

Disciplinary and Other NASD Actions

REPORTED FOR NOVEMBER

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 September 2004.

Firms Fined, Individuals Sanctioned

Garden State Securities, Inc. (CRD #10083, Wall, New Jersey), George Kenneth Bicking (CRD #21054, Registered Principal, Holmdel, New Jersey), and Paul William Ponn (CRD #1645923, Registered Principal, Matawan, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, jointly and severally with Bicking, and required to revise the firm's written supervisory procedures regarding quotation and trading activity within 30 business days. Bicking was suspended from association as a general securities principal for 15 business days. Ponn was fined \$25,000 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ponn engaged in a course of conduct through which small buy (sell) orders were entered into an electronic communications network (ECN) at prices that affected the national best bid (offer) (NBBO) to facilitate the automatic execution of larger sell (buy) orders on the opposite side of the market by a market maker that guaranteed that they would provide executions at the NBBO price, thereby permitting Ponn to buy (sell) shares of a NASDAQ National Market® (NNM)® security at prices that otherwise would not have been available in the market. The findings also stated that Bicking failed to establish, maintain, and enforce a supervisory system reasonably designed to detect and prevent fraudulent, manipulative, and deceptive quotation and trading activity. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning fraudulent, deceptive, and manipulative quotation and trading activity.

Bicking's suspension began November 1, 2004, and will conclude at the close of business November 19, 2004. Ponn's suspension began November 1, 2004, and will conclude January 29, 2005. (NASD Case #CMS040148)

Northwestern Mutual Investment Services, LLC (CRD #2881, Milwaukee, Wisconsin), Thomas Garland Lipscomb, III (CRD #1371451, Registered Representative, Overland Park, Kansas), Daniel Edward Brunette (CRD #813924, Registered Representative, Indianapolis, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$1,000,000, and required to file with NASD's Advertising Regulation Department all institutional sales materials used for educational purposes relating to internal seminars and training sessions about variable life insurance

products prior to their first use for one year from the date of acceptance of this AWC. The firm was also required to provide notice to all current firm registered representatives that attended Lipscomb's seminars from May 18, 1998, through October 22, 2001, that explains the deficiencies identified in this AWC of the seminars. Lipscomb was censured, fined \$250,000, suspended in any capacity for 30 business days, and ordered to requalify as a Series 6 investment company products/variable contracts representative. Brunette was censured, fined \$10,000, and suspended in any capacity for five business days.

Without admitting or denying the allegations, the firm, Lipscomb, and Brunette consented to the described sanctions and to the entry of findings that Lipscomb conducted training seminars for firm sales agents that emphasized the investment aspects of a variable life insurance while downplaying the insurance aspects, presented a simplistic and inaccurate depiction of its tax implications, and failed to describe sufficiently the risks of using the policy in the manner he recommended. The findings also stated that the firm was aware of concerns with Lipscomb's seminars but failed to take adequate action to address these concerns nor was Lipscomb disciplined by the firm for failing to make requested changes to the seminar. NASD also found that Brunette failed to describe clearly the variable life insurance policy in letters to public customers and the firm, despite knowing that Brunette had used inappropriate terms in communications with public customers, failed to take adequate and timely action to monitor and supervise his written correspondence with customers. In addition, NASD found that the firm failed to retain e-mails for three years, or for the first two years in an accessible place.

Lipscomb's suspension began October 18, 2004, and will conclude at the close of business November 26, 2004. Brunette's suspension began October 18, 2004, and concluded at the close of business October 22, 2004. (NASD Case #CAF040075)

Sumner Harrington, Ltd. (CRD #45858, Minnetonka, Minnesota), Kim Edward Elverud (CRD #2139216, Registered Principal, Bloomington, Minnesota), William Eugene Casey (CRD #2244596, Registered Principal, St. Paul, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$60,000, jointly and severally with Elverud, and required to submit all advertisements and sales literature relating to the specific products or services prepared by or for the firm or its affiliates to NASD's Advertising Regulation Department for approval prior to distribution to the public for a period of nine months following the acceptance of this AWC. The firm was also required to notify each current holder of renewable unsecured subordinated notes of a securities issuer of the outcome of this AWC by first class mail and shall, at a minimum, include a copy of this AWC or press release. The firm also was required to retain an outside

consultant to review and make recommendations concerning the adequacy of the firm's current policies and procedures as they relate to suitability under NASD rules and federal securities laws. Elverud was suspended from association with any NASD member in any capacity for 20 days. Upon completion of the suspension in any capacity, Elverud will be suspended from acting in any supervisory capacity or as a trainer of personnel with any NASD member for nine months. Elverud was also required to requalify by examination as a Series 24 principal before the completion of the nine-month supervisory suspension. If Elverud has not requalified, he shall be prohibited from serving in any principal capacity until he has successfully requalified. Casey was fined \$5,000, suspended from association with any NASD member in any capacity for 20 days, and required to requalify by examination as a Series 24 principal within three months after the acceptance of this AWC or cease serving in that capacity.

