbitration cases to NASD and failed to report to NASD, pursuant to NASD Rule 3070, that an individual was terminated by the firm for failing to disclose outside trading accounts. In addition, NASD found that the firm, acting through Gilbert, failed to file with NASD statistical and summary information regarding customer complaints. (NASD Case #C10040039)

Firms Fined

Carlin Equities Corporation (CRD #31295, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction Service (ACT) last sale reports of transactions in Over-the Counter (OTC) Equity securities and failed to designate through ACT last sale reports as late. The findings also stated that the firm failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution. (NASD Case #CMS040056)

Deutsche Bank Securities, Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to NASD inaccurate short interest position reports. The findings further stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning short interest reporting. (NASD Case #CMS040065)

See also Deutsche Bank Securities, Inc., NASD Case #CMS040066, below.

Deutsche Bank Securities, Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$225,000, and required to revise, within 30 business days, its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning short interest reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it did not include some short positions in the firm's calculations and its short interest reported to NASD was inaccurate. The findings also stated that the firm's short positions were incorrectly classified and the firm failed to make corrections in a timely and effective manner, such that short interest positions were reported to NASD prior to completion of procedures to review affiliate accounts and were reported to NASD inaccurately, and incorrectly netted short positions against long positions. In addition, NASD found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning short interest reporting. (NASD Case #CMS040066)

See also Deutsche Bank Securities, Inc., NASD Case # CMS040065, above.

FFP Securities, Inc. (CRD #16337, Chesterfield, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$125,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file disclosure events and customer complaints with NASD. The findings also stated that the firm failed to file a written grievance in its quarterly statistical and summary information, and to file written customer grievances on a timely basis. NASD also found that the firm failed to file amended Forms U4 and U5 for individuals subject to amendments within 30 days of becoming aware of the facts or circumstances giving rise to the amendments. In addition, NASD found that the firm failed to establish and maintain an effective supervisory system to identify the firm's designated supervisory personnel and dates for which such designation is or was effective and to prevent and detect self-supervision by registered principals. **(NASD Case #C04040021)**

Fiserv Securities, Inc. (CRD #14285, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$18,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in OTC Equity securities and failed to designate through ACT last sale reports as late. The findings also stated that the firm failed to report the correct time of execution through ACT in last sale reports of transactions in OTC Equity securities. Furthermore, NASD found that the firm submitted to the Order Audit Trail SystemSM (OATSSM) reports with respect to equity securities traded on The Nasdaq Stock Market, Inc. (NASDAQ) that were rejected by OATS for context or syntax errors and were repairable. The findings further stated that the reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace any of the reports. In addition, NASD found that the firm failed to follow written supervisory procedures and thus failed to enforce a supervisory system reasonably designed to achieve compliance with NASD rules. **(NASD Case #CMS040060)**

L.H. Ross & Company, Inc. (CRD #37920, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it filed reports required pursuant to NASD Rule 3070 in an untimely manner. The findings also stated that the firm filed Forms U4 and U5 and amended them in an untimely manner. **(NASD Case #C07040046)**

HMS Securities, Inc. (CRD #5940, Montvale, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or

denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit all required Reportable Order Events (ROEs) to OATS on 260 business days. **(NASD Case #CMS040051)**

Inter-Dealer Brokers LLC (CRD #45502, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in OTC Equity securities, and failed to designate through ACT last sale reports as late. **(NASD Case #CMS040061)**

Jeffries & Company, Inc. (CRD #2347, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$27,500, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws and regulations concerning trade reporting (riskless principal transactions), best execution (three-quote rule), and limit order display. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last sale reports of transactions in NASDAQ National Market[®] (NNM[®]) securities and eligible securities, failed to designate through ACT such last sale reports as late, and failed to transmit the time of execution through ACT last sale reports of transactions in a NNM security and eligible securities for which it has recording and reporting obligations under NASD Marketplace Rules 6954 and 6955.

The findings stated that the firm failed to report to ACT a capacity indicator of riskless principal in last sale reports of transactions in NNM and eligible securities. The findings also stated that the firm failed to report through ACT last sale reports of transactions in OTC Equity securities, failed to report to ACT a capacity indicator of riskless principal in a last sale report of a transaction in an OTC Equity security, provided written notification disclosing to its customer an incorrect reported trade price and incorrect capacity in the transaction, and failed to provide written notification disclosing to its customer the amount of remuneration received by the firm in connection with the transactions. The firm failed to provide written notification disclosing to its customer that the transaction was executed at an average price and failed to show the terms and condition on the memorandum of brokerage orders. In addition, 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 trade reporting (riskless principal transactions) and best execution (three-quote rule) and failed to enforce its written supervisory procedures with respect to limit order display. **(NASD Case #CMS040062)**

Knight Equity Markets, L.P. (CRD #38599, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it incorrectly designated as “.PRP,” through ACT, last sale reports of transactions in NNM securities; reported through ACT last sale reports of transactions in NNM securities it was not required to report; and incorrectly reported to ACT the second leg of four riskless principal transactions in NNM securities and incorrectly designated the capacity of each such transaction as principal. The findings also stated that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities, and failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity. Furthermore, NASD found that the firm incorrectly reported to ACT the second leg of five riskless principal transactions in CQS securities, and incorrectly designated the capacity of each such transaction as principal and made available a report on the covered orders in National Market System (NMS) securities that it received for execution from any person. **(NASD Case #CMS040063)**

Liquidnet, Inc. (CRD #103987, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report timely to OATS ROEs. NASD also found that the firm transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning OATS. **(NASD Case #CMS040052)**

Merrill Lynch, Pierce, Fenner & Smith Incorporated (CRD #7691, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$75,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce an adequate system to supervise and monitor activities in connection with the sale of variable life insurance products. **(NASD Case #C05040022)**

Millennium Brokerage, LLC (CRD #47728, Woodcliff Lake, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report timely to

OATS ROEs. The findings also stated that the firm submitted to OATS reports with respect to equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD. In addition, NASD found that the reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web site, but the firm failed to correct or replace the reports. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning OATS. **(NASD Case #CMS040053)**

Person Financial Services, Inc. (CRD #25866, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$22,500, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning NASD trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution. The findings also stated that the firm failed to report to ACT the reporting side executing broker as “give up” in transactions in eligible securities. In addition, NASD found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning NASD trade reporting. **(NASD Case #CMS040064)**

Samco Financial Service, Inc. (CRD #30108, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning OATS rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report ROEs to OATS in a timely manner. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning OATS. **(NASD Case #CMS040067)**

Sands Brothers & Co., Ltd. (CRD #26816, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$11,000, and required to revise within 30 business days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning SEC Rule 11Ac1-5. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make available a report on the covered orders in NMS securities that it received for execution from any person. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with

applicable securities laws, regulations, and NASD rules concerning SEC Rule 11Ac1-5. (NASD Case #CMS040058)

