

JULY 2005

Notice to Members

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Notice to Members

JULY 2005

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Senior Management

KEY TOPICS

Rule 3010
Taping Rule

GUIDANCE

Taping Rule

SEC Approves Amendments Relating to Taping Rule
"Opt Out" and Exemption Provisions; **Effective Date:
August 1, 2005**

Executive Summary

On May 5, 2005, the Securities and Exchange Commission approved amendments to paragraph (L) of Rule 3010(b)(2) (Taping Rule or Rule). The amendments require member firms that are seeking an exemption from the Rule to submit their exemption requests to NASD within 30 days of receiving notice from NASD or obtaining actual knowledge that they are subject to the provisions of the Rule. The amendments also clarify that firms that trigger application of the Taping Rule for the first time can elect to either avail themselves of the one-time "opt out provision" or seek an exemption from the Rule, but they may not seek both options.¹

The Rule, as amended, is set forth in Attachment A. The amendments become effective on **August 1, 2005**.

Questions/Further Information

Questions concerning this *Notice* may be directed to Afshin Atabaki, Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8902; or Courtney A. Dinsmore, Senior Attorney, Department of Member Regulation, at (202) 728-8402.

Background and Discussion

The Taping Rule, which has been in effect since 1998, is designed to ensure that members with a significant number of registered persons that previously were employed by firms that have been expelled from membership or have had their registrations revoked for sales practice violations (Disciplined Firms) have proper supervisory procedures in place relating to telemarketing activities to prevent fraudulent and improper sales practices or other customer harm.

05-46

Under the Rule, member firms that hire a specified number of registered persons from Disciplined Firms must establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all their registered persons. Such procedures must include tape-recording all telephone conversations between such firms' registered persons and both existing and potential customers. The Rule provides firms up to 60 days from the date they receive notice from NASD or obtain actual knowledge that they are subject to the provisions of the Rule to establish and implement the required supervisory procedures, including installing taping systems. Such firms also are required to review the tape recordings, maintain appropriate records, and file quarterly reports with NASD.

The Taping Rule permits member firms that become subject to the Rule for the first time a one-time opportunity to adjust their staffing levels to fall below the prescribed threshold levels and thus avoid application of the Rule (often referred to as the "opt out provision"). A firm that elects this one-time option must reduce its staffing levels to fall below the applicable threshold levels within 30 days after receiving notice from NASD or obtaining actual knowledge that it is subject to the provisions of the Rule. Once a firm has made the reductions, the firm is not permitted to rehire the terminated individuals for at least 180 days.

NASD also has the authority to grant exemptions from the Rule in "exceptional circumstances." In reviewing exemption requests, NASD generally has required a firm to establish that it has alternative procedures to assure supervision at a level functionally equivalent to a taping system. Prior to these amendments to Rule 3010(b)(2)(L), the Rule was silent on the time frame for submitting an exemption request. However, because the Rule provides a firm a total of 60 days from the date it receives notice from NASD or obtains actual knowledge that it is subject to the provisions of the Rule to implement the required supervisory procedures, a firm implicitly has that 60-day period to submit an exemption request.

A firm that submits an exemption request is not required to establish and implement the required supervisory procedures, including the taping system (*i.e.*, such requirements are "tolled") while the staff is reviewing the request and during the course of any subsequent appeals to NASD's National Adjudicatory Council (NAC). NASD tolls the Taping Rule's requirements during the exemption appeal process primarily due to the significant costs involved with installing a taping system and the possibility that the staff or NAC will grant the exemption. At the same time, firms often wait until the 60th day (or shortly before) to request the exemption, which, assuming the exemption was not granted, only further prolonged the establishment and implementation of the required supervisory procedures.

To reduce these possible delays in implementation of the Taping Rule requirements, NASD has amended Rule 3010(b)(2)(L) to require firms that are seeking an exemption from the provisions of the Rule to submit their exemption requests to NASD within 30 days of receiving notice from NASD or obtaining actual knowledge that they are subject to the provisions of the Rule. Specifying a time frame for submitting an exemption request is consistent with the investor protection concerns that the Rule is intended to address, especially given that the requirement to establish and implement the appropriate supervisory procedures is tolled upon the submission of an exemption request. Moreover, based on NASD's experience, 30 days will provide ample time for firms to decide whether to seek an exemption and to submit their requests to NASD.

NASD also received inquiries from some firms as to whether they could elect to use the "opt out" while simultaneously seeking an exemption, with the goal being that the firm would be granted an exemption and be able to immediately rehire the persons whose employment was terminated as part of the "opt out" (rather than waiting the requisite 180 days). However, firms may not pursue these two alternatives simultaneously. A core purpose of the "opt out provision" is to provide relief to those firms that may have inadvertently or unintentionally become subject to the Taping Rule for the first time due, for example, to sudden turnover among registered persons or other events beyond the firm's control. In contrast, exemptions, which are granted only in "exceptional circumstances," are for those situations where the firm has demonstrated that it has supervisory procedures that are equivalent to a taping system or is otherwise in a truly unique situation. It would be inconsistent with the purposes of these two provisions to permit a firm to pursue both options with NASD, either simultaneously or one after the other.

Accordingly, NASD has amended Rule 3010(b)(2)(L) to clarify that firms that trigger application of the Taping Rule for the first time must elect to either avail themselves of the one-time "opt out provision" (*i.e.*, make the staff adjustment to fall below the thresholds of the Rule) or seek an exemption from the Rule, but they may not elect to do both. Pursuant to the amended Rule, firms that become subject to the Taping Rule for the first time have 30 days to decide between the above options.

Endnote

- 1 See Securities Exchange Act Release No. 51658 (May 5, 2005), 70 FR 24848 (May 11, 2005) (Order Granting Approval of Proposed Rule Change Relating to Taping Rule "Opt Out" and Exemption Provisions; File No. SR-NASD-2005-033).

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ATTACHMENT A

New language is underlined; deleted language is in brackets.

3010. Supervision

(a) No Change.

(b) **Written Procedures**

(1) No Change.

(2) Tape recording of conversations

(A) Each member that either is notified by NASD [Regulation] or otherwise has actual knowledge that it meets one of the criteria in paragraph (b)(2)(H) relating to the employment history of its registered persons at a Disciplined Firm as defined in paragraph (b)(2)(J) shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered persons.

(B) The member must establish and implement the supervisory procedures required by this paragraph within 60 days of receiving notice from NASD [Regulation] or obtaining actual knowledge that it is subject to the provisions of this paragraph.

A member that meets one of the criteria in paragraph (b)(2)(H) for the first time may reduce its staffing levels to fall below the threshold levels within 30 days after receiving notice from NASD [Regulation] pursuant to the provisions of paragraph (b)(2)(A) or obtaining actual knowledge that it is subject to the provisions of the paragraph, provided the firm promptly notifies the Department of Member Regulation, NASD [Regulation], in writing of its becoming subject to the Rule. Once the member has reduced its staffing levels to fall below the threshold levels, it shall not rehire a person terminated to accomplish the staff reduction for a period of 180 days. On or prior to reducing staffing levels pursuant to this paragraph, a member must provide the Department of Member Regulation, NASD [Regulation] with written notice, identifying the terminated person(s).

(C) No Change.

(D) The member shall establish reasonable procedures for reviewing the tape recordings made pursuant to the requirements of this paragraph to ensure compliance with applicable securities laws and regulations and applicable rules of [the Association] NASD. The procedures must be appropriate for the member's business, size, structure, and customers.

(E) through (F) No Change.

(G) By the 30th day of the month following the end of each calendar quarter, each member firm subject to the requirements of this paragraph shall submit to [the Association] NASD a report on the member's supervision of the telemarketing activities of its registered persons.

(H) No Change.

(I) For purposes of this Rule, the term "registered person" means any person registered with [the Association] NASD as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series or pursuant to Municipal Securities Rulemaking Board ("MSRB") Rule G-3.

(J) through (K) No Change.

(L) Pursuant to the Rule 9600 Series, [the Association] NASD may in exceptional circumstances, taking into consideration all relevant factors, exempt any member unconditionally or on specified terms and conditions from the requirements of this paragraph. A member seeking an exemption must file a written application pursuant to the Rule 9600 Series within 30 days after receiving notice from NASD or obtaining actual knowledge that it meets one of the criteria in paragraph (b)(2)(H). A member that meets one of the criteria in paragraph (b)(2)(H) for the first time may elect to reduce its staffing levels pursuant to the provisions of paragraph (b)(2)(B) or, alternatively, to seek an exemption pursuant to paragraph (b)(2)(L), as appropriate; such a member may not seek relief from the Rule by both reducing its staffing levels pursuant to paragraph (b)(2)(B) and requesting an exemption.

(3) through (4) No Change.

(c) through (g) No Change.

Notice to Members

JULY 2005

SUGGESTED ROUTING

Legal and Compliance
Operations
Senior Management

KEY TOPICS

Exchange Act Rule 15c3-1
Exchange Act Rule 15c3-3
Federal Reserve Board Regulation T
NASD Rule 2520
Systems
Unexpected Close

GUIDANCE

Unexpected Close of Securities Markets

Executive Summary

This *Notice* provides guidelines to members regarding the applicability of Exchange Act Rules 15c3-1 and 15c3-3, NASD Rule 2520, and Federal Reserve Board Regulation T in the event the securities markets unexpectedly close. The *Notice* explains the circumstances under which the day of the unexpected close is to be considered a “regular business day” and the circumstances under which it should be considered a “non-business day.”

Questions/Further Information

Questions regarding this *Notice* may be directed to Susan M. DeMando, Associate Vice President, Financial Operations, Department of Member Regulation, at (202) 728-8411.

Background and Discussion

On occasion, the securities markets may unexpectedly close for business; e.g., on a national day of mourning. However, the Federal Reserve regional banks, other banks, and the Depository Trust & Clearing Corporation (DTCC) may elect to remain open for clearance and settlement of securities. Such an event occurred on June 11, 2004, the day of former President Ronald Reagan’s funeral.

In anticipation of future unexpected closings similar to the closing that occurred on June 11, 2004, this *Notice* provides members with guidelines regarding the applicability of various regulations.¹ NASD members should follow these guidelines in the event of an unexpected close. This *Notice* will hereafter refer to an unexpected close of securities markets as “that day.”

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1. Regarding the applicable regulatory requirements pursuant to Exchange Act Rules 15c3-1 and 15c3-3, NASD Rule 2520, and Federal Reserve Board Regulation T, if the banks and DTCC are open, members should consider “that day” as a regular business day for the following:

(A) Exchange Act Rule 15c3-1 (Net Capital)

For aging purposes, in determining net capital charges (fail to deliver, suspense charges, etc.), “that day” should be considered as a regular business day.