Without admitting or denying the allegations, the firm, Elverud, and Casey consented to the described sanctions and to the entry of findings that the firm, acting through Elverud and Casey, made unsuitable recommendations to public customers regarding securities offerings without having reasonable grounds for believing the recommendations were suitable for particular customers upon the basis of the facts disclosed prior to the transactions and failed to make reasonable efforts to obtain additional information concerning the customer's financial status, investment objectives, and other information relevant to making a determination as to suitability. The findings also stated that the firm received compensation in connection with the offerings and failed to provide any explanation or documentation to NASD describing changes in the firm's underwriting compensation. In addition, the firm's advertising revenue was not disclosed in the offering materials distributed to the investing public. NASD also found that the firm's investment kits and advertisements failed to disclose that the firm was to receive commissions for its underwriting efforts and its advertising material, and that credit agencies had downgraded an issuer's credit rating or that the company's notes carried more risk. In addition, NASD found that the firm failed to disclose adequately consideration it received from securities issuers or the amount thereof in connection with notices, circulars, and advertisements distributed to the investing public. Moreover, NASD found that the firm's written supervisory procedures failed to address adequately suitability determinations for compliance with NASD Rule 2310. Furthermore, NASD found that the firm, through Elverud, failed to establish and maintain adequate procedures for the supervision of suitability determinations and to supervise adequately and monitor Casey's suitability determinations. Casey, in turn, failed to supervise adequately and monitor suitability determinations made by another employee under his charge.

Elverud's suspension in any capacity began November 1, 2004, and will conclude November 20, 2004. Elverud's

suspension in a supervisory or personnel trainer capacity will begin November 22, 2004, and will conclude at the close of business August 23, 2005. Casey's suspension began October 4, 2004, and concluded October 23, 2004. (NASD Case #CAF040069)

Trautman Wasserman & Company, Inc. (CRD #33007, New York, New York) and Gregory Owen Trautman (CRD #1837389, Registered Principal, New York, New York) submitted an Offer of Settlement in which the firm was fined \$100,000. Trautman was fined \$200,000, including disgorgement of \$135,000 of commissions in partial restitution to public customers, suspended from association with any NASD member in any capacity for 31 days, suspended from association with any NASD member as a Series 24, general securities principal for six months, and barred from association with any NASD member as a Series 55 equity trader. Without admitting or denying the allegations, the firm and Trautman consented to the described sanctions and to the entry of findings that the firm, acting through Trautman, offered a special sales credit to its registered representatives for selling a security and, either intentionally or recklessly failed to disclose or to take any steps to cause to be disclosed to public customers the special sales credit offered to the firm's registered representatives, depriving the customers of the knowledge that the registered representatives might be recommending stock based upon the their own financial interest rather than the investment value of the security. NASD also found that the firm failed to report to NASDAQ principal purchases and sales of the security. In addition, NASD found that the firm inaccurately reported securities transactions, failed to identify the report as an aggregate transaction, and reported the times of securities purchases to the Nasdaq Stock Market for which the corresponding order memoranda reflected a later time.

Moreover, NASD found that the firm was a market maker in penny stocks and effected transactions with public customers in the stocks although the stocks did not qualify for a transactional exemption from the Securities and Exchange Commission's (SEC) penny stock rules. The firm also failed to furnish the customers with the requisite risk disclosure document relating to the penny stock market and disclose the inside bid/outside offer quotations; failed to disclose the amount of compensation received by the firm and registered representatives; failed to give purchasing customers the requisite written statement relating to price determinations and market and price information for the penny stocks; and failed to properly approve the accounts for transactions in penny stocks for non-established customers and to receive the required purchase agreement. Moreover, NASD found that the firm's written supervisory procedures were not reasonably designed to achieve compliance with Regulation M of the Securities Exchange Act of 1934.

Trautman's suspension in a principal capacity began November 1, 2004, and will conclude April 30, 2005. Trautman's suspension in all capacities began November 1, 2004, and will conclude at the close of business December 1, 2004. (NASD Case #C3A030049)

Firms and Individuals Fined

Huntingdon Securities Corporation (CRD #16497, Minot, North Dakota) and Roger William Domres (CRD # 2190341, Registered Principal, Minot, North Dakota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Domres were censured and fined \$10,000, jointly and severally. The fine must be paid before Domres reassociates with any NASD member or before the firm applies for membership with NASD. Without admitting or denying the allegations, the firm and Domres consented to the described sanctions and to the entry of findings that the firm, acting through Domres, generated approximately \$11,899 in revenue from the sale of options without having at least one properly qualified options principal. The findings also stated that that the firm permitted Domres to perform in a capacity requiring registration while he was deemed inactive due to his failure to complete timely the Regulatory Element of NASD's Continuing Education Requirements. NASD also found that the firm failed to establish and maintain an effective supervisory control system and supervisory procedures designed to ensure compliance with the Regulatory Element of NASD's Continuing Education Requirements. (NASD Case #C04040045)