Track ECN/Track Data Securities Corp. (CRD #103802, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise within 30 days its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning the registration of persons with NASD, Best Execution, the SEC's Limit Order Display Rule, trade reporting, recordkeeping, locked and/or crossed markets, OATS reporting, anti-competitive practices, "Chinese Walls" (or information barriers), general operating system/procedures, short sales, Regulation ATS, and SEC Rule 11Ac1-5. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to register with NASD, as limited representative equity traders, persons associated with the firm where such persons, with respect to transactions in equity, preferred, or convertible debt securities, were engaged in proprietary trading and the execution of transactions on an agency basis, and made available a report on the covered orders in NMS securities that it received for execution from any person that included incorrect and incomplete information as to classification of orders as covered or not covered. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning the registration of persons with NASD, Best Execution, the SEC's Limit Order Display Rule, trade reporting, recordkeeping, locked and/or crossed markets, OATS reporting, anti-competitive practices, "Chinese Walls," general operating system/procedures, short sales, Regulation ATS, and SEC Rule 11Ac1-5. (NASD Case #CMS040068)

Washington Square Securities, Inc. (CRD #2882, Des Moines, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$50,000, and ordered to pay \$48,955.35 in partial restitution to public customers who purchased Class B shares. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through its agents, it effected, or caused to be effected, purchases of large positions of Class B mutual fund shares in firm customer accounts. The findings also stated that the purchases were unsuitable because they deprived the customers of the benefit of sales charge breakpoints that they would have received had they purchased Class A shares, including those acquired through letters of intent or rights of accumulation. NASD also found that the purchases deprived the customers of lower 12b-1 fees that they would have received if they had purchased Class A shares, while also exposing the customers to potentially higher contingent deferred sales charges upon liquidation and to the costs of purchasing Class B

shares possibly exceeding the costs of purchase of Class A shares. In addition, NASD found that the firm, acting through its agents, failed to establish, maintain, and enforce a supervisory system reasonably designed to enable the firm and its supervisors to scrutinize Class B share purchases with a view towards detecting and preventing unsuitably large Class B share purchases. (NASD Case #C04040015)

Individuals Barred or Suspended

Mauricio Acuna (CRD #3237599, Registered Representative, Garden City, 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, Acuna consented to the described sanction and to the entry of findings that he agreed to have an imposter take the Series 6 and Series 63 Qualification Examinations on his behalf. (NASD Case #C10040032)

Juan C. Alejos (CRD #4108723, Registered Representative, Elmsford, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500 and suspended from association with any NASD member in any capacity for 20 days. Without admitting or denying the allegations, Alejos consented to the described sanctions and to the entry of findings that he solicited a public customer to purchase a security and, during the solicitation, misrepresented material facts and made baseless price projections. The findings also stated that Alejos solicited a Utah resident to purchase securities even though he was not registered to sell securities in Utah and was not permitted to solicit Utah residents.

Alejos' suspension began June 7, 2004, and will conclude at June 26, 2004. (NASD Case #C10040048)

Louis John Appel, Jr. (CRD #1284856, Registered Representative, Boca Raton, Florida) 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 Appel reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Appel consented to the described sanctions and to the entry of findings that he forged the signature of an insurance company officer on a company Request for Collateral Assignment/Discharge of Assignment form relating to a public customer's application for a term life insurance policy.

Appel's suspension began June 7, 2004, and will conclude at the close of business December 6, 2004. (NASD Case #C07040045)

James Ray Atrat (CRD #1438065, Registered Representative, Clovis, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Atrat created and provided to a public customer account summaries that contained false information. (NASD Case #C01030033)

Arnab Banerjee (CRD #4172393, Registered Representative, Hoboken, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Banerjee willfully failed to disclose material facts on his Form U4 and failed to respond to NASD requests for information. (NASD Case #C10030091)

Alan Wayne Barksdale (CRD #4538369, Registered Representative, Little Rock, Arkansas) 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 31 days. Without admitting or denying the allegations, Barksdale consented to the described sanctions and to the entry of findings that he solicited an attorney to make contributions to public officials so that the attorney might receive favorable consideration as bond counsel on future issues of municipal securities while Barksdale's member firm was engaging in municipal securities business with the issuer.

Barksdale's suspension began May 17, 2004, and will conclude at the close of business June 16, 2004. (NASD Case #C05040019)

Damon Lee Barnes (CRD #4656593, Associated Person, Pembroke Pines, Florida) 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, Barnes consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U4 and failed to respond to NASD requests for information. (NASD Case #C07040032)

Randall Todd Becker (CRD #2706294, Registered Principal, Bellevue, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$17,200, including disgorgement of \$12,200 in financial benefits, and suspended from association with any NASD member in any capacity for 15 business days. The fine must be paid before Becker reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Becker consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm, he entered into an agreement with an individual to open accounts for new customers at his firm in exchange for a \$100 payment for each account. The findings also stated that Becker received \$14,200 and opened the accounts, but subsequently repaid \$2,000 to the individual.

Becker's suspension began June 7, 2004, and will conclude at the close of business June 25, 2004. (NASD Case #C3B040012)

Darrill Samuel Beebe (CRD #2869508, Registered Representative, Arlington, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Beebe reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Beebe consented to the described sanctions and to the entry of findings that he willfully failed to amend his Form U4 to disclose material information.

Beebe's suspension began May 17, 2004, and will conclude at the close of business November 16, 2004. (NASD Case #C06040010)

Orville Dale Bellamy (CRD #1204847, Registered Representative, Centerville, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bellamy consented to the described sanction and to the entry of findings that he misused funds from a public customer's life insurance policies by directing an insurance company to liquidate the customer's life insurance policies, and send the \$100,000 proceeds to his home which he used for his own benefit and without the customer's permission or knowledge. NASD also found that Bellamy entered into a settlement agreement with the customer, whereby he agreed to pay the customer \$75,000 in exchange for her signature on a "Release," and entered into this settlement agreement without his member firm's knowledge or consent. In addition, the findings stated that Bellamy failed to respond to NASD requests for information. (NASD Case #C8A040031)

Steven Robert Boccone (CRD #1995219, Registered Principal, New York, 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, Boccone consented to the described sanction and to the entry of findings that he prepared transfer application forms that directed the transfer of \$750,000 from the bank account of a public customer to an entity Boccone owned and controlled by falsifying the forms with the purported signatures of authorized signatories for the customer's bank account. The findings also stated that Boccone caused the transfer of \$750,000 to the entity he owned and controlled for his own personal use without the authorization of the customer. NASD also found that Boccone failed to respond to NASD requests to appear at on-the-record interviews. (NASD Case #C10020058)

Rick Lynn Burnett (CRD #2131056, Registered Representative, Decatur, Illinois) 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, Burnett consented to the described sanction and to the entry of findings that he converted assets of public customers by knowingly participating in a scheme to defraud and obtain money by material misrepresentations, concealments, and omissions. Furthermore, NASD found that Burnett sent forged requests to an insurance company for the withdrawal of \$175,000 from an annuity account of a public customer. The findings stated that Burnett received the \$175,000 checks and deposited the checks in his business account and used the entire amount for his own benefit or for other some benefit other than that of the customer. The findings further stated that Burnett failed to respond to NASD requests for information. **(NASD Case #C8A040022)**

Robin Carter Calvert (CRD #1185609, Registered Representative, Spartanburg, South Carolina) 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, Calvert consented to the described sanction and to the entry of findings that he made misrepresentations and material omissions of fact to public customers with the purchase or sale of a security. The findings also stated that Calvert made unsuitable recommendations to public customers. NASD also found that Calvert failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C07040029)**

Thomas Paul Cappellino (CRD #2262349, Registered Representative, Irving, Texas) was barred from association with any NASD member in any capacity. The sanctions were based on findings that Cappellino failed to disclose a material fact on his Form U4 and failed to respond to NASD requests for information. **(NASD Case #C06030026)**

Thomas Joseph Castro (CRD #1610563, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 35 days. Without admitting or denying the allegations, Castro consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm. The findings also stated that Castro engaged in private securities transactions and failed to provide prior written notification to, or obtain written approval from, his member firm.