(B) Exchange Act Rule 15c3-3 (Reserve Formula and Possession or Control)

- (1) If “that day” occurs on a Friday, the weekly reserve formula computation should be prepared, as usual, as of close of business on Friday, with the deposit requirement (if any) to be made by 10 a.m. on the second business day following the computation date.
- (2) If “that day” occurs on the normal month-end date, the reserve formula computation should be prepared, as usual, as of close of business on the month-end date with the deposit requirement (if any) to be made by 10 a.m. on the second business day following the computation date.
- (3) For purposes of possession or control requirements, bank loan and stock loan recalls, if required, should be effected on “that day.”

(C) Federal Reserve Board Regulation T (Extensions)

Margin extensions due on “that day” can be filed either on “that day” or on the next business day (as of “that day”). All subsequent extensions required to be filed after “that day” should be filed on the normal due date, counting “that day” as a business day. However, if the request for an extension has expired or is denied, “that day” should be treated as a non-business day since securities cannot be liquidated when the primary market where the securities are traded is closed.

(D) NASD Rule 2520 (Margin Calls)

For maintenance margin calls, pursuant to NASD Rule 2520(f)(6), “that day” should be counted as a regular business day.

(E) Federal Reserve Board Regulation T (DKs on COD Deliveries)

Extensions on DK’d COD transactions due on “that day” can be filed either on “that day” or on the next business day (as of “that day”). If “that day” falls within the granted two-day extension period, members may treat “that day” as either a business day or a non-business day. All subsequent extensions should be filed on the normal due date, counting “that day” as a business day. However, if the request for an extension has expired or is denied, “that day” should be treated as a non-business day since securities cannot be liquidated when the primary market where the securities are traded is closed.

(F) Exchange Act Rule 15c3-3(m) (Sell Order Extensions)

Extensions on customers' sell orders under Exchange Act Rule 15c3-3(m) due on "that day" can be filed either on "that day" or on the next business day (as of "that day"). All subsequent extensions should be filed on the normal due date, counting "that day" as a business day. However, if the request for an extension has expired or is denied, "that day" should be treated as a non-business day since securities cannot be purchased when the primary market where the securities are traded is closed.

(G) NASD Rule 2520(f)(8)(B)(iv)(e) (Day Trading Requirements)

Funds deposited into a day trader's account to meet the minimum equity or maintenance margin requirements of NASD Rule 2520(f)(8)(B) cannot be withdrawn for a minimum of two business days following the close of business on the day of deposit. In making this determination, "that day" should be counted as a business day.

2. For regulatory purposes, in regards to the applicable requirements pursuant to Exchange Act Rules 17a-5(a) and (b), members should consider the day the securities markets are closed ("that day") as a non-business day for the following:

(A) Exchange Act Rule 17a-5(a) (FOCUS Report)

For purposes of determining the FOCUS Report due date, "that day" should not be considered as a business day.

(B) Exchange Act Rule 17a-5(b)

For filing a report upon termination of membership interest, "that day" should not be considered as a business day.

3. For purposes of Exchange Act Rule 15c3-3 (Reserve Formula Computation), if "that day" occurs on a Friday or on a month-end date and money markets funds are closed, the SEC has granted two options to members when computing its reserve formula:

(A) Recording of Bookkeeping Entries on Liquidation/Sweep of Money Market Funds:

Members can decide to record the bookkeeping entries on the liquidation of customers' money market funds or on the sweep of customers' balances into money market funds that are not open on "that day." Members can net the receivable and the payable only between the same family of funds. If this netting results in a net receivable from the fund, nothing further needs to be done. In addition, any unsecured receivables due from the money market fund may be considered as an allowable asset for net capital purposes for "that day" only if the following conditions are met:

- (1) the broker-dealer has control over the money market fund; and
- (2) the customer of the broker-dealer cannot access the fund; and
- (3) the broker-dealer must receive the money from the fund on the next business day.

However, if recording the bookkeeping entries results in a net payable to the fund, that amount needs to be locked up on "that day" into the broker-dealer's 15c3-3 Reserve Bank Account. A separate 15c3-3 Reserve Bank Account need not be set up for this deposit. The required deposit can be made into the broker-dealer's already established 15c3-3 Reserve Bank Account. The funds can then be withdrawn on the next business day, directly from the 15c3-3 Reserve Bank Account, to pay the money market fund. The amount of funds deposited and the subsequent withdrawal for payment of such funds must be separately identified on the broker-dealer's records. In this option, the reserve formula computation as of close of business of "that day" would not include the customers' free credit balances, nor would it include any customer debits related to trades that settled on "that day" who had money market positions.

Whether the reserve formula computation of "that day" results in an excess of total debits over total credits or in an excess of total credits over total debits has no impact on the requirement that any net payable to a money market fund must be locked up into a 15c3-3 Reserve Bank Account on "that day."

(B) Non-Recording of Bookkeeping Entries on Liquidation/Sweep of Money Market Funds:

Members can decide not to record the bookkeeping entries on the liquidation of customers' money market funds or on the sweep of customers' balances into money market funds that are not open on "that day." Therefore, the reserve formula computation as of the close of business "that day" would include customers' free credit balances that were not swept, as well as customer debits relating to their trades that settled on "that day," even though the customers had money market positions. Members can, if needed, use the securities of the customers who had debit balances in their customer accounts to finance their business.

4. For securities lending, it is understood that the business will continue to operate as usual on "that day," even though the primary securities markets will be closed.
5. On a case-by-case basis, NASD will consider a request for relief from regulatory requirements resulting from the closing of the securities markets on "that day." In cases where undue hardship can be demonstrated, members should contact Susan M. DeMando, Associate Vice President, Financial Operations, Department of Member Regulation, at (202) 728-8411 to discuss the specific relief sought and the reason for such relief.

Endnote

- 1 The guidelines in this *Notice* are consistent with those provided by the New York Stock Exchange (NYSE) in NYSE Information Memo, Number 05-25, April 8, 2005.

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Notice to Members

JULY 2005

SUGGESTED ROUTING

Legal and Compliance
Operations
Senior Management

KEY TOPICS

Due Diligence
Outsourcing
Supervisory Responsibilities
Third-Party Service Providers

GUIDANCE

Outsourcing

Members' Responsibilities When Outsourcing Activities to Third-Party Service Providers

Executive Summary

NASD is aware that members are increasingly contracting with third-party service providers to perform certain activities and functions related to their business operations and regulatory responsibilities that members would otherwise perform themselves—a practice commonly referred to as outsourcing. NASD is issuing this *Notice* to remind members that, in general, any parties conducting activities or functions that require registration under NASD rules will be considered associated persons of the member, absent the service provider separately being registered as a broker-dealer and such arrangements being contemplated by NASD rules (such as in the case of clearing arrangements), MSRB rules, or applicable federal securities laws or regulations. In addition, outsourcing an activity or function to a third party does not relieve members of their ultimate responsibility for compliance with all applicable federal securities laws and regulations and NASD and MSRB rules regarding the outsourced activity or function. As such, members may need to adjust their supervisory structure to ensure that an appropriately qualified person monitors the arrangement. This includes conducting a due diligence analysis of the third-party service provider.

Questions/Further Information

Questions or comments concerning this *Notice* may be directed to Patricia Albrecht, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8026.

Background

The practice of contracting with third-party service providers/vendors to perform certain activities and functions on a continuing basis (outsourcing) is not new to the securities industry. For example, NASD Rule 3230 (Clearing Agreements) has long permitted members that are introducing broker-dealers to enter into contracts with registered clearing broker-dealers that allocate certain functions and responsibilities, such as providing execution services, custody, and margin; maintaining books and records; and receiving, delivering, and safeguarding funds. Over the years, however, members' outsourcing activities have grown beyond the use of clearing agreements. Now, members regularly enter into outsourcing arrangements with entities other than broker-dealers. These entities may be unregulated, such as providers of data services, or regulated, such as transfer agents. Additionally, members increasingly are outsourcing activities other than those traditionally performed pursuant to clearing agreements.

To better understand their members' outsourcing activities, NASD and the New York Stock Exchange (NYSE) conducted a joint survey in October 2004 of a select number of broker-dealers. The survey sought to determine whether broker-dealers had procedures in place to determine the proficiency of service providers, whether outsourced business functions were properly monitored, and whether broker-dealers were in compliance with applicable regulations pertaining to the privacy of customer information in connection with such outsourcing arrangements. The survey found that, in many instances, there was a lack of written procedures to monitor the outsourcing of services, a lack of business continuity plans on the part of service providers and members with respect to outsourced services, and a lack of formalized due diligence processes to screen service providers for proficiency. However, while not always in the form of written procedures, most participants reported that they did have methods that they used to monitor and assess a third-party vendor's own procedures and performance and the accuracy and quality of the work product produced on a continuing basis. These methods included (1) using programmatic checks through business operations; (2) including the procedures in the contracts with the vendors; (3) requiring status reports and periodic meetings; and (4) testing and reviewing the third parties' procedures.

The survey results also provided a snapshot of the type and range of activities being outsourced and the nature of the third-party service providers being used. Survey participants frequently outsourced functions associated with accounting/finance (payroll, expense account reporting, etc.), legal and compliance, information technology (IT), operations functions (e.g., statement production, disaster recovery services, etc.), and administration functions (e.g., human resources, internal audits, etc.). Approximately two-thirds of the third-party vendors used by survey participants were regulated entities, subject to the jurisdiction of the Securities and Exchange Commission, NASD, NYSE, the Board of Governors of the Federal Reserve System, and/or the Office of the Comptroller of the Currency. The remaining third-party vendors were unregulated entities—both foreign and domestic. Survey participants indicated that they used foreign third-party vendors most often when outsourcing IT and communications activities.¹

Discussion

Given the growing trend among members to outsource an increasing number of activities and functions to outside entities—both regulated and unregulated—and the lack of uniformity in members' procedures regarding members' use of outsourcing, NASD is issuing this *Notice* to provide guidance on requirements that pertain to the outsourcing of activities and functions that, if performed directly by members, would be required to be the subject of a supervisory system and written supervisory procedures pursuant to Rule 3010 (covered activities).² In addition, members are reminded that, in the absence of specific NASD rules, MSRB rules, or federal securities laws or regulations that contemplate an arrangement between members and other registered broker-dealers with respect to such activities or functions (e.g., clearing agreements executed pursuant to NASD Rule 3230), any third-party service providers conducting activities or functions that require registration and qualification under NASD rules will generally be considered associated persons of the member and be required to have all necessary registrations and qualifications.