Firms Fined

Professional Investment Services, Inc. (CRD #13703, Winfield, Kansas) and Don Howard Ehling (CRD #76203, Registered Principal, Winfield, Kansas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm and Ehling were censured and fined \$22,500, jointly and severally. Without admitting or denying the allegations, the firm and Ehling consented to the described sanctions and to the entry of findings that the firm, acting through Ehling, failed to file timely its annual audited reports. The findings also stated that the firm, acting through Ehling, contravened SEC Rule 15c3-1 in that it utilized the instrumentalities of interstate commerce to conduct a securities business while failing to maintain minimum net capital. NASD also found that the firm, acting through Ehling, failed to prepare accurate net capital computations. (NASD Case #C04040044)

American Express Financial Advisors, Inc. (CRD #6363, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$400,000. Without admitting or denying the allegations, the

firm consented to the described sanctions and to the entry of findings that it failed to file with NASD's Advertising Regulation Department within 10 days of publication or first use, advertising and sales literature it used with the investing public. The findings also stated that the firm failed to obtain the written approval by a principal of pieces of advertising and sales literature prior to use with the investing public. NASD also found that the firm failed to establish, maintain, and enforce a supervisory system and procedures reasonable designed to achieve compliance with federal securities laws and NASD rules. In addition, NASD determined that the firm failed to monitor consistently and to enforce policies and procedures relating to advertising and sales literature. (NASD Case #CAF040072)

Edward D. Jones & Co., L.P. (CRD #250, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$200,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it encouraged its representatives to recommend the use of margin loans to public customers and failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to deter and prevent its representatives from making unsuitable recommendations regarding the use of margin loans in client accounts as a result of its bonus plan. (NASD Case #C07040079)

Edward D. Jones & Co., L.P. (CRD #250, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$15,000, and required to revise the firm's supervisory procedures regarding Trade Reporting and Compliance Engine (TRACE) reporting within 30 business days of acceptance of this AWC by the National Adjudicatory Council (NAC). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported a price that included its markup/markdown and improperly reported the markup/markdown again as a commission in transactions reported to TRACE. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning the reporting of transactions to TRACE. NASD also found that the firm's supervisory system did not provide for supervision reasonably designed to ensure that the firm's automated TRACE reporting system reported trades in compliance with NASD's Marketplace Rule 6230(d)(1). (NASD Case #CMS040143)

J. B. Hanauer & Co. (CRD #6958, Parsippany, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$7,500, ordered to pay \$6,882, plus interest, in restitution to public customers, and to update its written supervisory procedures as they relate to the determination of the fair market value of municipal securities being bought or sold from a public customer. Without admitting

or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it purchased municipal security positions from public customers for its own account then sold the securities at a nominal gain. Moreover, NASD determined that the prices paid to the customers, and received by the firm, were below the fair market value of each security. NASD also found that the firm failed to ensure that the transactions were executed at aggregate prices that were fair and reasonable. (NASD Case #C05040064)

Lehman Brothers, Inc. (CRD #7506, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$13,000, and required to revise the firm's written supervisory procedures regarding SEC Rules 10a-1, 11Ac1-5, 11Ac1-6(ii), and Best Execution (Three Quote Rule) 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 accepted customer short sale orders in certain securities and, for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on behalf of the customer or that the firm could borrow the security on behalf of the customer for delivery by settlement date. The findings also stated that the firm effected short sales in certain securities for the firm's proprietary accounts and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by settlement date. NASD also found that the firm failed to mark memoranda for Consolidated Quotation SystemSM (CQSSM) proprietary transactions as long or short; executed short sales of CQS securities at prices below the last sale prices of the securities when it was not a market maker in any CQS security; and failed to provide written notification disclosing to its customers that the transactions were executed at an average price. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning SEC Rules 10A-1, 11Ac1-5, 11Ac1-6(ii), and Best Execution (Three Quote Rule). (NASD Case #CMS040140)

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 \$27,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through the Automated Confirmation Transaction ServiceSM (ACTSM) last sale reports of transactions in eligible securities and OTC Equity securities and failed to designate through ACT such last sale reports as late. The findings also stated that the firm incorrectly designated as late to ACT last sale reports of transactions in eligible securities. (NASD Case #CMS040146)

Quick & Reilly, Inc. (CRD #11217, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$5,000, ordered to pay \$5,137.50, plus interest, in restitution to public customers, and to update its written supervisory procedures as they relate to the determination of the fair market value of municipal securities being bought or sold from a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it purchased municipal security positions from public customers for its own account then sold the securities at a nominal gain. Moreover, NASD determined that the prices paid to the customers, and received by the firm, were below the fair market value of each security. NASD also found that the firm failed to ensure that the transactions were executed at aggregate prices that were fair and reasonable. **(NASD Case #C05040066)**