Castro's suspension began June 7, 2004, and will conclude July 11, 2004. **(NASD Case #C10040050)**

Terry Philip Cole, Jr. (CRD #2790843, Registered Principal, Indianapolis, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Cole, no monetary sanction has been imposed. Without admitting or denying the allegations, Cole consented to the described sanctions and to the entry of findings that he failed to update timely his Form U4 to disclose a material fact.

Cole's suspension began June 7, 2004, and will conclude at the close of business September 6, 2004. **(NASD Case #C8A040026)**

Robert Williams Crowther, III (CRD #1035793, Registered Principal, Ocean Township, 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 principal or supervisory capacity for 30 business days. Without admitting or denying the allegations, Crowther consented to the described sanctions and to the entry of findings that he failed to reasonably and properly supervise a registered representative who made unsuitable recommendations to a public customer to purchase securities on margin.

Crowther's suspension began May 17, 2004, and will conclude at the close of business June 28, 2004. **(NASD Case #C9B040025)**

Raymond Louis Dirks (CRD #601699, Registered Representative, New York, New York) submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Dirks consented to the described sanctions and to the entry of findings that he wrote research reports that contained "Strong Buy" recommendations that did not define what was meant by a "Strong Buy," and did not disclose any risks that could impede the achievement of targets or estimates. The findings also stated that Dirks failed to disclose in a report that company auditors had issued a going concern on the company before the issuance of the report. NASD also found that in one report Dirks failed to disclose that his member firm was a market maker in the company's securities at the time the report was published. In addition, NASD found that reports omitted material facts and included price target projections and revenue estimates that were exaggerated, unwarranted, misleading, and without a legitimate basis, and forecast events that were unwarranted in light of the speculative nature of the company's business.

Dirks' suspension began May 17, 2004, and concluded at the close of business June 15, 2004. **(NASD Case #CAF030063)**

Ronald Raymond Dowling (CRD #1511055, Registered Representative, Mokena, Illinois) 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 30 days. Without admitting or denying the allegations, Dowling consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation without providing prompt written notice to his member firm.

Dowling's suspension began May 17, 2004, and concluded at the close of business June 14, 2004. (NASD Case #C8A040018)

James Michael Drew (CRD #2682083, Registered Principal, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$84,464, including disgorgement of \$74,464 in commissions received, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Drew reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Drew consented to the described sanctions and to the entry of findings that he engaged in excessive trading with the intent to defraud in the accounts of public customers. The findings also stated that Drew did not have reasonable grounds for believing that recommendations and resultant transactions were suitable for the customers on the basis of the customers' financial situation, investment objectives, and needs.

Drew's suspension began June 1, 2004, and will conclude at the close of business December 31, 2004. (NASD Case #C05040018)

Gregory Allen Eastman (CRD #2456282, Registered Principal, Tempe, Arizona) was fined \$20,000 and suspended from association with any NASD member in any capacity for two years. The fine is due and payable if and when Eastman returns to the securities industry. The sanctions were based on findings that Eastman falsely represented his commissions and assets under management at his member firm in order to obtain employment with another member firm.

Eastman's suspension began April 19, 2004, and will conclude at the close of business April 19, 2006. (NASD Case #C3A030012)

Scott Joseph English (CRD #4611147, Registered Representative, Mesa, Arizona) 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 six months. The fine must be paid before English reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification.

Without admitting or denying the allegations, English consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U4.

English's suspension began June 7, 2004, and will conclude at the close of business December 6, 2004. (NASD Case #C3A040021)

Mark Stanley Feuerberg (CRD #1156136, Registered Principal, Briarwood, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Feuerberg reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Feuerberg consented to the described sanctions and to the entry of findings that he sold a fixed term life insurance policy to a public customer and forged the customer's signature on a document without the customer's knowledge, authorization, or consent.

Feuerberg's suspension began May 17, 2004, and will conclude August 14, 2004. (NASD Case #C10040040)

Joseph M. Francis (CRD #4562148, Registered Representative, Charleston, Maine) 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 45 days. The fine must be paid before Francis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Francis consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Francis' suspension began June 7, 2004, and will conclude at the close of business July 21, 2004. (NASD Case #C11040018)

Alan Frankel (CRD #2735039, Registered Representative, Merrick, 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 one year, and ordered to disgorge \$135,417.77 in partial restitution to public customers. Without admitting or denying the allegations, Frankel consented to the described sanctions and to the entry of findings that he exercised control over the accounts of public customers and effected numerous and excessive securities transactions in their accounts using unsuitable levels of margin in a manner that was inconsistent with the customers' investment objectives.

Frankel's suspension began June 7, 2004, and will conclude at the close of business June 6, 2005. (NASD Case #C9B040030)

Robert Emmett Gill (CRD #2715248, Registered Principal, Eatontown, 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 10 business days. Without admitting or denying the allegations, Gill consented to the described sanctions and to the entry of findings that he purchased \$721 worth of shares of stock without customer approval while employed at a member firm.

Gill's suspension began May 3, 2004, and concluded at the close of business May 14, 2004. **(NASD Case #C9B040028)**

Gary Joseph Gordon (CRD #1710288, Registered Principal, Deerfield Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Gordon reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gordon consented to the described sanctions and to the entry of findings that he failed to supervise adequately a registered representative in the sale of unregistered stock to the investing public. The findings also stated that Gordon failed to conduct adequately due diligence of the stock issuer that would have detected there were no registration statements filed or in effect, and that the stock issuer's auditors had placed a "going concern" statement in the issuer's public filings. NASD also found that Gordon failed to detect red flags, including a dramatic increase in the sales volume of unregistered shares and to contact the customers to verify the trading activity in their accounts.

Gordon's suspension began May 3, 2004, and will conclude at the close of business May 2, 2005. **(NASD Case #CAF040027)**

Dmitriy Gulkarov (CRD #4183984, Registered Representative, Corona, 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, Gulkarov consented to the described sanction and to the entry of findings that he posed as an impostor for individuals and took licensing examinations on their behalf. **(NASD Case #C10040029)**

Dawn Cherie Halligan (CRD #4430041, Registered Representative, Ankeny, Iowa) was barred from association with any NASD member in any capacity. The sanction was based on findings that Halligan wrote checks on, and made withdrawals from, the business account of a registered representative for her personal use and benefit without the customer's authorization, knowledge, or consent. The findings also stated that Halligan embezzled \$27,420.94 from the business account at the firm branch office where she was employed. **(NASD Case #C04030062)**

Bill Powell Hanson (CRD #2819083, Registered Representative, Beaverton, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Hanson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hanson consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm.