I. Accountability and Supervisory Responsibility for Outsourced Functions

Rule 3010 requires NASD members to design a supervisory system and corresponding written supervisory procedures that are appropriately tailored to each member's business structure.³ If a member, as part of its business structure, outsources covered activities, the member's supervisory system and written supervisory procedures must include procedures regarding its outsourcing practices to ensure compliance with applicable securities laws and regulations and NASD rules. The procedures should include, without limitation, a due diligence analysis of all of its current or prospective third-party service providers to determine whether they are capable of performing the outsourced activities.⁴

After the member has selected a third-party service provider, the member has a continuing responsibility to oversee, supervise, and monitor the service provider's performance of covered activities. This requires the member to have in place specific policies and procedures that will monitor the service providers' compliance with the terms of any agreements and assess the service provider's continued fitness and ability to perform the covered activities being outsourced. Additionally, the member should ensure that NASD and all other applicable regulators have the same complete access to the service provider's work product for the member, as would be the case if the covered activities had been performed directly by the member.

Members should also include specific policies and procedures to determine whether any covered activities that the member is contemplating outsourcing are appropriate for outsourcing. To determine the appropriateness of outsourcing a particular activity, firms may want to consider certain factors, such as the financial, reputational, and operational impact on the member firm if the third-party service provider fails to perform; the potential impact of outsourcing on the member's provision of adequate services to its customers; and the impact of outsourcing the activity on the ability and capacity of the member to conform with regulatory requirements and changes in requirements.⁵ These factors, however, are not meant to illustrate all of the factors a member may want to consider and are not meant to be an exclusive or exhaustive list of factors a member may need to consider.

In addition, members are reminded that outsourcing covered activities in no way diminishes a member's responsibility for either its performance or its full compliance with all applicable federal securities laws and regulations, and NASD and MSRB rules.

II. Activities and Functions that are Prohibited from being Outsourced

A. Activities and Functions Requiring Registration and Qualification

It is NASD's view that the performance of covered activities, which require qualification and registration, cannot be deemed to have been outsourced because the person performing the activity is an associated person of the member irrespective of whether such person is registered with the member. An exception would be where a third-party service provider is separately registered as a broker-dealer and the contracted arrangement between the member and the service provider is contemplated by NASD rules, MSRB rules, or applicable federal securities laws or regulations.⁶ An example of such an exception would be a clearing agreement executed pursuant to NASD Rule 3230 between a member and a clearing broker-dealer.⁷

B. Supervisory and Compliance Activities

NASD has noted in previous guidance that the ultimate responsibility for supervision lies with the member.⁸ Accordingly, a member may never contract its supervisory and compliance activities away from its direct control. This prohibition, however, does not preclude a member from outsourcing certain activities that support the performance of its supervisory and compliance responsibilities. For example, a member may implement a supervisory system designed by another party, which could include a computer software program that detects excessive trading in customer accounts. However, if a member chooses to implement such a system, it must make its own determination that the system implemented is current and reasonably designed to achieve compliance as required under Rule 3010. This may include, for example, monitoring the system to ensure that it functions as designed and that such design is of an adequate nature and breadth.⁹

Endnotes

- 1 A February 2005 joint report by the Joint Forum of the Basel Committee on Banking Supervision found similar trends in the use of outsourcing by financial firms. See *Outsourcing in Financial Services*, The Joint Forum of the Basel Committee on Banking Supervision (February 2005). The Joint Forum was established in 1996 under the aegis of the Basel Committee on Banking Supervision (Basel Committee), the International Organization of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS) to address issues common to the banking, securities, and insurance sectors, including the regulation of financial conglomerates. The Joint Forum is composed of an equal number of senior bank, insurance, and securities supervisors representing each supervisory constituency.
- 2 Examples of covered activities include, without limitation, order taking, handling of customer funds and securities, and supervisory responsibilities under Rules 3010 and 3012.
- 3 See Rule 3010(a) and (b); *Notice to Members (NTM) 99-45* (June 1999).
- 4 Rule 3012 also requires a member firm to have a written supervisory control system that will, among other things, test and verify that the member's supervisory policies and procedures are reasonably designed to achieve compliance with the applicable securities laws and regulations and NASD rules. Members are reminded that this requirement includes the testing and verification of their supervisory procedures regarding their outsourcing practices, including testing and verifying that any due diligence procedures meet the "reasonably designed to achieve compliance" standard. See *NTM 99-45* (June 1999) (providing guidance on the meaning of the term "reasonably designed to achieve compliance"). Such testing and verifying will help firms to ensure that their due diligence analyses of third-party service providers remain current and relevant.
- 5 Members may also want to consult a February 2005 IOSCO report for more factors that they should consider in connection with outsourcing. See *Principles of Outsourcing of Financial Services for Market Intermediaries*, IOSCO Technical Committee (February 2005). Another resource members may want to consider is the previously mentioned report by the Joint Forum of the Basel Committee on Banking Supervision. *Outsourcing in Financial Services*, *supra* note 1.
- 6 NASD does not view a third-party vendor as an associated person of the member if it solely provides services such as a trade execution and reporting system or automated data services in connection with back-office functions that, in turn, are utilized by registered or other associated persons of the member.
- 7 See Rule 3230(a)(1). Some members also enter into secondary or sub-clearing (sometimes referred to as "piggyback clearing") arrangements for clearing services with an intermediary firm that has an existing contract with a clearing firm instead of contracting directly with the clearing firm. Because intermediary firms do not always identify to clearing firms which accounts belong to the piggybacking firms, NASD has filed with the SEC a proposed rule change to Rule 3230 and Rule 3150 (Reporting Requirements for Clearing Firms) that would require intermediary firms to identify the accounts belonging to the piggybacking firms and that would require clearing firms to distinguish the data belonging to intermediary firms from the data belonging to the piggybacking firms.
- 8 See *NTM 99-45* (June 1999).
- 9 See *id.*

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Notice to Members

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SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Senior Management
Systems
New Technology

KEY TOPICS

Privacy
Protection of Customer Information

GUIDANCE

Safeguarding Confidential Customer Information

NASD Reminds Members of Their Obligations Relating to the Protection of Customer Information

Executive Summary

NASD members are required to maintain policies and procedures that address the protection of customer information and records. Among other things, these policies and procedures must be reasonably designed to protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer. This *Notice* reminds members of their obligation to maintain policies and procedures that are intended to protect customer information and to ensure that their policies and procedures adequately reflect changes in technology or alternative work arrangements.¹

Questions/Further Information

Legal questions or comments concerning this *Notice* may be directed to the Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071.

Background

Under Securities and Exchange Commission (SEC) Rule 30 of Regulation S-P, members, as well as other financial institutions, are required to adopt written policies and procedures that address the protection of customer information and records.² Specifically, the policies and procedures must be reasonably designed to:

- (1) ensure the security and confidentiality of customer records and information;

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- (2) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and
 - (3) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.

Thus, members must be mindful of the importance of safeguarding customer information. This *Notice* reminds members of their obligation to protect confidential customer records and information and provides two examples of the types of technological or other changes that may implicate a member's duty to protect customer information and the issues the member should consider in connection with those changes.

Recent Developments

Within the past several years, there have been numerous technological advancements and other changes in the workplace that may raise concerns regarding the safeguarding of customer information. For example, an increasing number of individuals across all sectors of the workforce, including the financial services industry, are now telecommuting or working part-time from their homes or while on travel.³ The increased use of laptops and wireless email devices, for example, provide employees with numerous alternative work arrangements. While these new methods of working and communicating are often beneficial to both employers and employees, they can present concerns for the privacy of customer information that members should keep in mind. This Notice addresses two increasingly widespread issues: wireless technology and remote access to information.⁴

Wireless Fidelity (Wi-Fi)

One relatively recent advance in technology that is being more widely embraced with each passing year is the use of wireless fidelity, or "Wi-Fi." While Wi-Fi is a generic term used to refer to various types of wireless networks, it often refers to wireless connectivity to the Internet. This connectivity can take several forms. For example, many people have wireless capabilities in their homes, and some telecommunications vendors now offer wireless Internet connectivity that is as broad-based as cell phone coverage, which can allow people to connect wirelessly to the Internet from anywhere within the coverage area (e.g., an entire city). In addition, people can also tap into a wireless Internet connection in some business establishments (e.g., hotels, coffee shops, and Internet cafes).

There are at least two major issues members should consider if they allow their associated persons to use wireless technology when servicing customer accounts. The first is that the data is broadcast out into the airwaves, thus making any confidential information in that data easier to intercept than if the user is required to tap into a physical wire. This is why the use of appropriate safeguards, for example encryption, is important to help prevent unauthorized parties from accessing the data.

Another issue raised by the use of Wi-Fi is that wireless connections present an attractive mechanism for hackers to tap into the user's workstation to gain access to a corporate network.⁵ A corporate network's protective measure (e.g., firewalls and similar defensive software) could be by-passed under such circumstances because, when a user connects a workstation directly to the Internet, the workstation itself becomes the connection point, without the benefit of all the protections available to a corporate network. Every workstation connected directly to the Internet creates a separate opportunity for intrusion. Wi-Fi users can mitigate the risks of this intrusion by, for example, having the same or similar types of protections installed locally in the workstation that a corporate network provides. Regardless of the protective methods employed, members must consider the protection of customer information when determining whether to allow associated persons to use Wi-Fi or other types of new technology.

Remote Access

In addition to wireless technological advances that may raise concerns regarding the security of customer information, remote access to corporate networks through VPNs or other technology may raise similar concerns. As mentioned above, each year, more employees are taking advantage of alternative working arrangements by working from home and also working while traveling. While some employees may use wireless connections, others access corporate networks remotely through physical wire connections. Physical connections to corporate networks present similar concerns as Wi-Fi connections, although members can more easily address some of these concerns through the use of firewalls, routers, filters, and other means to guard against intrusion. Before permitting associated persons to access customer information remotely, members must implement appropriate measures to secure the customer information.⁶

Members' Obligations

As members update their technology and use new and different methods of communication, whether through the use of wireless technology or allowing employees to work remotely, they should consider whether these methods necessitate updates or changes in their policies and procedures. Each member should tailor its policies and procedures to address specifically the technology used by its associated persons with access to customer records and information. There can be no "one-size-fits-all" policy or procedure; however, members should consider the following, at a minimum:

- ◆ whether the member's existing policies and procedures adequately address the technology currently in use;
- ◆ whether the member has taken appropriate technological precautions to protect customer information;
- ◆ whether the member is providing adequate training to its employees regarding the use of available technology and the steps employees should take to ensure that customer records and information are kept confidential; and
- ◆ whether the member is conducting, or should conduct, periodic audits to detect potential vulnerabilities in its systems and to ensure that its systems are, in practice, protecting customer records and information from unauthorized access.

The use of new technologies can benefit members, employees, and customers; however, these new technologies can also present risks that members must consider and address appropriately. In some instances, the appropriate way to deal with these risks is not only through technological solutions, but may also involve changes to the member's training regimen and/or to the member's policies and procedures. Members should consider whether the adoption of new technologies would necessitate changes in its compliance policies and procedures or systems before implementation so that issues can be identified and addressed in a timely way and problems can be avoided. In this regard, members must understand their obligations under Regulation S-P and related SEC rules and interpretations, as well as the requirements to have policies and procedures and a supervisory scheme as mandated by NASD Rules 3010, 3012, and 3013.