RBC Dain Rauscher, Inc. (CRD #31194, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, ordered to pay \$8,714.50, plus interest, in restitution to a public customer, and to update its written supervisory procedures as they relate to the determination of the fair market value of municipal securities bought or sold from a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it purchased a municipal security position from a public customer for its own account and then sold the security at a nominal gain. Moreover, NASD determined that the price paid to the customer, and received by the firm, was below the fair market value of the security. NASD also found that the firm failed to ensure that the transactions were executed at aggregate prices that were fair and reasonable. **(NASD Case #C05040068)**

Royal Alliance Associates, Inc. (CRD #23131, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$11,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution that the firm had an obligation to accept or decline in ACT as the order entry identifier (OEID). **(NASD Case #CMS040142)**

Safeco Securities, Inc. (CRD #739, Redmond, Washington) 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 used instrumentalities of interstate commerce to effect transactions in securities while failing to maintain required net capital of not less than \$5,000. **(NASD Case #C3B040025)**

UBS Securities, LLC (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it incorrectly designed as “.PRP” through ACT last sale reports of transactions in NNM securities; transmitted to the Order Audit Trail SystemSM (OATSSM) reports that contained inaccurate, incomplete, or improperly formatted data; and failed to provide written notification disclosing to its customers that transactions were executed at an average price. The findings also stated that the firm made available a report on covered orders in national market securities that it received for execution from any person that included incorrectly classified orders and incorrectly calculated order execution data. **(NASD Case #CMS040147)**

Individuals Barred or Suspended

Douglas Roy Albert (CRD #1040077, Registered Representative, Nesconset, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Albert consented to the described sanctions and to the entry of findings that he altered an Investor Acknowledgment of Risk With Respect to Real Estate Investment Trusts form for the account of a public customer. The findings also stated that Albert changed the dates and account number on the document and, after making these changes, submitted the form to his supervisor as a new document for approval to transfer a portion of the customer's individual retirement account into a real estate investment trust investment.

Albert's suspension began October 4, 2004, and will conclude at the close of business January 3, 2005. **(NASD Case #CLI040024)**

Robert Scott Bales (CRD #1174731, Registered Representative, Mattituck, 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, Bales consented to the described sanction and to the entry of findings that he failed to respond to NASD requests to appear for testimony. **(NASD Case #CLI040023)**

Samuel Jay Begun (CRD #2376641, Registered Representative, Potomac, Maryland) 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, Begun consented to the described sanction and to the entry of findings that he received \$30,000 from a public customer to invest in a real estate business venture Begun had described, and that Begun

improperly treated these funds as a personal loan from the customer. (NASD Case #C9A040043)

Brookes McIntosh Bendetsen (CRD #1374304, Registered Principal, Burlingame, California) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Bendetsen signed the name of a public customer to a margin agreement for the customer's trust account without written authorization of the customer. The findings also stated that Bendetsen recommended and effected short sales of shares in the account of a public customer without having a reasonable basis for believing the transactions were suitable for the customer based on the customer's financial situation, investment objectives, and needs. NASD also found that Bendetsen created and provided to the customer false account statements in order to conceal losses in the customer's trust account. (NASD Case #C01020025)

Donna Marie Bishop (CRD #1502667, Registered Representative, Glastonbury, Connecticut) 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, Bishop consented to the described sanction and to the entry of findings that she misappropriated funds totaling \$81,662 from public customers for her own use and benefit without the knowledge, consent, or authorization of the customers. The findings also stated that Bishop failed to respond to NASD requests for information and documents. (NASD Case #C11040034)

Bruce George Boyle (CRD #1796066, Registered Principal, Hauppauge, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and suspended from association with any NASD member in a principal capacity for 15 days. After consideration of a suspension in any capacity for 30 days previously imposed by Boyle's firm, Boyle was given full credit for serving the 30-day suspension. Without admitting or denying the allegations, Boyle consented to the described sanctions and to the entry of findings that, while employed as the operations manager for his member firm, and without his firm's knowledge or approval, he produced order tickets that, while not inaccurate, were not made at the time of the transaction and were created by Boyle in response to NASD staff requests.

Boyle's suspension in a principal capacity began October 4, 2004, and concluded at the close of business October 18, 2004. (NASD Case #C10040095)

Bradley Scott Brunner (CRD #2707045, Registered Principal, Chico, 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, Brunner consented to the described sanction and to the entry of findings that he converted \$24,000 from a private organization that was unrelated to his member firm for his own personal use and benefit. (NASD Case #C01040023)

Rolf Willy Brunner (CRD #2052632, Registered Representative, Short Hills, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Brunner reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Brunner consented to the described sanctions and to the entry of findings that, pursuant to his employment agreement with his member firm, in the event that his customer account assets totaled more than \$30 million, he would be paid a forgivable loan of 30 basis points for each dollar under management. The findings stated that because Brunner's assets would not have entitled him to the forgivable loan before the expiration time to qualify, other registered representatives at Brunner's member firm permitted several of their joint customer accounts to be temporarily transferred to Brunner so that he could reach a qualifying level of account assets and thereby obtain a forgivable loan. NASD also found that Brunner received a forgivable loan of \$138,974.16 from his member firm and shared a portion of the proceeds with the registered representatives.