Hanson's suspension began May 17, 2004, and will conclude at the close of business August 16, 2004. **(NASD Case #C3B040010)**

Antonio Harris (CRD #4524894, Registered Representative, Hiram, Georgia) 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, Harris consented to the described sanction and to the entry of findings that he falsified and submitted a life and disability insurance application for a fictitious customer to his employer with a copy of a falsified check purportedly written by the customer. **(NASD Case #C07040043)**

Howard Eugene Hustedt (CRD #253952, Registered Representative, Ideboct, Iowa) 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, Hustedt consented to the described sanction and to the entry of findings that he engaged in private securities transactions without notifying his member firm of the transactions, his proposed role therein, and without receiving prior written approval for these transactions from his member firm. The findings also stated that Hustedt participated in transactions that required registration as a general securities representative (Series 7) without qualifying and/or registering with NASD in that capacity. **(NASD Case #C04040018)**

Diane M. Janiec (CRD #2383100, Registered Representative, Rutherford, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. The sanction was based on findings that Janiec received \$1,751 from a public customer to pay for premiums on the customer's insurance policies, failed to deposit the funds with her firm and, instead, converted the funds for her own use and benefit without the customer's knowledge or consent. **(NASD Case #C9B040034)**

William Jacob Jaramillo (CRD #3157263, Registered Representative, Lyons, Illinois) 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, Jaramillo consented to the described sanction and to the entry of findings that he prepared

and submitted a customer information form, an application for life insurance or policy change, a mutual fund account application, an application for universal life policy, and money order applications bearing the falsified signatures of the customers without the knowledge or consent of the customers. The findings also stated that Jaramillo prepared and submitted documents bearing the falsified signatures of the customers without their knowledge or consent that included the acknowledgements of life insurance policies delivery. Furthermore, NASD found that the falsified documents represented that customers had received variable life insurance policies delivered by mail, which the customers had not requested or received and about which they had no knowledge. In addition, the findings stated that Jaramillo failed to respond to NASD written requests for information. (NASD Case #C8A040030)

Sheryl Anne Kaye (CRD #2267431, Registered Representative, Short Hills, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Kaye reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kaye consented to the described sanctions and to the entry of findings that she created false documents when she photocopied customers' signatures from expired insurance replacement forms and affixed them to current insurance replacement forms without the customers' permission or knowledge.

Kaye's suspension began June 21, 2004, and will conclude at the close of business August 4, 2004. (NASD Case #C9B040026)

Gerald Nelson Kieft, II (CRD #2315539, Registered Principal, Carlisle, Pennsylvania) 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 30 days. The fine must be paid before Kieft reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kieft consented to the described sanctions and to the entry of findings that he prepared a Web site for an investment advisory firm he formed for the purpose of distributing research reports to investors and brokers, and it contained numerous references to his member firm and its brokerage services that presented exaggerated and unbalanced statements. NASD also found that Kieft prepared a research report on a company, which was released on the Web site, that was unbalanced and misleading because it failed to mention the company's auditors' reservations about the company's ability to survive as a going concern. In addition, NASD found that Kieft purchased and sold shares of securities in the discretionary accounts of public customers during a period

beginning 30 days before and ending five days after the publication of a research report on the company.

Kieft's suspension began May 17, 2004, and concluded at the close of business June 15, 2004. (NASD Case #CAF040029)

Gary David Kneller (CRD #1836439, Registered Principal, Marietta, Georgia) 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, Kneller consented to the described sanction and to the entry of findings that he recommended an investment purported to be a secured loan with a guaranteed fixed rate of return to a public customer. The findings stated that, based on the recommendation, the customer caused \$500,000 to be wired to an account under the control of Kneller and his business partner. NASD found that the customer's funds were transferred out of the account and the customer's investment principal had been lost although she received payments totaling \$96,000 from the investment. Furthermore, NASD determined that Kneller entered into a settlement agreement in connection with legal action by the customer and failed to disclose the legal action and the settlement to his member firm. In addition, NASD found that Kneller failed to respond to NASD requests for documents and a written statement. (NASD Case #C07040024)

Jason Gerald Knight (CRD #2613450, Registered Representative, Holly, Michigan) 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 Knight reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Knight consented to the described sanctions and to the entry of findings that he effected discretionary transactions in the securities account of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firms.

Knight's suspension began June 7, 2004, and will conclude at the close of business July 6, 2004. (NASD Case #C8A040023)

Kevin Michael Krisko (CRD #4142981, Registered Representative, Holland, Ohio) was barred from association with any NASD member in any capacity. The sanction was based on findings that he suggested that an individual forge the signature of a public customer on documents to purchase an annuity for the customer. The findings also stated that Krisko submitted the forged documents to purchase a \$750,000 annuity for the customer, without the customer's knowledge or consent, in order to earn more points toward the payment of bonuses for himself and his "team." (NASD Case #C8B030029)

Barbara J. Lowe (CRD #4603000, Registered Representative, Sugarland, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Lowe reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lowe consented to the described sanctions and to the entry of findings that she willfully failed to disclose a material fact on her Form U4.

Lowe's suspension began June 7, 2004, and will conclude at the close of business December 6, 2004. (NASD Case #C06040011)

Richard Lewis Martin (CRD #2642814, Registered Representative, Denver, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Martin consented to the described sanction and to the entry of findings that he improperly utilized the internal recordkeeping and disbursement system of his employer to request, receive, and deposit to his own bank account checks totaling \$55,400. The findings also stated that Martin accomplished this by representing to his firm that the amounts of surrender charges previously retained by the firm were excessive and by requesting that the purported excess surrender charges be remitted to him. (NASD Case #C3A040022)

Michael Mayweather (CRD #4605403, Registered Representative, Ballwin, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Mayweather consented to the described sanction and to the entry of findings that he obtained a credit card from a bank by using a public customer's personal information without the knowledge, consent, or authorization of the customer. The findings also stated that Mayweather used the credit card to purchase merchandise and obtain cash advancements totaling \$4,667.15. (NASD Case #C04040017)

John Stevenson Miller (CRD #2139980, Registered Principal, New Rochelle, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Miller reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Miller consented to the described sanction and to the entry of findings that he improperly effected numerous securities transactions in his member firm's error account.

Miller's suspension began May 17, 2004, and will conclude at the close of business May 16, 2005. (NASD Case #C9B040031)

Paul Edward Mize (CRD #2206359, Registered Representative, Sedona, Arizona) was barred from association with any NASD member in any capacity and ordered to pay \$40,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Mize converted the funds of a public customer for his own use and benefit and failed to respond to NASD requests to appear for on-the-record interviews. (NASD Case #C07030072)

Michael Arthur Niebuhr (CRD #724449, Registered Principal, San Diego, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Niebuhr participated with others to evade the registration requirements of the Securities Act by selling unregistered and improperly registered common stock to investors. The findings also stated that Niebuhr purchased stock while participating in its distribution in violation of Regulation M. NASD also found that Niebuhr participated in a scheme to charge excessive and fraudulent markups of stock. (NASD Case #CAF020012)

Michael Sean O'Connell (CRD #2320720, Registered Representative, Basking Ridge, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, O'Connell consented to the described sanctions and to the entry of findings that he recommended, offered, and caused to be purchased residual income trust (REIT) shares in the individual retirement account (IRA) of a public customer without having reasonable grounds for believing that the investments were suitable for the customer. The findings also stated that O'Connell disregarded his customer's expressly stated investment objective to minimize risk and maintain liquidity in his IRA.