Endnotes

- 1 As discussed in greater detail below, members must ensure that reasonable measures have been or will be implemented to protect customer information regarding the member's use of new technology before the member actually uses or allows its associated persons to use such technology.
- 2 Recent amendments to Rule 30 of Regulation S-P made in response to the Fair and Accurate Transactions Act of 2003 (FACT Act) govern the disposal of consumer report information. See *Disposal of Consumer Report Information*, Exchange Act Release No. 50781 (Dec. 2, 2004), 69 Fed. Reg. 71322 (Dec. 8, 2004).
- 3 A recent survey indicates that the number of telecommuters working from their home "almost every day" rose to over 12 million in 2004. See *Home-Based Work Force Grows 23% in Decade*, CBS Marketwatch (Oct. 20, 2004). In addition, the same survey showed that over 44 million employees performed some work at home in 2004, up approximately 3 million from 2003. See *More Bosses Getting Into the Telecommuting Biz*, USA Today, at B2 (Nov. 3, 2004). For the press release announcing the findings, see www.telecommute.org/news/pr090204.htm.
- 4 One significant concern that has driven recent regulations regarding the confidentiality and privacy of customer information is identity theft. See 69 Fed. Reg. at 71322 (noting that Section 216 of the FACT Act was "designed, in general, to protect a consumer against the risks associated with unauthorized access to information about the consumer contained in a consumer report, such as fraud and related crimes, including identity theft"). While some of the recent, high-profile cases of identity theft involve unauthorized access to electronic information, some recent reports indicate that the majority of identity theft cases are still committed with information obtained offline. See generally *ID Theft is Declining and Mostly Offline, New Study Finds*, Wall Street Journal, at D2 (Jan. 26, 2005) (discussing a 2005 study by the Better Business Bureau that found that approximately 68 percent of cases of identity fraud in 2004 relied on information acquired offline). Thus, members are reminded that their procedures should not focus solely on the use of electronic information, but should also address the proper use and destruction of paper documents (including, of course, consumer report information under the recent amendments to Regulation S-P) that could raise privacy concerns.
- 5 This is sometimes called a "back door."
- 6 Of course, members must also take reasonable measures to ensure that they have adequate procedures in place to address customer privacy concerns with regard to their current methods of communication (e.g., procedures regarding the inclusion of confidential customer information in email messages).

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Disciplinary and Other NASD Actions

REPORTED FOR JULY

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 June 2005.

Firms and Individuals Fined

Berry-Shino Securities, Inc., (CRD #38098, Scottsdale, Arizona) and Ralph Matthew Shino (CRD #1380293, Registered Principal, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which Shino was censured and the firm was censured and fined \$45,050, including disgorgement of \$7,550. \$10,000 of the fine is joint and several with Shino, and \$5,000 is joint and several with another individual. Without admitting or denying the allegations, the firm and Shino consented to the described sanctions and to the entry of findings that the firm, acting through Shino, failed to report customer complaints and an arbitration award, and reported customer complaints late. NASD found that the firm, acting through Shino, failed to file and amend Forms U4 and U5 in a timely manner. The findings also stated that the firm failed to maintain accurate financial records and filed inaccurate FOCUS reports. NASD also found that the firm failed to maintain its required minimum net capital and accepted funds for investment in a private placement, but did not forward the funds to an account established in accordance with SEC Rule 15c2-4. In addition, NASD determined that the firm executed transactions in long-term options for which customers were charged commissions that were excessive in light of relevant factors. The findings also stated that the firm's supervisory system was not reasonably designed to achieve compliance with NASD conduct rules related to excessive options commissions. (NASD Case #C3A050020)

Firms Fined, Individuals Sanctioned

Berthel, Fisher & Company Financial Services, Inc. (CRD #13609, Marion, Iowa) and Craig Vincent Mineart (CRD #2642191, Registered Principal, Brighton, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Mineart were fined \$10,000, jointly and severally. Mineart was 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 Mineart, acting as the firm's registered options principal, failed to adequately supervise a representative by allowing the representative to recommend and execute options transactions when Mineart knew or should have known that the transactions were unsuitable for customer.

Mineart's suspension began June 6, 2005, and concluded at the close of business June 17, 2005. (NASD Case #C04050017)

Castle Creek Financial, LLC (CRD #39063, Rancho Santa Fe, California) 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 participated in a private placement offering; however, the firm failed to establish an escrow account to deposit investor funds. **(NASD Case #C02050038)**

Chapman Securities, Inc. (CRD #25688, Wichita, Kansas) and Michael David Relihan (CRD #501990, Registered Principal, Wichita, Kansas) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$15,000, jointly and severally, and Relihan was barred from association with any NASD member in any principal capacity. Without admitting or denying the allegations, the firm and Relihan consented to the described sanctions and to the entry of findings that the firm, acting through Relihan, failed to file its annual audited report in a timely manner. The findings also stated that the firm, acting through Relihan, used the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum net capital and failed to prepare accurate net capital computations. NASD also found that the firm, acting through Relihan, filed a late FOCUS report. **(NASD Case #C04050021)**

Credit Suisse First Boston LLC (CRD #816, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in the Automated Confirmation Transaction ServiceSM transactions (ACTSM) in eligible securities within 20 minutes after execution. The findings stated that the firm failed to provide written notification disclosing its correct capacity in transactions to customers. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning best execution, trade reporting, and the Order Audit Trail SystemSM (OATSSM). **(NASD Case #CLG050072)**

Grattan Financial Securities, Inc. (CRD #43484, San Gabriel, California) and Georgene Marie Grattan (CRD #1085145, Registered Principal, San Gabriel, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Grattan were fined \$20,000, jointly and severally. Grattan was suspended from association with any NASD member in any principal capacity for 45 days and required to re-qualify by examination as a general securities principal before acting in that capacity with any NASD member. Without admitting or denying the allegations the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Grattan,

permitted an individual, while he was statutorily disqualified, to become an associated person with the firm. The findings also stated that the firm, acting through Grattan, failed to take timely or adequate supervisory action designed either to ensure that the firm complied with the requirements of Article III, Section 3(b) of NASD's By-Laws or to ensure that a statutorily disqualified individual did not associate with the firm.

Grattan's suspension began June 20, 2005, and will conclude at the close of business August 3, 2005. **(NASD Case #C02050039)**

The Lugano Group Incorporated (CRD #38655, New Orleans, Louisiana), Harold Emanuel Doley, III (CRD #1562598, Registered Principal, New York, New York), and Amir Mireskandari (CRD #2622452, Registered Principal, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$25,000, of which \$20,000 will be joint and several with Doley and \$5,000 will be joint and several with Mireskandari. Doley was suspended from association with any NASD member in any capacity for 10 business days and suspended from association with any NASD member in any principal capacity for two months, and Mireskandari was suspended from association with any NASD member in any capacity for 10 business days. The firm will provide no research services to its clients for two years and will retain an outside consultant to review and make recommendations concerning the adequacy of the firm's current policies and procedures.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm permitted Doley and Mireskandari to perform duties as registered persons when they failed to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also stated that the firm, acting through Doley, failed to develop and implement a written anti-money laundering (AML) program reasonably designed to achieve and monitor the firm's compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated by the U.S. Department of Treasury. NASD also found that the firm, acting through Doley, failed to establish adequate supervisory procedures. In addition the findings stated that the firm, acting through Doley and Mireskandari, failed to make required disclosures and certifications in a research report that reported on a publicly traded entity.

Doley's suspensions will begin July 19, 2005; the suspension in any capacity will conclude at the close of business August 1, 2005, and the suspension in any principal capacity will conclude September 18, 2005. Mireskandari's suspension began July 5, 2005, and will conclude at the close of business July 18, 2005. **(NASD Case #C05050027)**

Morgan Keegan & Company, Inc. (CRD #4161, Memphis, Tennessee), George Earl Bagwell, III (CRD #10078, Registered Principal, Montgomery, Alabama), and Woodley Hannon Bagwell (CRD #10084, Registered Principal, Montgomery, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$30,000, jointly and severally. George Bagwell and Woodley Bagwell each were suspended from association with any NASD member in any principal capacity for six months. Without admitting or denying to allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Woodley and George Bagwell, failed to supervise the activities of registered representatives.

George Bagwell's suspension began July 5, 2005, and will conclude at the close of business January 4, 2006. Woodley Bagwell's suspension began July 5, 2005, and will conclude at the close of business January 4, 2006. (NASD Case #C05050029)

Raymond James & Associates, Inc. (CRD #705, St. Petersburg, Florida) and Angelo Masut, Jr. (CRD #1245245, Registered Representative, Homasassa, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Masut was fined \$10,000, including disgorgement of \$1,960.36 in commissions received, and suspended from association with any NASD member in any capacity for 10 business days. In addition, the firm and Masut are required to pay \$3,924 in restitution to public customers. Without admitting or denying the allegations, the firm and Masut consented to the described sanctions and to the entry of findings that Masut recommended and effected transactions in the accounts of public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers based on their financial situation and needs. The findings also stated that the firm failed to maintain and enforce its written supervisory procedures to supervise the activities of Masut and to achieve compliance with NASD Conduct Rule 2310.

Masut's suspension began June 6, 2005, and concluded at the close of business June 17, 2005. (NASD Case #C05050020)

A. Gary Shilling & Co., Inc. (CRD #7666, Springfield, New Jersey) and Albert Gary Shilling (CRD #422125, Registered Principal, Springfield, New Jersey) submitted a letter of Acceptance, Waiver and Consent in which the firm and Shilling were censured and fined \$15,000, jointly and severally. Shilling was fined an additional \$15,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Shilling purchased and sold securities in a manner inconsistent with

recommendations made in his research reports, and sold common stock shares in two insurance companies that were restricted prior to the publication of the report. NASD also found that the firm and Shilling issued research reports that failed to provide distribution of ratings and price chart information. The findings also stated that the firm, acting through Shilling, failed to adopt and implement any written supervisory procedures reasonably designed to ensure compliance with NASD Conduct Rule 2711. (NASD Case #C9B050036)

Firms Fined

American Express Financial Advisors Inc., (CRD #6363, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required within 30 days to provide NASD staff with a report attesting to, and setting forth the details of, its implementation of procedures correcting supervisory deficiencies. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to have adequate procedures in place to monitor whether the managing principal representative (MPR) performed certain supervisory reviews of the office of supervisory jurisdiction (OSJ), or to identify and review transactions by individual registered representatives under the MPR's supervision. NASD also found that the firm failed to reasonably ensure that the OSJ forwarded copies of letters regarding mutual fund switches to the home office on a consistent basis, as required by its written supervisory procedures. (NASD Case #C05050021)

Cambridge International Partners, Inc. (CRD #40451, 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 develop and implement an AML program reasonably designed to achieve compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of the Treasury. (NASD Case #C10050032)

Daewoo Securities (America) Inc. (CRD #30679, 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 develop and implement an AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations promulgated thereunder by the Department of the Treasury. (NASD Case #C10050043)

Electronic Brokerage Systems, LLC (CRD #104031, Chicago, Illinois) 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 include all required information in route reports to SuperMontage. NASD also found that the firm failed to enforce its written supervisory procedures, which specified that it would monitor to ensure that routed order ID numbers were included when routing orders away from the firm. **(NASD Case #CLG050061)**

GVR Company LLC (CRD #111528, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations, and NASD rules concerning the Display Rule. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and NASD rules concerning the Display Rule. **(NASD Case #CLG050076)**

Hold Brothers On-Line Investment Services, LLC (CRD #36816, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$16,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to OATS Reportable Order Events (ROEs) in a timely manner. The findings also stated that the firm failed to enforce its written supervisory procedures, which specified that it would evidence OATS reviews in a supervisory log. **(NASD Case #CLG050078)**

See also Hold Brothers On-Line Investment Services, LLC, NASD Case #C9B050031, below.