Brunner's suspension began November 1, 2004, and will conclude at the close of business October 31, 2005. (NASD Case #C10040098)

John David Buglisi (CRD #2977744, Registered Representative, Lido Beach, New York) submitted an Offer of Settlement in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for 45 days. Without admitting or denying the allegations, Buglisi consented to the described sanctions and to the entry of findings that he purchased and sold shares of stock and call options in public customer accounts without the customers' knowledge, consent, or authorization.

Buglisi's suspension began November 1, 2004, and will conclude at the close of business December 15, 2004. (NASD Case #CLI040001)

Melzina Cannon (CRD #2944615, Registered Representative, Detroit, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Cannon reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cannon consented to the described sanctions and to the entry

of findings that she failed to disclose a material fact on her Uniform Application for Securities Industry Registration or Transfer (Form U4).

Cannon's suspension began November 1, 2004, and will conclude at the close of business December 13, 2004. (NASD Case #C8A040083)

Dennis Arthur Cooke, Sr. (CRD #1627734, Registered Representative, Havertown, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Cooke, no monetary sanctions were imposed. Without admitting or denying the allegations, Cooke consented to the described sanction and to the entry of findings that he 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 the customers' financial situations, investment objectives, and needs.

Cooke's suspension began October 18, 2004, and will conclude at the close of business January 17, 2005. (NASD Case #C9A040041)

David Walter Coyman (CRD #2148069, Registered Representative, Long Valley, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and ordered to disgorge \$15,000 in commissions in partial restitution to public customers. The fine and restitution amounts must be paid before Coyman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Coyman consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firms.

Coyman's suspension began November 1, 2004, and will conclude April 30, 2005. (NASD Case #C9B040089)

Shabnam Das (CRD #2621453, Registered Representative, Frederick, Maryland) 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, Das consented to the described sanction and to the entry of findings that she caused \$113,000 to be withdrawn from public customer accounts without the customers' knowledge or authorization. The findings also stated that Das converted a portion of the funds for her own use and benefit. (NASD Case #C9A040040)

Deidre Thompson Day (CRD #1081698, Registered Representative, Stockbridge, Georgia) 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, Day consented to the described sanction and to the entry of findings that she failed to respond to NASD requests for information. (NASD Case #C07040078)

Alfredo Diaz (CRD #2125018, Registered Principal, Plandome, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any principal or supervisory capacity for 15 business days. Without admitting or denying the allegations, Diaz consented to the described sanctions and to the entry of findings that he failed to supervise an individual that he knew was engaged in outside business activities and failed to ensure that the individual provide prompt written notice of his activities to their member firm.

Diaz' suspension began October 18, 2004, and concluded at the close of business November 5, 2004. (NASD Case #C9B040087)

Sebastien Courtney Dufort (CRD #2143800, Registered Principal, Hinsdale, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Dufort reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dufort consented to the described sanctions and to the entry of findings that he effected, or caused to be effected, transactions in the account of a public customer on a discretionary basis without prior written authorization from the customer and acceptance in writing by Dufort's member firm of the account as discretionary. The findings also stated that Dufort placed orders for transactions in the account of a public customer at another member firm without first notifying his member firm and the executing member firm in writing of his association with the other firm.

Dufort's suspension began October 4, 2004, and concluded at the close of business November 2, 2004. (NASD Case #C8A040080)

John Ettore (CRD #2580761, Registered Representative, Mahopac, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 60 days. In addition, Ettore shall not be supervised by any individual previously associated with a disciplined firm as defined in NASD Rule 3010(b)(2)(J). Ettore shall also be subject to special supervision including, but not limited to, the monitoring of his sales presentations on at least a monthly basis for one year

after he becomes registered with a member firm. The fine must be paid before Etere reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Etere consented to the described sanctions and to the entry of findings that he used high-pressure sales tactics and knowingly made numerous baseless predictions of substantial price increases and material misrepresentations of fact in connection with his solicitation of customers and prospective customers to purchase equity securities.

Etere's suspension began October 25, 2004, and will conclude at the close of business December 23, 2004. (NASD Case #C07040081)

Charles Elwood Greenway (CRD #1229685, Registered Principal, Lees Summit, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that Greenway converted \$185,200 from the accounts of public customers without the knowledge, authorization, or consent of the customers. The findings also stated that Greenway failed to respond to NASD requests for information. (NASD Case #C04040043)

Donald Joe Godwin (CRD #1287029, Registered Principal, Nashville, Tennessee) was barred from association with any NASD member in any capacity. The sanction was based on findings that Godwin failed to respond to NASD requests for information. The findings also stated that Godwin engaged in an outside business activity and failed to provide written notice to his member firms. (NASD Case #C07040038)

Chris Dinh Hartley (CRD #1799834, Registered Representative, San Jose, California) was fined \$7,500 and suspended from association with any NASD member in any capacity for 90 days. The SEC affirmed the sanctions imposed by the NAC. The sanctions were based on findings that Hartley engaged in private securities transactions and failed to give prior written notice to, or receive written approval from, his member firm prior to engaging in such activities.