O'Connell's suspension began June 7, 2004, and will conclude at the close of business July 6, 2004. (NASD Case #CAF040032)

James Christopher Pangione (CRD #2315739, Registered Representative, Sterling, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 20 days. In light of the financial status of Pangione, no monetary sanction has been imposed. Without admitting or denying the allegations, Pangione consented to the described sanctions and to the entry of findings that he employed advertising, in the form of an internet Web site, to promote his investment business that failed to provide a sound basis for evaluating services being offered and included, among other things, exaggerated and unwarranted statements.

Pangione's suspension began May 17, 2004, and will conclude at the close of business June 5, 2004. (NASD Case #C11040012)

Ronald B. Pekarchik (CRD #1362535, Registered Principal, Farmingdale, 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, Pekarchik consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C9A040009)

Richard Lee Petersen (CRD #841120, Registered Principal, Kennewick, 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, Petersen consented to the described sanction and to the entry of findings that he provided public customers with account statements for their accounts with his member firms in which he overstated the value of the securities in their accounts. (NASD Case #C3B040011)

Timothy Angelo Rassias (CRD #2106648, Registered Representative, Holden, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 20 days. In light of the financial status of Rassias, no monetary sanction has been imposed. Without admitting or denying the allegations, Rassias consented to the described sanctions and to the entry of findings that he employed advertising, in the form of an internet Web site, to promote his investment business that failed to provide a sound basis for evaluating services being offered and included, among other things, exaggerated and unwarranted statements.

Rassias's suspension began May 17, 2004, and concluded June 5, 2004. (NASD Case #C11040013)

Louis Enrigve Rivadeneira (CRD #2826609, Registered Representative, New York, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Rivadeneira converted to his own use at least \$56,000 belonging to public customers. The findings also stated that Rivadeneira forged the signature of a public customer on an IRA distribution form and a flexible payment annuity form. NASD also found that Rivadeneira failed to respond to NASD requests for information and documents and to appear for an on-the-record interview. (NASD Case #C10030107)

David Edward Robert, Sr. (CRD #2608638, Registered Representative, Holland Patent, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,465, including disgorgement of \$465 of commissions received, and suspended from association with any NASD

member in any capacity for 10 business days. The fine must be paid before Robert reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Robert consented to the described sanctions and to the entry of findings that he made recommendations to a public customer to surrender her deferred variable annuity and purchase Class B shares of various funds without having reasonable grounds for believing that the recommendations were suitable based upon the customer's investment objective, financial situation, and needs.

Robert's suspension began June 7, 2004, and will conclude at the close of business June 18, 2004. (NASD Case #C11040016)

Theodore Gerald Rothman (CRD #405741, Registered Principal, Philadelphia, Pennsylvania) and David Lorin Rothman (CRD #1408470, Registered Principal, Richboro, Pennsylvania) submitted a Notice of Acceptance, Waiver, and Consent in which T.G. Rothman was fined \$45,000 and suspended from association with any NASD member in any capacity for 30 days. D.L. Rothman was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, T.G. Rothman and D.L. Rothman consented to the described sanctions and to the entry of findings that they recommended and effected Class S shares of a mutual fund in the accounts of public customers without reasonable grounds to believe their recommendations were suitable because, in all instances, one or more of the other fund share classes was less costly and/or otherwise more advantageous to investors.

T.G. Rothman's suspension will begin June 21, 2004, and will conclude at the close of business July 20, 2004. D.L. Rothman's suspension began June 7, 2004, and will conclude at the close of business June 18, 2004. (NASD Case #C9A040012)

Carl Pestano Salazar (CRD #4445191, Registered Representative, Antelope, California) 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, Salazar consented to the described sanction and to the entry of findings that he failed to disclose a material fact on his Form U4. The findings also stated that Salazar failed to respond to NASD requests for information. (NASD Case #C01030029)

David Duane Samuelson (CRD #1288815, Registered Representative, Virginia, Minnesota) 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, Samuelson consented to the described sanction and to the entry of findings that he failed to disclose material information on his Form U4 and failed to

respond to NASD requests for information. (NASD Case #C04040019)

Robert Michael Seahorn, Sr. (CRD #1522325, Registered Representative, Collierville, Tennessee) 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, Seahorn consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. (NASD Case #C05040023)

Scott C. Stevens (CRD #4585274, Registered Representative, Wheaton, Illinois) 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, Stevens consented to the described sanction and to the entry of findings that he converted \$1,531 from his member firm's banking affiliate by preparing and submitting documents, including four general ledger debits and one cashier's check request, to obtain funds from certain of the affiliate's accounts without the knowledge or authority of the affiliate and he used the funds for his own personal benefit. The findings also stated that Stevens failed to respond to NASD request for information. (NASD Case #C8A040021)

Kentdolphus Lamont Talley (CRD #4658198, Registered Representative, Fort Worth, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Talley reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Talley consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Talley's suspension began June 7, 2004, and will conclude at the close of business June 6, 2005. (NASD Case #C06040013)

Joseph Temkin (CRD #2231397, Registered Representative, Hyde Park, 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, Temkin consented to the described sanction and to the entry of findings that he converted \$430,000 of a public customer's fund for his own use and benefit. (NASD Case #C11040014)

Jason Kevin Walker (CRD #4644615, Associated Person, Covington, Louisiana) 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 Walker reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Walker consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

Walker's suspension began June 7, 2004, and will conclude at the close of business July 6, 2004. (NASD Case #C05040020)

Samuel Kouchin Wang (CRD #3201292, Registered Representative, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Wang reassociates with a member firm or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wang consented to the described sanctions and to the entry of findings that he exercised discretionary transactions in the account of a public customer without prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The findings also stated that Wang sent electronic mail messages from public customers from a computer located in his personal residence without first submitting the correspondence for approval by a principal of the firm.

Wang's suspension began June 7, 2004, and will conclude at the close of business December 6, 2004. (NASD Case #C05040026)

Robert Wayne Wilson (CRD #2814879, Registered Representative, Thomson, 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 six months. The sanctions were based on findings that Wilson altered a firm document concerning the collateral assignment of an annuity and submitted the falsified document to a bank as part of a personal loan application.

Wilson's suspension began May 17, 2004, and will conclude at the close of business November 16, 2004. (NASD Case #C07040039)

Matthew Donald Wittschiebe (CRD #4222286, Registered Representative, Kent, Washington) 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 Wittschiebe reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wittschiebe consented to the described sanctions and to the entry of findings that he affixed, or caused to be affixed, the signature

of a public customer to an Acknowledgement and Authorizations form without the customer's consent, and submitted the form to an insurance company in connection with the purchase of a life insurance policy.

Wittschiebe's suspension began June 7, 2004, and will conclude at the close of business August 5, 2004. (NASD Case #C3B040013)

Sally Ann Yanchus (CRD #2011984, Registered Representative, Woodstock, New York) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$15,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Yanchus consented to the described sanctions and to the entry of findings that she wrote a research report on a company with a sell/sell short recommendation on the company's common stock that was distributed to customers of her member firm and other members of the public that contained substantive errors and statements that were exaggerated, unwarranted, or misleading. The findings also stated that Yanchus wrote a "morning note" about the company that repeated errors or misleading information even though the errors in the report had been brought to her attention. NASD also found that Yanchus failed to disclose in the "morning note" that her member firm made a market in the company's securities at the time the report was published.