Hold Brothers On-Line Investment Services, LLC (CRD #36816, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$100,000, and required to retain an independent consultant and to implement new supervisory and compliance procedures and systems in connection with registration and continuing education requirements within 45 days. Without admitting or denying the allegations, the

firm consented to the described sanctions and to the entry of findings that it permitted individuals to act as general securities representatives and/or equity traders while failing to have them registered and/or qualified in such capacities. NASD found that the firm permitted individuals to maintain their securities licenses although they were not actively involved in the firm's investment banking or securities business, and permitted individuals to perform duties as registered persons while their registrations with NASD were inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Rule in a timely manner. The findings also stated that the firm's supervisory system and written procedures were not reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning registration requirements and the Regulatory Element of NASD's Continuing Education Rule. In addition, NASD determined that the firm failed to conduct an annual internal inspection of the activities of its Chicago OSJ and failed to conduct an annual compliance meeting. **(NASD Case #C9B050031)**

See also Hold Brothers On-Line Investment Services, LLC, NASD Case #CLG050078, above.

Huss Services, Inc. (CRD #2258, Norwich, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required within 30 business days to revise its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning the Trade Reporting and Compliance Engine (TRACE) and OATS within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to TRACE transactions in TRACE-eligible securities within 45 minutes after execution and failed to timely report to OATS ROEs. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning TRACE and OATS. **(NASD Case #CLG050065)**

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 \$39,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm submitted OATS reports with respect to equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD; and although the reports were repairable, the firm did not correct or replace any of them. NASD also found that the firm incorrectly designated as "PRP" through ACT last sale reports of transactions in NASDAQ National Market® (NNM®) and Small Cap securities. In addition, NASD determined that the firm transmitted OATS reports that contained inaccurate, incomplete, or improperly

formatted data. The findings also stated that the firm failed to preserve for a period of not less than three years the memorandum of brokerage orders. (NASD Case #CLG050059)

Lazard Freres & Co. LLC (CRD #2528, 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 allegation, the firm consented to the described sanctions and to the entry of findings that it failed to timely report to OATS ROEs and failed to submit required information to OATS. (NASD Case #CLG050075)

Leader Capital Corp., (CRD #46206, Portland, Oregon) 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 develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirement of the Bank Secrecy Act and the regulations promulgated thereunder. (NASD Case #C3B050011)

Leerink Swann & Company (CRD #39011, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm issued research reports that omitted certain facts and/or used conditional or indefinite language in making required disclosures. (NASD Case #C11050016)

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 \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS reports with respect to equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD, and the reports were repairable. (NASD Case #CLG050058)

See also Merrill Lynch, Pierce, Fenner & Smith, Incorporated, NASD Case #CLG050067, below.

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 \$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 display immediately customer limit orders in NASDAQ securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid

or offer and the national best bid or offer for each security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. (NASD Case #CLG050067)

See also Merrill Lynch, Pierce, Fenner & Smith, Incorporated, NASD Case #CLG050058, above.

MML Distributors, LLC, (CRD #38030, Springfield, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$200,000, and required to review its written supervisory procedures and establish a supervisory system to address deficiencies relating to pre-registration Web CRD researches and its procedures regarding the preservation of electronic mail communications for compliance with NASD rules and federal securities laws and regulations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm's supervisory system and procedures were not reasonably designed to ensure that required written consent was obtained before any pre-registration searches on Web CRD and that the firm retained the required documentation. NASD found that the firm's system and written procedures were not reasonably designed to ensure compliance with email retention requirements. The findings also stated that the firm permitted individuals to perform duties as a registered person while their registration with NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Program. (NASD Case #C11050015)

Oppenheimer & Co. Inc., f/k/a Fahnstock & Co. Inc. (CRD #249, New York, New York) submitted an Offer of Settlement in which the firm was censured and fined \$32,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected short sales in certain securities for the firm's proprietary accounts and failed to make and annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by the settlement date. NASD found that the firm executed short sale orders in Consolidated Quotation System (CQS) securities and failed to properly mark the orders as short in its trading ledger. The findings stated that the firm failed to provide written notification disclosing to its customers its correct capacity in a transaction and incorrectly stated its capacity as agent on a customer confirmation. NASD also found that the firm failed to show the time of order receipt and failed to show the correct volume on the memorandum of its brokerage orders. In addition, NASD determined that the firm failed on three occasions to document the name of each dealer it contacted and the quotation received to determine the best inter-dealer market, and failed to maintain continuous two-sided quotations in the absence of the grant of an excused withdrawal or a functional excused withdrawal by

NASD. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning registration qualification of firm personnel, best execution, anti-intimidation, short sales, and maintaining continuous two-sided quotations as an ITS/CAES (Intermarket Trading System/Computer Assisted Execution System) market maker. **(NASD Case #CMS040156)**

Orion Securities (USA) Inc., (CRD #38108, Toronto, Ontario, Canada) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures concerning maintaining a two-sided quotation within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to maintain a continuous two-sided quotation in the absence of an excused withdrawal or a functional excused withdrawal. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning maintaining a two-sided quotation. **(NASD Case #CLG050063)**

Pritchard Capital Partners, LLC (CRD #100480, Mandeville, Louisiana) 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 engaged in a securities business when the firm's net capital was below the required minimum and failed and neglected to provide notification that the firm's net capital was below the required minimum pursuant to SEC Rule 15c3-1. The findings also stated that the firm failed and neglected to file accurate FOCUS Part IIA Reports. The findings further stated that the firm prepared an inaccurate trial balance, and inaccurate net capital computations and general ledgers. In addition, NASD determined that the firm failed and neglected to compute reserve computations. **(NASD Case #C05050019)**

RBC Dain Rauscher, Inc. (CRD #31194, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it 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 enforce its written supervisory procedures that specified it was to conduct a weekly review of trade reports for compliance with NASD Marketplace Rule 6130(b). **(NASD Case #CLG050071)**

Seaboard Securities, Inc., (CRD #755, Florham Park, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations, and NASD rules concerning affirmative determination and marking of customer tickets within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected short sales for the firm's proprietary account(s) and failed to make an affirmative determination that the firm could borrow the security or otherwise provide for delivery of the security by settlement date. NASD also found that the firm failed to report to ACT the correct symbol indicating whether the firm acted in a principal or agency capacity in eligible securities transactions. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning affirmative determination and marking of customer tickets. **(NASD Case #CLG050069)**

Southwest Securities, Inc. (CRD #6220, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations, and NASD rules concerning the maintenance of continuous two-sided quotations in ITS/CAES. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to maintain continuous two-sided quotations in the absence of a grant of excused withdrawal or a functional excused withdrawal by NASD. The findings further stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning the maintenance of continuous two-side quotations in ITS/CAES. **(NASD Case #CLG050074)**

State Street Global Markets, LLC (CRD #30107, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS reports with respect to equity securities traded on NASDAQ that were not in the electronic form prescribed by NASD; and although the reports were repairable, the firm did not correct or replace any of them. NASD found that the firm transmitted to OATS execution reports and ROEs that contained inaccurate data and failed to timely report ROEs. The findings also stated that the firm failed to enforce its written supervisory procedures that specified a daily review of the OATS Web site to check

for, among other things, rejected ROEs and Order/Trade matching statistics. (NASD Case #CLG050070)

Tradition Asiel Securities, Inc., (CRD #28269, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations, and NASD rules concerning trade reporting within 30 business days. 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. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations, and NASD rules concerning trade reporting. (NASD Case #CLG050068)

UVEST Financial Services Group, Inc., (CRD #13787, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$80,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it violated recordkeeping requirements in that the firm failed to preserve for three years certain electronic mail communications received by its employees that related to its business as a broker, dealer, or member of an exchange. NASD also found that the firm failed to have a systematic means to retain electronic communications related to its business that were reasonably designed to achieve compliance with SEC and NASD rules. (NASD Case #CE4050005)

Westminster Securities Corporation (CRD #6105, 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 the firm failed to accurately mark order tickets. NASD found that the firm failed to preserve for a period not less than three years order tickets that pertained to executed transactions. The findings also stated that the firm engaged in a pattern or practice of late reporting without exceptional circumstances and failed to designate through ACT last sale reports of transactions in OTC Equity Securities as late. In addition, NASD determined that the firm failed to establish and maintain a supervisory system and failed to establish, maintain, and enforce written supervisory procedures to supervise the activities of associated persons, both of which were reasonably designed to achieve compliance with securities laws and rules, and NASD rules relating to ACT reporting. (NASD Case #C10050028)

Individuals Barred or Suspended

Aaron Adise (CRD #4532632, Registered Representative, Jericho, New York) submitted a Letter of Acceptance, Waiver, and Consent in which was is fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Adise consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, the purchase of shares in a public customer's account without the customer's knowledge, authorization, or consent.

Adise's suspension began June 20, 2005, and concluded at the close of business July 1, 2005. (NASD Case #CLI050012)

Khalid Abul-Ghany (CRD #4779679, Associated Person, Philadelphia, Pennsylvania) 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 Abul-Ghany willfully failed to disclose material facts on his Form U4.