Hartley's suspension began October 18, 2004, and will conclude January 15, 2005. (NASD Case #C01010009)

Anthony Eugene Hoffman (CRD #1872765, Registered Representative, North Canton, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two months. The fine must be paid before Hoffman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hoffman consented to the described sanctions and to the entry of

findings that he failed to submit timely an amended Form U4 disclosing material information.

Hoffman's suspension began November 1, 2004, and will conclude at the close of business December 31, 2004. (NASD Case #C8A040084)

Steven Gregory Hoffman (CRD #1175434, Registered Representative, Houston, Texas) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Hoffman consented to the described sanctions and to the entry of findings that he failed to disclose and/or amend his Form U4 to disclose material facts.

Hoffman's suspension began October 18, 2004, and concluded at the close of business November 5, 2004. (NASD Case #C06040014)

Joseph Raymond Huard, Jr. (CRD #1025521, Registered Principal, Lake Worth, 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, Huard consented to the described sanction and to the entry of findings that he pled guilty to two felony charges in violation of NASD Conduct Rule 2110. (NASD Case #C9B040085)

Melissa Mae Humphreys (CRD #4474941, Registered Representative, Tampa, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Humphreys, as an employee of an affiliated bank of a member firm, caused the issuance of new debit/ATM cards for bank customers without their knowledge or authorization, and used the cards to make cash withdrawals and purchases totaling \$9,096.21 for her own benefit against the customers' bank accounts. The findings also stated that Humphreys failed to respond to NASD requests for information. (NASD Case #C07040036)

Robert Yoon Hyun (CRD #4374116, Registered Representative, Bellevue, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hyun consented to the described sanction and to the entry of findings that he solicited and obtained payments from public customers totaling \$286,000 intended to be used to purchase securities but, instead, converted and misused the funds for his own use and benefit without the knowledge, consent, or authorization of the customers. The findings also stated that Hyun failed to respond to NASD requests for information. (NASD Case #C3B040022)

Karl Emil Keirstead (CRD #2526412, Registered Representative, East Hampton, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$21,000, including disgorgement of after-tax transaction profits, and suspended from association with any NASD member in any capacity for 60 days. The fine must be paid before Keirstead reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Keirstead consented to the described sanctions and to the entry of findings that he violated NASD's free-riding and withholdings interpretation when he knowingly purchased and sold shares of a hot issue through his girlfriend while he was registered as a general securities representative through his member firm.

Keirstead's suspension began October 4, 2004, and will conclude at the close of business December 2, 2004. (NASD Case #C10040096)

Gary Scott Lochansky (CRD #2574846, Registered Representative, Jersey City, New Jersey) 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, Lochansky consented to the described sanction and to the entry of findings that he submitted, or caused to be submitted, an application for a \$1,000,000 deferred variable annuity to an insurance company in the name of a fictitious person. The findings also stated that Lochansky entered into an agreement with his sales manager to participate jointly in a financial trade show and to split the costs between them, falsely represented to his sales manager that he had paid \$3,750 of the costs, and provided him a copy of an invoice falsely marked to indicate such payment. NASD found that Lochansky's sales manager gave him a \$1,775 check that Lochansky deposited into his personal bank account, failed to make any payment on the trade show invoice, failed to use the proceeds of the check to make any payment on the invoice, and failed to refund or repay the money to his sales manager. (NASD Case #C9B040072)

Hardat Mahadeo (CRD #1948439, Registered Representative, New York, New York) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for six weeks. The fine must be paid before Mahadeo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Mahadeo consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction away from his member firm and failed to provide written notification to his firm. The findings also stated that Mahadeo failed to amend his Form U4 to disclose material information.

Mahadeo's suspension began November 1, 2004, and will conclude December 12, 2004. (NASD Case #C10040045)

Kristine Louise Martin (CRD #3143633, Registered Representative, Scottsdale, Arizona) 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, Martin consented to the described sanction and to the entry of findings that she transferred funds totaling \$11,444 from a public customer's money manager account and used the funds to make credit card payments in which Martin had an interest without the customer's authorization. (NASD Case #C3A040041)

Rick Lee Matney (CRD #1828590, Registered Representative, Marshalltown, Iowa) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Matney reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Matney consented to the described sanctions and to the entry of findings that he received \$2,018.80 from a public customer to cover premiums for property and casualty insurance. The findings stated that Matney discovered that his insurance company would not underwrite the insurance, failed to inform the customer, and, instead, applied the check to premiums for existing insurance policies held by the customer. NASD also found that Matney fabricated insurance declaration pages for the insurance purportedly underwritten by his insurance company to satisfy the customer's request for information about the insurance.