Yanchus' suspension began May 3, 2004, and concluded May 16, 2004. (NASD Case #CAF040028)

Robert Terry Young (CRD #2738223, Registered Representative, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Young consented to the described sanction and to the entry of findings that he requested that his member firm's clearing firm issue checks totaling \$418,826.37 from the account of a public customer without the authority of the customer or her representatives, and deposited the checks into the bank account of a company Young established for his personal use or for some purpose other than the benefit of the customer without permission or authority of the customer or her representatives. The findings also stated that Young completed and sent falsified financial statements to the executrix of a customer's estate and her attorney. NASD also found that Young failed to respond to NASD requests for information. (NASD Case #C8A040024)

Robert Young (CRD #2702774, Registered Representative, Houston, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Young used his discretion to effect transactions in the account of a public customer in disregard of his firm's denial of

Young's request that the firm accept the customer's account as discretionary. The findings also stated that Young effected transactions in the account of a public customer without his member firm's written acceptance of the account as discretionary. NASD also found that Young failed to respond to NASD requests for information. (NASD Case #C05030059)

Denis Gilmour Yuen (CRD #2891536, Registered Representative, East Moriches, New York) 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, Yuen consented to the described sanctions and to the entry of findings that he engaged in an outside business activity without providing prompt written notice to his member firm.

Yuen's suspension began May 17, 2004, and concluded at the close of business May 31, 2004. (NASD Case #C10040031)

William Jay Zuehl (CRD #2393860, Registered Representative, Excelsior, Minnesota) 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, Zuehl consented to the described sanction and to the entry of findings that he participated in a process to circumvent Regulation 60, a New York State Insurance regulation that requires a financial adviser involved in an annuity replacement transaction to, among other things, meet with a customer on at least two separate occasions. The findings stated that Zuehl placed dates on Regulation 60 documents that gave the false impression that two meetings had occurred when, in fact, only one meeting had occurred. (NASD Case #C9B040037)

Individual Fined

Loretta Emanuele (CRD #1147761, Registered Principal, Kendall Park, New Jersey) was fined \$10,000 and ordered to requalify as a financial and operations principal prior to reassociating with a member firm. The fine must be paid before Emanuele reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Emanuele consented to the described sanctions and to the entry of findings that she prepared and filed inaccurate FOCUS reports and prepared inaccurate books and records including general ledgers on behalf of the firm. The findings also stated that Emanuele caused her member firm to conduct a securities business when the firm's net capital fell below the minimum required under the net capital rule. (NASD Case #C10040028)

Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

Thomas Anthony Burgo (CRD #3131830, Registered Representative, Depew, New York) was named as a respondent in an NASD complaint alleging that he received \$1,000 from a public customer to invest on behalf of her children and, instead, deposited the funds into his personal bank account rather than making the investments, thereby converting the funds for his own use and benefit without the authorization or consent of the customer. (NASD Case #C9B040035)

James Francis Flynn, Jr. (CRD #1776929, Registered Supervisor, Morristown, New Jersey) was named as a respondent in an NASD complaint alleging that he solicited, recommended, and effected mutual fund transactions totaling over \$1.1 million in Class B mutual funds in the account of a public customer without reasonable grounds for believing that the transactions were suitable for the customer's account given the amount of Class B shares purchased, the nature of the recommended transactions, and the customer's financial situation, investment objectives, circumstances, and needs. The complaint further alleges that Flynn's recommendations were unsuitable for the customer in that the customer would have received breakpoints, paid lower 12b-1 fees, and avoided contingent deferred sales charges if Class A shares had been recommended and purchased. In addition, the complaint alleges that the customer would have avoided front-end sales charges if Flynn utilized a letter of intent or rights of accumulation, and invested the \$1.1 million in one fund family. The complaint also alleges that Flynn received approximately \$13,953 in commissions due to the unsuitable recommendations. (NASD Case #C9B040036)

Melissa Mae Humphreys (CRD #4474941, Registered Representative, Tampa, Florida) was named as a respondent in an NASD complaint alleging that she caused the issuance of new debit/ATM cards for bank customers without their knowledge or authorization, obtained temporary debit/ATM cards for the customers' accounts without their knowledge or authorization, and used the cards to make unauthorized cash withdrawals and purchases totaling \$9,096.21. The complaint also alleges that Humphreys failed to respond to NASD requests for information. (NASD Case #C07040036)

Gregory Adam Jurkiewicz (CRD #2582435, Registered Representative, Dunedin, Florida) was named as a respondent in an NASD case alleging that he made unsuitable recommendations to purchase Class B shares of mutual funds without reasonable grounds for believing that the recommendations were suitable for the customers. The complaint also alleges that Jurkiewicz omitted to disclose material information in his recommendations to public customers to purchase mutual funds. In addition, the complaint alleges that Jurkiewicz failed to respond to NASD requests for information. (NASD Case #C3A040020)

John David Kaweske (CRD #2309807, Registered Principal, Miami, Florida) was named as a respondent in an NASD complaint alleging that he failed to return investor funds, securities, or the proceeds from the sale of the securities after an offering closed without meeting the contingency. The complaint also alleges that Kaweske failed to establish an escrow account on behalf of a stock issuer as described in the subscription agreement. The complaint further alleges that Kaweske knowingly or recklessly failed to disclose and omitted material information in the sale of preferred stock. In addition, the complaint alleges that Kaweske willfully failed to disclose material information on his Form U4. (NASD Case #C07040042)

Ibrahim Ethem Kurtulus (CRD #2287372, Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that he opened accounts at his member firm for public customers without their prior knowledge, authorization, or consent. The complaint also alleges that Kurtulus effected transactions in the accounts of public customers without their prior knowledge, authorization, or consent. (NASD Case #C10040030)

Ross McVey, Jr. (CRD #1418538, Registered Principal, Oshkosh, Wisconsin) was named as a respondent in an NASD complaint alleging that McVey prepared and submitted more than 50 documents, upon which the signatures of customers were affixed without their knowledge or consent in order for McVey to obtain payments for financial plans that were not provided and to increase the fees charged to customers' accounts totaling in excess of \$120,000, without the customers' knowledge and consent. The complaint also alleges that McVey obtained funds totaling in excess of \$120,000 by preparing and submitting documents bearing the signatures of public customers of his member firm, affixed without their knowledge or consent, to authorize payments from their accounts for financial plans that were not provided and to increase the fees charged to customers' accounts that were not authorized. The complaint further stated that the funds were paid to and used by McVey for his personal benefit and not for the benefit of the customers. In addition, the complaint alleges that McVey failed to respond to NASD's request to appear to give on-the-record testimony. (NASD Case #C8A040020)

Max J. Silberman (CRD #423803, Registered Representative, Orange Village, Ohio) was named as a respondent in an NASD complaint alleging that Silberman exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The complaint also alleges that Silberman sold, or caused to be sold, option call contracts without the knowledge or consent of the executor of a public customer's estate and in the absence of written or oral authorization to Silberman to exercise discretion in said account. (NASD Case #C8A040028)