Abul-Ghany's suspension began June 20, 2005, and will conclude at the close of business December 19, 2005. (NASD Case #C9A040054)

Francios Wolffe Belizaire (CRD #4495421, Associated Person, Irvington, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Belizaire falsified a direct deposit authorization for public customers by printing the customers' names on the direct deposit authorization forms without the customers' knowledge, authorization, or consent. The findings also stated that Belizaire failed to respond to NASD requests for documents and a written statement. (NASD Case #C10040110)

Ronald Edward Blaylock (CRD #1447520, Registered Principal, Maplewood, New Jersey) submitted an Offer of Settlement in which he was fined \$125,000 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Blaylock consented to the described sanctions and to the entry of findings that he wrongfully obtained employer funds by submitting travel and expense reports containing personal expenses, and received reimbursement of \$22,700, to which he was not entitled. NASD found that he submitted materially inaccurate reports and firm books and records by submitting expense reports containing personal expenses, occasionally using default names to complete the expense form when he could not recall the person entertained, and occasionally adding to the list of attendees to bring down of average cost.

Blaylock's suspension began May 18, 2005, and concluded at the close of business June 15, 2005. (NASD Case #CAF040065)

Quentin Gustav Bischoff (CRD #1336976, Registered Principal, Tampa, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 45 days, and ordered to pay \$10,936.31, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Bischoff consented to the described sanctions and to the entry of findings that he recommended and engaged in excessive trading in the accounts of a public customer without having reasonable grounds to believe that these transactions were suitable for the customer based on her financial situation, investment objectives, and needs.

Bischoff's suspension began July 5, 2005, and will conclude at the close of business August 18, 2005. (NASD Case #C04050020)

Chris Jon Brainard (CRD #2687215, Registered Representative, Bridgehampton, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 60 days. In light of the financial status of Brainard, no monetary sanction has been imposed. Without admitting or denying the allegations, Brainard consented to the described sanction and to the entry of findings that he effected transactions in the account of a public customer that were unsuitable based on the customer's financial situation, investment objectives, and needs.

Brainard's suspension began June 6, 2005, and will conclude at the close of business August 5, 2005. (NASD Case #C04050016)

John Russell Buhrmann (CRD #1754168, Registered Supervisor, Merille, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Buhrmann reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Buhrmann consented to the described sanctions and to the entry of findings that he effected a discretionary transaction in the account of a public customer without obtaining prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Buhrmann's suspension began June 6, 2005, and concluded at the close of business June 17, 2005. (NASD Case #C8A050038)

John Thomas Carter II, (CRD #2619913, Registered Representative, Macon, 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 30 days. The fine shall be paid before Carter reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carter consented to the described sanctions and to the entry of finding that he signed the name of a public customer on a letter of authorization to transfer securities from a dividend reinvestment program to a securities account in contravention of firm's procedures and without the customer's authorization.

Carter's suspension began June 6, 2005, and concluded at the close of business July 5, 2005. (NASD Case #C07050035)

Neal Ryan Clemens (CRD #3257789, Registered Representative, Milwaukee, Wisconsin) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Clemens reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Clemens consented to the described sanctions and to the entry of findings that he effected discretionary transactions in the account of a public customer without obtaining prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm.

Clemens' suspension began June 20, 2005, and will conclude at the close of business July 19, 2005. (NASD Case #C8A040093)

Jessie Alvin Cripps, Sr. (CRD #2988628, Registered Representative, Exeter, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cripps consented to the described sanction and to the entry of findings that he received \$15,000 from a public customer, which the customer intended to be used for the purchase of a certificate of deposit, but Cripps instead used them in a manner that did not benefit the customer. (NASD Case #C02050036)

Angelyne Tajuana Collins (CRD #3268778, Registered Representative, Duluth, Georgia) was barred from association with any NASD member in any capacity. The sanction was based on findings that Collins caused a \$2,800 loan to be issued against the insurance policy of a public customer without the knowledge or authorization of the customer and then deposited the loan proceeds into a bank account in her name and in which she exercised control. The findings also stated that Collins failed to respond to NASD requests for information. (NASD Case #C07040106)

Shaune Denise Dailey (CRD #4757200, Associated Person, Las Vegas, Nevada) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dailey consented to the described sanction and to the entry of findings that she willfully failed to disclose material facts on her Form U4. (NASD Case #C02050040)

Michael Henry D'Amico (CRD #2225883, Registered Representative, Westlake Village, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that D'Amico received \$13,937.82 from a public customer for investment purposes, deposited the check in an account he controlled without the knowledge or consent of the customer, returned \$11,696.35 to the customer, and converted \$2,241.47 to his own use and benefit without the customer's knowledge, authorization, or consent. The findings also stated that D'Amico failed to respond to NASD request to appear for an on-the-record interview and provide testimony. (NASD Case #C02040054)

John Baldwin Hoffmann (CRD #247933, Registered Principal, New York, New York) **Kevin Johnson McCaffrey (CRD #1879348, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which Hoffmann was censured, fined \$120,001, which includes \$1 as disgorgement, and suspended from association with any NASD member in any supervisory capacity for 15 months. McCaffrey was censured, fined \$120,001, which includes \$1 as disgorgement, and suspended from association with any NASD member in any supervisory capacity for 15 months. The monetary sanctions imposed by NASD shall be reduced by the amounts paid by Hoffmann and McCaffrey pursuant to an order entered by the Securities and Exchange Commission. Without admitting or denying the allegations Hoffmann and McCaffrey consented to the described sanctions and to the entry of findings that they failed to adequately supervise a representative with a view to prevent him from publishing fraudulent research reports. The findings also stated that Hoffmann and McCaffrey failed to respond adequately to red flags that the representative made unreasonable research assumptions that led him to publish unrealistically bullish ratings and price targets.

Hoffmann's suspension began June 6, 2005, and will conclude at the close of business September 5, 2006. McCaffrey's suspension began June 6, 2005, and will conclude at the close of business September 5, 2006. (NASD Case #CE4050006)

Stacey Paul Hollins (CRD #4700182, Associated Person, Brooklyn, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Hollins failed to respond to NASD requests for information. The findings also stated that Hollins willfully failed to disclose material facts on his Form U4. (NASD Case #C10040120)

Hampton Forrest Hook (CRD #2398684, Registered Representative, Montgomery, Alabama) 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, Hook consented to the described sanction and to the entry of findings that he loaned \$6,100 to public customers to be deposited into their account at his member firm for the purchase of shares of stock. The findings stated that Hook guaranteed public customers against loss in connection with the purchase of shares in a company. NASD also found that Hook opened a brokerage account for a public customer by completing and signing "New Account Approval" and "Client Option Agreement and Approval" forms; the information provided by Hook and contained on the forms, however, was inaccurate.

In addition, NASD found that Hook shared in the account of a public customer of his member firm by funding all transactions with his own funds and keeping all but \$1,000 of the account proceeds for himself without obtaining prior written authorization from his member firm. The findings also stated that Hook executed unauthorized purchase and sale transactions in the account of a public customer without the customer's knowledge or consent. NASD also found that Hook exercised discretion in the accounts of public customers without having obtained prior written authorization from the customers and without prior written acceptance of the accounts as discretionary by his member firm. In addition, NASD determined that Hook recommended purchase and sale transactions in the account of a public customer without having reasonable grounds for believing that the frequency and nature of the recommended transactions were suitable for the customer based on the customers' financial situation, objectives, circumstances, and needs. (NASD Case #C05050028)

John Basil Inferrera (CRD #2277159, Registered Representative, Pittsford, 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 six months. The fine must be paid before Inferrera reassociates with any NASD member following

the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Inferrera consented to the described sanctions and to the entry of findings that, while not licensed to sell securities in the states of New Jersey and Indiana and in order to circumvent securities licensing requirements, he entered into an arrangement with registered representatives who were properly registered. NASD found that as a part of this arrangement he created inaccurate records related to public customer accounts so that other representatives appeared as the registered representatives of the record when he was actually handling the customers' accounts. The findings also stated that the other registered representatives entered securities transactions for New Jersey and Indiana public customers on Inferrera's behalf.

Inferrera's suspension began June 20, 2005, and will conclude at the close of business December 19, 2005. (NASD Case #C9B050032)

David A. Johnson (CRD #2407687, Registered Representative, Altoona, Pennsylvania) was barred from association with any NASD member in any capacity and ordered to pay \$42,702.83, plus interest, in restitution to public customers. The sanctions were based on findings that Johnson participated in private securities transactions without providing prior written notice to and receiving written permission from his member firm. The findings also stated that Johnson failed to respond to NASD requests for documents and information. (NASD Case# C9A040061)

Mary Beth Ann Johnson (CRD #1171598, Registered Representative, Oswego, Illinois) 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 60 days. The fine must be paid before Johnson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Johnson consented to the described sanctions and to the entry of findings that she typed a letter to herself from a public customer requesting that the member firm issue a check out of the customer's account made payable to an insurance company for the premium payment of an existing life insurance policy for the customer, affixed the customer's signature on the letter, and submitted the letter to her member firm, which caused a check in the amount of \$17,409 to be issued and sent to the insurance company without the customer's knowledge or consent.

Johnson's suspension began June 20, 2005, and will conclude at the close of business August 18, 2005. (NASD Case #C8A050043)

Weston Raymond Kirby (CRD #3052965, Registered Representative, Dallas, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kirby credited his personal brokerage account \$7,000 and withdrew the funds from his account for his personal use and benefit, all of which was done without any deposit of funds to support such credits and without the authorization or consent of his member firm. The findings also stated that Kirby effected transactions in a public customer's account without the authorization or consent of the customer. (NASD Case #C06040038)

Steven Charles Kirsch (CRD #708676, Registered Principal, Boca Raton, Florida) was barred from association with any NASD member in any capacity. The sanction was based on finding that Kirsch provided false testimony about his activities at an NASD on-the-record interview. NASD found that he performed supervisory duties while subject to a 30-day suspension and failed to reasonably supervise his research department prior to his 30-day suspension to ensure that a research report issued by his member firm was accurate. (NASD Case #CAF040025)

Matthew Lee Lewis (CRD #4325621, Registered Representative, East Grand Rapids, Michigan) 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, Lewis consented to the described sanction and to the entry of findings that he affixed the signatures of public customers to documents without the customers' knowledge and consent. The findings also stated that Lewis improperly used the funds of public customers totaling \$2,000 by submitting forged documents authorizing the preparation of a financial plan and its payment, via a deduction from the customers' brokerage accounts. (NASD Case #C8A050036)

Fion Lo (CRD #4628942, Registered Representative, Pacifica, California) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Lo consented to the described sanction and to the entry of findings that she converted insurance premium payments totaling \$6,492.29 from public customers for her own personal use. Lo later repaid the converted funds. (NASD Case #C01050009)

Darwin Raul Martinez (CRD #1493059, Registered Representative, Queens Village, 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, Martinez consented to the described sanction and to the entry of findings that he stole property worth \$6,000 from public customers of his member firm. (NASD Case #C10050004)

Robert Kurtis Mauss (CRD #1054321, Registered Representative, Austin, Texas) 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, Mauss consented to the described sanction and to the entry of findings that he engaged in private securities transactions without providing prior written notice to his member firm. The findings also stated that he engaged in outside business activities and received compensation in connection with such activity without providing prompt written notice to his member firm. NASD also found that Mauss failed to disclose material facts on his Form U4. **(NASD Case #C06050010)**

William John Muenckler (CRD #2225541, Registered Principal, East Northport, New York) submitted an Offer of Settlement in which he was fined \$12,500 and suspended from association with any NASD member in any capacity for five months. The fine must be paid before Muenckler reassociates with any NASD member following the suspension or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Muenckler consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Forms U4. NASD also found that Muenckler willfully caused his member firm to make an extension of credit to him in violation of Regulation T.