Matney's suspension began November 1, 2004, and will conclude at the close of business October 31, 2005. (NASD Case #C04040036)

Jamie Patrick McNamara (CRD #4546647, Registered Representative, Lees Summit, Missouri) 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, McNamara consented to the described sanction and to the entry of findings that he received \$388 from a public customer to obtain automobile insurance coverage, deposited the funds into a personal d/b/a account, and failed to purchase the insurance coverage for the customer as intended. The findings also stated that McNamara created a fictitious automobile insurance card for the customer to alleviate the customer's concerns that she did not have automobile insurance coverage. NASD also found that McNamara failed to respond to NASD requests for information. (NASD Case #C04040040)

John Preston Middleton, III (CRD #1915353, Registered Representative, Lynchburg, Virginia) 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, Middleton consented to the described sanction and to the entry of findings that he caused loan checks totaling \$10,590 to be issued against life insurance policies owned by public customers, obtained possession of the checks, forged the customers' endorsements on the checks, and converted the funds for his own use and benefit without the customers' knowledge or authorization. The findings further stated that Middleton failed to respond to NASD requests for information. (NASD Case #C9A040044)

John Troy Morrison (CRD #1033116, Registered Supervisor, Springfield, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any principal or supervisory capacity for 10 business days. Without admitting or denying the allegations, Morrison consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative who recommended and effected transactions in the accounts of public customers without having reasonable grounds for believing that the transactions were suitable, or that using margin was suitable. The findings also stated that Morrison failed to take appropriate action to supervise the registered representative to prevent violations and achieve compliance with applicable securities laws, regulations, and NASD rules.

Morrison's suspension began October 18, 2004, and concluded at the close of business October 29, 2004. (NASD Case #C9A040042)

John R Murdock, III (CRD #4464537, Registered Representative, Texarkana, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Murdock received checks and cash totaling \$3,737.50 for insurance premium payments from public customers and converted the funds for his personal benefit without the customers' knowledge. NASD also found that Murdock failed to respond to NASD requests for information. (NASD Case #C06040009)

Christopher Martin Murray (CRD #4187317, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 10 business days, and ordered to pay \$24,000 in restitution to a public customer. Without admitting or denying the allegations, Murray consented to the described sanctions and to the entry of findings that he recommended the purchase of a common stock to a corporate customer without having reasonable grounds to believe that the recommendation and

resultant transaction were suitable for the customer's financial situation and needs.

Murray's suspension began November 1, 2004, and concluded at the close of business November 12, 2004. (NASD Case #CLI040025)

Edmund Anthony Palmieri, Jr. (CRD #2123194, Registered Representative, Scotch Plains, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegation, Palmieri consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed to provide prompt written notice to his member firm.

Palmieri's suspension began October 18, 2004, and will conclude at the close of business November 16, 2004. (NASD Case C9B040088)

Frank Palumbo (CRD #2165975, Registered Principal, Dix Hills, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Palumbo consented to the described sanctions and to the entry of findings that he effected a transaction in a public customer's account without the customer's knowledge, consent, or authorization.

Palumbo's suspension began November 1, 2004, and concluded at the close of business November 5, 2004. (NASD Case #CLI040026)

Alfred Thomas Petrecca (CRD #4594840, Associated Person, Enola, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Petrecca failed to respond to NASD requests for information and to appear and provide testimony. The findings also stated that Petrecca willfully failed to disclose material information on his Form U4. (NASD Case #C9A040013)

Robert Mark Racusen (CRD #1601853, Registered Representative, Buffalo Grove, 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 one year. The fine must be paid before Racusen reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Racusen consented to the described sanctions and to the entry of findings that he engaged in securities transactions in the account

of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization to Racusen to exercise discretion in the customer's account.

Racusen's suspension began November 1, 2004, and will conclude at the close of business October 31, 2005. (NASD Case #C8A040089)

Rooney Arun Sahai (CRD #1551326, Registered Representative, Ridgewood, New Jersey) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Sahai forged the signatures of public customers on documents; purchased a variable annuity on behalf of a public customer without her prior knowledge, authorization, and consent; and failed to respond to NASD requests for information. (NASD Case #C9B020032)

This case has been appealed to the SEC, and the bar is in effect pending consideration of the appeal.

Joseph A. Sciamanna (CRD #4655238, Registered Representative, Bensalem, Pennsylvania) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Sciamanna reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sciamanna consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

Sciamanna's suspension began October 4, 2004, and will conclude April 3, 2005. (NASD Case #C9A040027)

Christopher Kenneth Somers (CRD #2659495, Registered Representative, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for one year. In light of the financial status of Somers, the fine imposed was \$10,000. The fine must be paid before Somers reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Somers consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the account of a public customer without having reasonable grounds to believe that the transactions recommended were suitable in light of the excessively high levels of transactional costs, in relation to the assets of the account, incurred by the account.