Brian Thomas Slich (CRD #4025395, Registered Representative, Metairie, Louisiana) was named as a respondent in an NASD complaint alleging that he processed internal checking/savings account debit advices and withdrew \$10,514.19 from the accounts of public customers, thereby converting the funds to his own use and benefit without the customers' knowledge or consent. The complaint also alleges that Slich failed to respond to NASD requests for information. (NASD Case #C05040025)

Steven Lee Smith (CRD #2224721, Registered Representative, Alpharetta, Georgia) was named as a respondent in an NASD complaint alleging that he completed an application for the purchase of a variable annuity in an amount over \$650,000 in the IRA of a public customer by forging the signature of the customer, without the knowledge or authorization of the customer. The complaint also alleges that Smith failed to respond to an NASD request for information. (NASD Case #C07040041)

Danny Ray Talbott (CRD #1336628, Registered Principal, Hinsdale, Illinois) was named as a respondent in an NASD complaint alleging that Talbott purchased or caused the purchase of \$45,000 worth of mutual fund shares in the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to Talbott to exercise discretion in said accounts. (NASD Case #C8A040035)

Joseph M. Williams, Sr. (CRD #467974, Registered Representative, West Deal, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended and effected the purchases and sales of securities to the account of a public customer without reasonable grounds to believe the purchases he recommended and effected were suitable based on the customer's financial needs and investment objectives, the risk characteristics of the securities, the dollar size of the purchases, the fact that he knew the purchases would be made on margin, losses the customer had sustained on prior purchases, and the existing margin debit in the account. The complaint also alleges that Williams did not have any reasonable grounds to believe that any use of margin to purchase stocks having the risk characteristics of the stocks he recommended was suitable for the customer. (NASD Case #C9B040027)

Firm Expelled for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

CGI Capital, Inc.
Mundelein, Illinois
(May 14, 2004)

Firms Suspended for Failure to Supply Financial Information

The following firms were suspended from membership in NASD for failure to comply with formal written requests to submit financial information to NASD. The action was based on the provisions of NASD Rule 8221. 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.

BIO-IB, Inc.
New York, New York
(May 12, 2004)

Blake Barnett
Investments, Inc.
Houston, Texas
(May 12, 2004)

DAV/Wetherly Financial, L.P.
Los Angeles, California
(May 12, 2004)

Harvest Capital
Investments LLC
Vienna, Virginia
(April 19, 2004)

IICC – Tradeco, Inc.
Houston, Texas
(April 19, 2004)

International Capital
Markets Group, Inc.
Los Angeles, California
(May 12, 2004)

May, Davis Group, Inc.
New York, New York
(April 19, 2004 –
April 29, 2004)

Morgan Schiff & Co., Inc.
New York, New York
(May 12, 2004)

Perez & Associates, LLC
New York, New York
(April 19, 2004)

Supertrade Securities, Inc.
Houston, Texas
(April 19, 2004 –
April 30, 2004)

Touchtrade.com, Inc.
Salt Lake City, Utah
(April 19, 2004)

Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210.

(The date the bar became effective is listed after the entry.)

Hall, Frank D.
Houston, Texas
(April 16, 2004)

Williams, Trenea Y.
Bakersfield, California
(April 14, 2004)

Lusk, Ron Alan
Bend, Oregon
(May 6, 2004)

Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested Under NASD Rule 8210.

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Adler, Wendy Lynn
North Hills, New York
(April 27, 2004)

Hall, Nutashia L.
Kennesaw, Georgia
(April 20, 2004)

Breier, Mitchell G.
Dallas, Texas
(April 27, 2004)

Hershberg, Elliot M.
Harrison, New York
(April 16, 2004)

Ferrigan, Peter B.
Amityville, New York
(May 4, 2004)

Ippolito, Anthony Edward
Stockton, California
(April 13, 2004)

Gupta, Arvind K.
Flushing, New York
(April 22, 2004)

Nortman, Jaime Alyson
New York, New York
(April 27, 2004)

Individual Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Rooney, John R.
Jupiter, Florida
(May 14, 2004)

Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply with an Arbitration Award or a Settlement Agreement

Brandon, Christopher
Ormond Beach, Florida
(May 3, 2004)

Winick, Martin
Henderson, Nevada
(May 17, 2004)

Hemans, Wayne S.
Delray Beach, Florida
(April 21, 2004)

Breier, Mitchell G.
Dallas, Texas
(April 27, 2004)

Porter, Jr., Gerald B.
San Francisco, California
(April 30, 2004)

NASD Fines and Suspends Phua Young, Former Merrill Lynch Research Analyst; Young Issued Research in Violation of NASD Rules, Selectively Disclosed Material Nonpublic Information, Gave Prohibited Gift to Tyco's Former CEO

NASD has fined Phua Young, a former managing director at Merrill Lynch, \$225,000 and suspended him from the industry for one year for a series of NASD rule violations relating to his activities as a research analyst.

The sanctions imposed stem from a complaint filed by NASD against Young in May 2003, focusing on his coverage of Tyco International Ltd. Today's settlement also resolves charges contained in an amended complaint filed by NASD in March 2004 relating to Young's coverage of Honeywell International Inc.

Young was the senior Merrill Lynch analyst providing research coverage of Tyco and Honeywell from 1999 through April 2002, when Merrill discharged him. During that time, he issued research on both companies that violated NASD rules, improperly shared research reports, and selectively disclosed material nonpublic information.

"The conduct of this analyst amounted to a betrayal of the objectivity and honesty in research that investors are entitled to," said Barry R. Goldsmith, NASD Executive Vice President for Enforcement. "We will continue to hold analysts to high professional standards and appropriately sanction them for misleading and skewed research."

Tyco

NASD found that Young issued a number of favorable Tyco research reports that violated NASD rules. In January 2002, Tyco announced that it would retire \$11 billion in debt and spin off its CIT Group, a large commercial lender that Tyco had purchased for \$10 billion. The sale of CIT was important for Tyco because the proceeds were to be used to repay some of Tyco's debt.

Young issued a series of favorable Tyco research reports assuming that Tyco would receive \$8 billion for its CIT unit and assigning its stock a target price of \$65.00 when it was trading in the \$30.00 range. None of these reports disclosed Young's privately held views that the CIT unit was not worth "anything near \$8B," that Tyco's fundamentals were weak because of its debt, and that Tyco's stock was overvalued. As early as February 26, 2002, Young noted his concern privately that CIT would be sold at a huge loss, writing in an e-mail:

"Dennis [Kozlowski] sounds down. He does not sound like he can sell CIT without a huge loss."

Young also privately expressed his negative view of Tyco's debt level, and that the stock would not reach its target price. For example, in another e-mail, Young stated:

"I am waiting for [a share price of] \$10 after Tyco [sic] announces the inability to sell CIT [sic] for anything near \$8B. Liquidity crunch, more distractions, the debt bomb starts to TICK, TICK, TICK . . ."