Muenckler's suspension began June 20, 2005, and will conclude November 19, 2005. **(NASD Case #C10040076)**

Brian Jared Newmark (CRD #2687942, Registered Representative, Havertown, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$150,000 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Newmark reassociates with any NASD member following the suspension or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Newmark consented to the described sanctions and to the entry of findings that he engaged in business activities outside the scope of his relationship with his member firm without providing prompt written notice to his member firm.

Newmark's suspension began June 6, 2005, and will conclude at the close of business March 5, 2006. **(NASD Case #C9A050023)**

Stephen Douglas Oatway (CRD #3012900, Registered Principal, Le Sueur, 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, Oatway consented to the described sanction and to the entry of

findings that he converted \$65,000 of securities funds of public customers to his own use and benefit without the customers' authorization, knowledge, or consent. The findings also stated that Oatway failed to respond to NASD requests for information. **(NASD Case #C04050018)**

Brion Gary Randall (CRD #2612584, Registered Representative, Plano, 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 four months. The fine must be paid before Randall reassociates with any NASD member following the suspension or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Randall consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers without having obtained prior written authorization from the customer and without prior written acceptance of the accounts as discretionary by his member firm.

Randall's suspension began June 20, 2005, and will conclude at the close of business October 19, 2005. **(NASD Case #C06050012)**

John Francis Ranhofer (CRD #2699789, Registered Representative, Valencia, 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, Ranhofer consented to the described sanctions and to the entry of findings that he participated in a private securities transactions without providing prior written notice to or receive approval from his member firm. The findings also stated that Ranhofer engaged in outside business transactions and failed to give prompt notice of these activities to his member firm. NASD also found that Ranhofer failed to disclose material facts on his Form U4. **(NASD Case #C02040033)**

Lawrence Brice Ray (CRD #3036046, Registered Representative, Miller Place, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before Ray reassociates with any NASD member following the suspension or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Ray consented to the described sanctions and to the entry of findings that he failed to amend his Form U4 to disclose material facts in a timely manner.

Ray's suspension began June 20, 2005, and will conclude at the close of business July 18, 2005. **(NASD Case #CLI050013)**

Jason Barry Reback (CRD #735463, Registered Principal, Mendham, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,316, including disgorgement of commissions of \$1,316, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Reback consented to the described sanctions and to the entry of findings that he purchased bonds in the account of a public customer without the customer's consent or authority.

Reback's suspension began June 20, 2005, and concluded at the close of business July 1, 2005. **(NASD Case #C9B050033)**

Gerard Magelli Russomagno (CRD #2234516, Registered Principal, Tewksbury, 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 three months. The fine must be paid before Russomagno reassociates with any NASD member following the suspension or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Russomagno consented to the described sanctions and to the entry of findings that he failed to disclose material information of his Form U4.

Russomagno's suspension began July 5, 2005, and will conclude at the close of business October 4, 2005. **(NASD Case #C9B050034)**

Ricardo Alfonso Sibaja (CRD #4209256, Registered Representative, Ontario, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 45 days. The fine must be paid before Sibaja reassociates with any NASD member following the suspension or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Sibaja consented to the described sanctions and to the entry of findings that, upon the request of public customers, he completed forms on their behalf to change the names of ownership on two of their accounts. After submitting the forms, Sibaja was notified that the forms were outdated and that the customers needed to submit an original, executed form for each account. However, in an attempt to accommodate the customers, he cut the customers' signatures from the outdated forms and pasted them onto the new forms without the customers' knowledge or consent.

Sibaja's suspension began June 20, 2005, and will conclude at the close of business August 3, 2005. **(NASD Case #C02050041)**

Michael Russell Smith (CRD #1041552, Registered Principal, Arlington Heights, Illinois) 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. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he affixed the signature of a public customer to letters requesting the liquidation of an account within a profit sharing plan, of which the customer was the trustee, without the customer's knowledge or consent.

Smith's suspension began June 20, 2005, and will conclude at the close of business December 19, 2005. **(NASD Case #C8A050044)**

Ilene Leslie Sonnenberg (CRD #2924802, Registered Representative, Coconut Creek, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$10,000, including disgorgement of \$1,241, and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Sonnenberg reassociates with any NASD member following the suspension or prior to any application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Sonnenberg consented to the described sanctions and to the entry of findings that she recommended the purchase of a variable annuity to public customers that was unsuitable.

Sonnenberg's suspension began June 6, 2005, and concluded at the close of business June 17, 2005. **(NASD Case #C05050024)**

Kevin Levant Teasley (CRD #2670648, Registered Principal, Great Falls, Montana) was barred from association with any NASD member in any capacity, and ordered to pay \$150,000, plus interest, in restitution to a public customer. The sanctions were based on findings that Teasley misused customer funds totaling \$250,000 by not investing the funds as intended. The findings also stated that Teasley failed to respond to NASD requests for information. **(NASD Case #C3B040031)**

Teekachand Richard Tiwari (CRD #1995398, Registered Representative, West Harrison, 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, Tiwari consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing written notification to or obtaining written approval from his member firm. The findings also stated that Tiwari engaged in outside business activities without providing prompt written notice to his member firm. In addition, NASD

found that Tiwari failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C10050031)

Jeffrey Steven Thomas (CRD #2744143, Registered Representative, Monroe, 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, Thomas consented to the described sanctions and to the entry of findings that he withdrew \$180,000 from the bank account of a trust account under the guise of using it to pay insurance premiums, diverted the check into two \$90,000 cashiers checks, deposited one of the checks into his personal checking account without the approval and authority of the owner, and then converted \$70,000 to his own personal use. The findings also stated that Thomas failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C8A050040)

Maximiliano Miguel Toledo, II (CRD #1689814, Registered Representative, Miami, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Toledo falsified his member firm's records so that he could liquidate mutual fund shares in the accounts of public customers. In addition, Toledo failed to respond to NASD requests for information. (NASD Case #C07040091)

Douglas Eugene Totten, Jr. (CRD #1350178, Registered Principal, Bradenton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Totten consented to the described sanction and to the entry of findings that he made recommendations to public customers to purchase variable annuities that were unsuitable. (NASD Case #C07050033)

Daniel Patrick Walker (CRD #1404568, Registered Representative, Lanark, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$30,353, plus interest, in disgorgement as partial restitution to public customers. The fine and restitution must be paid before Walker reassociates with any NASD member following the suspension or prior to any application or request for 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 participated in private securities transactions without providing prior written notification to and receiving prior written approval from his member firm.

Walker's suspension began June 6, 2005, and will conclude at the close of business December 5, 2005. (NASD Case #C04050019)

Nathaniel Elliott Webb (CRD #4653069, Associated Person, Los Angeles, California) was fined \$5,000 and suspended from association with any NASD member in any capacity for 20 business days. The fine must be paid before Webb reassociates with any NASD member following the suspension or prior to any application or request for relief from any statutory disqualification. The sanctions were based on findings that Webb failed to disclose material information on his Form U4.

Webb's suspension began May 16, 2005, and concluded at the close of business June 13, 2005. (NASD Case #C02040042)

Paul Zdzieblowski (CRD #3029905, Registered Representative, Sterling Heights, Michigan) was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers decision. The sanctions were based on findings that Zdzieblowski willfully failed to disclose material information on his Form U4.

Zdzieblowski's suspension began July 5, 2005, and will conclude July 5, 2006. (NASD Case #C8A030062)

Complaints Filed

NASD issued the following complaints. 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.

Majied Ad Alzid (CRD #4710052, Registered Representative, Flint, Michigan) was named as a respondent in an NASD complaint alleging that he made improper use of customer funds. The complaint alleges that a public customer withdrew \$7,000 from her savings account at the request of Alzid, and then tendered the funds to the respondent who represented that he would invest the \$7,000 on her behalf. Alzid instead opened a checking account and a brokerage account, designated himself as the sole authorized signatory on the accounts using his alias, deposited the customer's funds into the checking account, and used the funds for his personal benefit without the customer's authorization. The complaint also alleges that Alzid placed

trades without authorization by using another registered representative's number without that representative's knowledge or consent. The complaint further alleges that Alzid failed to respond to NASD requests for information. (NASD Case #C8A050041)

Austin Securities, Inc. (CRD #17094, Forest Hills, New York) and Brian Robert Mitchell (CRD #1191608, Registered Principal, Yorktown Heights, New York) were named as respondents in an NASD complaint alleging that, in connection with the offer, purchase, or sale of securities, and through the means and instrumentalities of interstate commerce, including the mails, the firm, acting through Mitchell, employed a device, scheme, or artifice to defraud; obtained money or property by means of an untrue statement of material fact or omission to state a material fact necessary to make the statement not misleading; and engaged in transactions, practices, or courses of business that operated as a fraud or deceit upon the purchaser. The complaint also alleges that the firm, acting through Mitchell, prepared and issued, or caused to be prepared and issued, false and fictitious account statements, confirmation statements, and Forms 1099 of the Internal Revenue Service to trustees of an account, which purported to represent the performance of the account and thus concealed misconduct and overstated the value of the account by several million dollars. (NASD Case #CLI050009)

Arthur Joseph Booze (CRD #2570386, Registered Representative, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that Booze altered a mutual fund product switch form by using "white out" on signed letters to erase the surrender charge and writing a false figure over the white out then placing the altered product switch letters with the false figures in the customers' files. The complaint also alleges that Booze recommended securities transaction in the accounts of public customers without having a reasonable basis for believing that the transactions were suitable for customers based on their financial status and investment objectives, and without discussing the possibility of purchasing similar mutual funds within the existing fund family. (NASD Case #C8A050029)

Erik Joseph Matz (CRD #2715303, Registered Representative, Hicksville, New York) was named as a respondent in an NASD complaint alleging that, by use of any means or instrumentality of interstate commerce or of the mails, he intentionally or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and intentionally or recklessly effected transactions in, or induced the purchase or sale of securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. (NASD Case #CLI050014)

Tonya Andrea Roberts (CRD #4174065, Registered Representative, Virginia Beach, Virginia) was named as a respondent in an NASD complaint alleging that she obtained credit cards through the use of a customer's personal information. The complaint alleges that she completed and signed credit card applications using a public customer's personal information she had access to, submitted and received credit cards, then charged \$6,000 for her own personal use and benefit without the customer's knowledge, authorization, or consent. The complaint also alleges that Roberts failed to respond to NASD requests for information. (NASD Case #C8A050042)

James Arthur Swanke (CRD #2228901, Registered Representative, Apple Valley, Minnesota) and Colin Price Collea (CRD #1519299, Registered Representative, Littleton, Colorado) were named as respondents in an NASD complaint alleging that Swanke and Collea made material misstatement of facts in connection with their offers and sales of brokered callable certificates of deposit. (NASD Case #C05050026)

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

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

Mannino, Stefano Anthony
Brooklyn, New York
(May 25, 2005)

Minton, Wallace Bradley
Louisville, Kentucky
(May 31, 2005)

Sullivan, William Joseph
Waterbury, Connecticut
(May 2, 2005)

Woodworth, Charles Hamlin
Mahwah, New Jersey
(June 1, 2005)

Woo, Carmen Kayee
Clayton, California
(June 1, 2005)

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

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

HD Brous & Co., Inc.
Great Neck, New York
(May 5, 2005 to June 20, 2005)

Individuals Suspended Pursuant to NASD Rule 9552 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.)