Young maintained a close relationship with Tyco, as evidenced by his own emails. For example, Young wrote to a senior employee in Tyco's Investor Relations Department, "I am indirectly paid by Tyco." The nature of Young's relationship with Tyco is also evident from favors he sought and/or received from the company. For example, at Young's request, Tyco retained a private investigator to prepare a background report on one of Young's personal friends and he subsequently received a comprehensive background report. For his part, Young improperly gave a gift — a case of wine, valued at over \$4,500 — to Dennis Kozlowski, Tyco's then-CEO. NASD's gifts and gratuities rules prohibit a registered person from giving gifts valued at over \$100 to any person where such payment is in relation to the business of the employer of the recipient.

Honeywell

On June 19, 2000, Honeywell announced lower than expected earnings. After this announcement, Young maintained 1-1- buy rating on Honeywell, the highest rating Merrill Lynch offered, and issued five favorable research reports on the company in June and July 2000. While Young continued to issue research recommending that investors buy the stock, NASD found that his research failed to reflect the negative views he expressed privately.

For example, in e-mails, Young characterized Honeywell as a "totally unmitigated disaster." Young derisively called Honeywell a "hondog" (sic) and described the shortfall as "the latest fiasco." Young further expressed his negative views, beliefs and opinion about the company in other emails, stating:

"[a] tough week today! No controls, no cushion, no credibility = no P/E. What a disaster!"

"[the former Honeywell CEO] sold us a lemon. It would look like the cupboards are bare and that there is a lack of controls."

Advance Notice of Research and Ratings to Tyco and Institutional Investors; Dissemination of Material Nonpublic Information

NASD also found that Young, on a number of occasions, gave Tyco advance notice of research reports and ratings before releasing them to the public, solicited Tyco to make changes in the reports and generally followed Tyco's suggested edits. For example, in one e-mail, Young forwarded a draft report and proposed rating to Tyco's chief financial officer, stating:

"PLEASE REVIEW ASAP. I WILL NOT SEND OUT UNTIL I HEAR FROM YOU FIRST!

LOYAL TYCO EMPLOYEE!"

Young agreed to the settlement without admitting or denying the allegations or findings.

NASD Disciplines Three Firms, Three Brokers for Variable Annuity Abuses; Total Fines Exceed \$500,000, with Two Brokers Permanently Barred

NASD fined three securities firms and one broker a total of \$503,000 for violations involving variable annuity transactions as part of its ongoing efforts to curb abuses in the sale of variable products. In addition, two brokers were barred from the industry.

NASD censured and fined Nationwide Investment Services Corporation of Columbus, OH and its affiliate, Nationwide Securities, Inc. of Dublin, OH a total of \$175,000 for having inadequate procedures and systems governing its sale of variable annuities, and for distributing advertising and sales literature that failed to make required disclosures regarding variable annuity investments. In addition, NASD censured and fined American Express Financial Advisors, Inc. \$300,000 for inadequate record keeping during a four-year period, which was discovered as a result of an investigation into unauthorized withdrawals from a customer's variable annuity account.

In the three separate enforcement actions against individual brokers, NASD announced that it barred one for converting funds from a variable annuity, barred another for forgery and misrepresentation in connection with variable annuity sales, and fined a third broker \$28,000 and suspended him for six months for unsuitable sales of deferred variables annuities.

"Variable annuities are complex products that are difficult for many investors to fully understand," said Mary L. Schapiro, NASD Vice Chairman and President of Regulatory Policy and Oversight. "The vast majority of our enforcement actions in this

area involve suitability, disclosure and supervision issues, which is why we are proposing tougher rules specifically governing variable annuity sales." (See www.nasdr.com/news/pr2004/release_04_027.html.)

Nationwide Investment Services Corporation and Nationwide Securities, Inc. distributed variable products advertising that contained deficiencies previously identified by NASD's Advertising Regulation Department. Among those deficiencies were failures to: prominently disclose the charges and fees associated with the product; explain that dollar cost averaging does not insure profit or protect against loss; clearly identify the product as a variable annuity and/or variable universal life insurance product, and provide a balanced presentation of the risks and benefits associated with investing in a variable annuity.

Nationwide Investment Services Corporation also failed to implement procedures to obtain customer information that is critical to evaluating the suitability of an investment in a variable annuity. In many instances, the firm failed to obtain information about tax bracket, prior investment experience, annual income, liquid net worth, risk tolerance, time horizon, investment objective, customer age or the details of the product being replaced by the variable annuity investment. The firm also failed to provide registered representatives with specific guidelines for evaluating the information obtained from a customer prior to making a recommendation to purchase a variable annuity.

American Express Financial Advisors, Inc. failed to preserve certain records in a non-rewriteable, non-erasable format as required by SEC rules. The records included copies of account statements, certain confirmations, and letters sent to customers confirming changes of address. These violations came to light as a result of NASD's investigation of the activities of a former registered representative of American Express who made unauthorized sales and cash withdrawals totaling \$124,900 from a customer's variable annuity and who then converted the funds. The representative avoided detection for almost two and one-half years because he had changed the customer's address on the records of American Express to the representative's own address.

NASD also took action against the following individuals in connection with variable annuity transactions:

- Daniel Karl Park, of Frisco, TX, formerly employed by Northwestern Mutual Investment Services, was barred from association with any NASD member in any capacity for signing the name of his wife to six different variable annuity withdrawal requests and then converting the funds without his wife's authorization.

- Debora A. Fruge, of Sulpher, LA, formerly employed by Banc One Securities Corporation, was barred for making misrepresentations to a customer regarding the balance of a variable annuity account, forging the customer's name to change of address forms, falsifying a confirmation relating to the variable annuity account, and failing to provide truthful information to the NASD. Fruge's course of misconduct began with a misunderstanding between Fruge and the customer regarding the nature of the annuity. The customer believed the annuity to be fixed; however, it was, in fact, a variable annuity. Rather than address the misunderstanding, Fruge misrepresented the balance and attempted to conceal her misrepresentations by creating a false confirmation and redirecting the customer's statements and confirmations for delivery to the branch office. Although the firm had procedures to ensure that change of address forms were not changed to post office boxes or branch office addresses, Fruge avoided detection by changing the address through the variable annuity company, rather than through her firm.
- Michael H. Tew, of Dothan, AL, formerly employed by A.G. Edwards & Sons, Inc., was suspended for six months and fined \$28,000 for the sale of three unsuitable variable annuities. The first unsuitable sale was to an elderly couple, both of whom were 76 years old at the time of the purchase. Tew knew that the customers were about to enter an assisted-living facility and had a need for liquidity. He also knew that the customers indicated income as their primary investment objective and wished to preserve the principal of their investment for their heir. Investment in the variable annuity accomplished none of these goals. The variable annuity did not allow the customers full access to their funds for seven years without incurring a surrender charge. The variable annuity purchase did not produce income, because Tew recommended investment in capital appreciation and growth sub accounts. In addition, the investment failed to preserve principal for their heir because the death benefit applied only if the customers died before the tenth contract year. Finally, Tew sold the customers a Retirement Income Guarantee Rider that was only available to contract owners 75 years old or younger. At age 76, the customers were ineligible for this rider. Because the variable annuity accomplished none of the investment goals identified by the customers, the customers could not financially benefit from the purchase, rendering the recommendation unsuitable. Tew also made unsuitable variable annuity recommendations in two other instances.

In settling these matters, the respondents neither admitted nor denied the allegations or findings.