Fernandez, Fernando
Boca Raton, Florida
(May 18, 2005)

Getty, Keith Merle
Mechanicsburg, Pennsylvania
(June 13, 2005)

Kendall III, Allyne Riese
San Diego, California
(June 6, 2005)

Moussavi, Ahmad
Los Angeles, California
(May 23, 2005)

Rodriguez, Mario
Bayonne, New Jersey
(May 10, 2005)

Steadman, Timothy Leroy
Modesto, California
(May 11, 2005)

Tizabi, Jacques
Los Angeles, California
(May 23, 2005)

Vesely, Kenneth Scott
North Woodmere, New York
(June 14, 2005)

Individuals Barred Pursuant to NASD Rule 9552 for Failure to Provide Information Requested under NASD Rule 8210.

Carroll, Kim Sang
Lake Forrest, California
(May 18, 2005)

Herrera, Rene U.
El Paso, Texas
(May 10, 2005)

Huynh, Phuong Lan Thi
San Deigo, California
(June 8, 2005)

Lazariw, Rosemary
Tampa, Florida
(May 16, 2005)

Pound, Lester Ray
The Woodlands, Texas
(May 23, 2005)

Siddons, Daniel Richard
West Chester, Pennsylvania
(May 16, 2005)

Stellmach, Justin Lee
Yardley, Pennsylvania
(May 24, 2005)

Sylvester, Cassian Oliver
New York, New York
(May 18, 2005)

NASD Fines 20 Firms \$1.65 Million for Municipal Trade Reporting Violations

Majority of Individual Fines Exceed Previous Record for MSRB Trade Reporting Violations

NASD censured and fined 20 securities firms a total of \$1.65 million for late and/or inaccurate reporting of tens of thousands of municipal securities transactions to the Municipal Securities Rulemaking Board (MSRB). NASD is responsible for enforcing MSRB rules.

Prior to January 31, 2005, MSRB rules required all dealers to report municipal trades to the MSRB by midnight of the day of the trade for public dissemination the following day. As of January 31, MSRB rules require that those transactions be reported within 15 minutes of trade execution. The MSRB now disseminates trade data about all reported municipal securities transactions almost immediately after the trades are reported.

These enforcement actions focus on misconduct that occurred from January 2003 through October 2004. During that period, 19 of the 20 firms failed to timely report at least five percent of their customer trades in municipal securities. Additionally, from January 2003 through May 2004, seven firms failed to timely report at least 12 percent of their inter-dealer municipal securities trades. NASD found that each firm failed to monitor its trade reporting to ensure compliance with MSRB reporting rules.

The majority of individual fines in this instance are the most severe NASD has ever imposed for municipal securities trade reporting violations, underscoring the fact that prompt, accurate transaction reporting is critical to the functioning of the municipal securities market. Prompt, accurate reporting also provides the primary audit trail for regulators to conduct surveillance for potentially manipulative practices and to detect sales practice violations and other violations of the

federal securities laws and MSRB rules. NASD and the MSRB have repeatedly advised dealers of their responsibility to report transactions accurately and timely.

“Accurate and timely trade reporting ensures that dealers and investors alike obtain an accurate picture of market activity and prices—facilitating a dealer’s ability to price municipal securities accurately and an investor’s ability to make informed investment decisions,” said Mary Schapiro, NASD Vice Chairman. “Municipal dealers, retail and institutional investors, and other market participants rely upon the integrity of trade data published by MSRB when making investment and trading decisions.”

Prior to these actions, the largest fine ever imposed by NASD for municipal trade reporting violations was \$25,000. In these actions, NASD censured and fined the following firms:

Piper Jaffray & Co.	\$280,000	Minneapolis, MN
ABN AMRO Incorporated	\$220,000	Chicago, IL
J.P. Morgan Securities, Inc.	\$160,000	New York, NY
Goldman, Sachs & Co.	\$140,000	New York, NY
Stephens, Inc.	\$110,000	Little Rock, AR
Stone & Youngberg, LLC	\$110,000	San Francisco, CA
Banc of America Investment Services, Inc.	\$90,000	Charlotte, NC
Raymond James & Associates, Inc.	\$90,000	St. Petersburg, FL
Brinker Capital Securities, Inc.	\$60,000	King of Prussia, PA
Chase Investment Services Corp.	\$60,000	Chicago, IL
Citigroup Global Markets Inc.	\$60,000	New York, NY
CIBC World Markets Corp.	\$40,000	New York, NY
Emmet & Co., Inc.	\$40,000	Far Hills, NJ
Loop Capital Markets, LLC	\$40,000	Chicago, IL
Popular Securities, Inc.	\$40,000	Hato Rey, PR
BOSC, Inc.	\$30,000	Tulsa, OK
Pershing LLC	\$30,000	Jersey City, NJ
Prager, Sealy & Co., LLC	\$30,000	San Francisco, CA
Tejas Securities Group, Inc.	\$10,000	Austin, TX
UBS International Inc.	\$10,000	New York, NY

In settling with NASD, the firms neither admitted nor denied the allegations, but consented to the entry of NASD's findings. NASD is continuing its investigation of apparent municipal trade reporting deficiencies at other firms.

NASD recently launched Smart Bond Investing, an online learning center that provides a wealth of information about bonds and bond investing, along with easy access to real-time corporate and municipal bond prices and the day's most active corporate bonds. In addition to covering the basics of bond maturity, yield, and pricing, Smart Bond Investing offers sections on dealing with risk; how bonds are bought and sold; an overview of the corporate, municipal, and government bond markets; and a look at the various types of individual bonds and bond mutual funds.

Special features of Smart Bond Investing include a Risk Report Card and Snapshot for corporate, municipal, government, and other types of bonds, an interactive Accrued Interest Calculator, and helpful tips and resources that include a Bond and Bond Fund Comparison table and a Top 10 List of things to consider before investing in bonds or bond funds.

In February 2005, NASD launched full implementation of TRACE, which makes data on virtually all corporate bond transactions publicly available within 30 minutes. On July 1, that data became publicly available within 15 minutes. TRACE data is available free of charge at www.nasdbondinfo.com.

NASD Charges Gunnallen Broker with Threatening Public Company

Broker Attempted to Extort Inside Information with Threat to Drive Down Stock Price

NASD charged Shawn Aaron, a stockbroker with Gunnallen Financial, Inc., in Tampa, FL, with attempting to extort and intimidate Optelecom-NKF, Inc. (OPTC), a NASDAQ SmallCap company. NASD charged that Aaron threatened to drive down the price of the company's stock from about \$13 to \$6 per share unless it provided him with confidential business information.

According to NASD's complaint, Aaron purchased Optelecom-NKF shares for his own account in early April 2004. On his recommendation, about 50 of his customers also bought the stock. Together, Aaron and his customers owned more than 134,000 shares by mid-April 2004. At the time, the company had about 3.15 million total shares issued and outstanding.

NASD charged that later that month, Aaron contacted a representative of Optelecom-NKF and falsely stated that he personally owned or controlled 300,000 shares, or 10 percent of the company's stock. Aaron then threatened to drive down the price of the stock to \$6 by dumping the shares on the

open market unless he were given inside information about the company. Aaron told the company representative that he wanted to work with him to take the company's stock to the next level. To bolster his threat, Aaron falsely stated that he had at times owned substantial shares of other companies' stock, including some in the same general business as Optelecom-NKF, and was instrumental in driving up their stock prices. The company refused to cooperate with Aaron.

NASD said in its complaint that Aaron's misconduct was part of a scheme to defraud Optelecom-NKF by the use of false pretenses and representations, violating NASD rules that obligate brokers to observe high standards of commercial honor and just and equitable principles of trade.

Optelecom-NKF is a Maryland-based company that designs and manufactures communications products that transport data, video, and audio over the Internet and fiber optic cables.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension, or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution.

NASD Charges Pennsylvania's Scott W. Ryan, Ryan & Company with Impermissible Short Selling Scheme for Hedge Fund Clients

Ryan Previously Barred, Firm Expelled for Failure to Cooperate with NASD Probe

NASD charged Scott W. Ryan of Bryn Mawr, PA, and Ryan & Company, LP (RYCO) of West Conshohocken, PA, with engaging in a long-term, widespread scheme of impermissible short selling activity on behalf of three hedge fund clients.

Ryan was barred from the securities industry and an NASD Hearing Panel expelled RYCO in June 2004 for failing to provide all of the information requested in association with the investigation that led to the charges. That hearing panel decision has been appealed to NASD's NAC. Ryan's bar and RYCO's expulsion are stayed pending the outcome of that appeal.

NASD has now charged Ryan and his firm with carrying out a scheme to create and maintain short positions in OTC equity securities on behalf of three RYCO client hedge funds. The hedge funds were unable to sell the stocks short themselves because they could not satisfy NASD's affirmative determination requirements. To circumvent the restrictions that prohibited the hedge funds from selling short, RYCO would register as a market maker in the security, and then, under the guise of its market maker status, sell the stock short at the

behest of the hedge funds. In each instance, RYCO sold the stock short without making and annotating an affirmative determination that the firm could borrow the security or otherwise provide for delivery of the security by settlement date. As a result of their illicit conduct, RYCO reaped substantial profits.

NASD further charged RYCO with failing to correctly report short sale transactions. Ryan and RYCO also face charges of failing to report option positions and of supervisory failures.

Ryan's registration with NASD and RYCO's registration as a broker-dealer were both voluntarily terminated on April 30, 2004.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension, or bar from the securities industry, and disgorgement of gains associated with the violations.