Somers' suspension began October 4, 2004, and will conclude at the close of business October 3, 2005. (NASD Case #C9A040039)

Danny Ray Talbott (CRD #1336628, Registered Principal, Peoria, Illinois) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Talbott reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Talbott consented to the described sanctions and to the entry of findings that he purchased, or caused to be purchased, \$45,000 in mutual fund shares in the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to Talbott to exercise discretion in the accounts.

Talbott's suspension began October 4, 2004, and will conclude at the close of business October 3, 2005. (NASD Case #C8A040035)

Thomas Andrew Timberlake (CRD #870022, Registered Principal, Tampa, Florida) was fined \$25,000, suspended from association with any NASD member for two years, and ordered to pay \$3,400 in restitution to public customers. The NAC imposed the sanctions following Timberlake's appeal of an OHO decision. The sanctions were based on findings that Timberlake made material misrepresentations and omissions in the offering of callable certificates of deposit (CDs) that he sold to public customers.

Timberlake's suspension began September 20, 2004, and will conclude at the close of business September 20, 2006. (NASD Case #C07010099)

David William Trende (CRD #2725055, Registered Representative, Hinckley, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Trende consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing written notices to his member firm. The findings also stated that Trende failed to receive written acknowledgement of the notices from his member firm prior to participation in the securities transactions.

Trende's suspension began October 18, 2004, and will conclude April 17, 2005. (NASD Case #C8A040081)

Christopher Robin Van Dyk (CRD #1538653, Registered Principal, Bainbridge Island, Washington) was barred from association with any NASD member in any capacity. The NAC imposed the sanction following call for review of an OHO decision by the NAC. The sanction was based on findings that Van Dyk participated in private securities transactions without prior written notice to, or approval from, his member firm to participate in the transactions. The findings also stated that Van

Dyk failed to respond timely to NASD requests for information. (NASD Case #C3B020013)

Anson Brian Walker (CRD #3244007, Registered Representative, Canton, Mississippi) 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, Walker consented to the described sanction and to the entry of findings that he forged the signature of a public customer on a redemption form in an attempt to withdraw \$5,000 from the customer's securities account. The findings further stated that Walker submitted the fraudulent redemption form and caused an unauthorized liquidation of mutual fund shares in the customer's account without the customer's knowledge or consent. (NASD Case #C05040069)

James David Wedge (CRD #4635661, Associated Person, Phoenix, Arizona) was barred from association with any NASD member in any capacity. The sanction was based on findings that Wedge failed to respond to NASD requests for information or documents. The findings also stated that Wedge failed to disclose material information on his Form U4. (NASD Case #C3A040015)

Donna Marie Weinstein aka Donna Marie Burch aka Donna Marie Ward (CRD #2054950, Registered Representative, Portland, Oregon) was barred from association with any NASD member in any capacity. The sanction was based on findings that Weinstein failed to disclose material information on her Form U4. (NASD Case #C3B040008)

Jay Thaden Williams (CRD #3058968, Registered Representative, Burnsville, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Williams reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Williams consented to the described sanctions and to the entry of findings that he affixed the signatures of a public customer to insurance forms and checks in order to facilitate transactions on behalf of the customer without the customer's knowledge, authorization, and consent.

Williams' suspension began November 1, 2004, and will conclude April 30, 2005. (NASD Case #C04040042)

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.

Dan Alan Camphausen (CRD #39460, Registered Representative, Chicago, Illinois) was named as a respondent in an NASD complaint alleging that he effected purchases and sales of equity securities in the account of a public customer without the knowledge or consent of the customer and in the absence of written or oral authorization to exercise discretion in the account. (NASD Case #C8A040088)

Izzeteen Hanif (CRD #1777495, Registered Representative, Mahwah, New Jersey) was named as a respondent in an NASD complaint alleging that he recommended purchase and sell transactions to a public customer without having reasonable grounds for believing that such transactions were suitable for the customer in view of the nature of the recommended transactions, the costs associated with the transactions, and in light of the customer's financial situation, investment objectives, circumstances, and needs. (NASD Case #C9B040086)

Investprivate, Inc. (CRD #103737, New York, New York) and Scott Lee Mathis (CRD #1362203, Registered Principal, New York, New York) were named as respondents in an NASD complaint alleging that the firm, acting through Mathis, directly or indirectly, by the use of means or instrumentalities of interstate commerce, or of the mails, or of any facility of any national securities exchange, employed a device, scheme, contrivance, and artifice to defraud and manipulative, deceptive, or any other fraudulent devices or contrivances; made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; engaged in acts, practices, or courses of business that operated as a fraud or deceit, or would operate as a fraud or deceit; and/or effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive devices or contrivances by knowingly or recklessly (1) distributing, or causing to be distributed, to investors or potential investors, through means of interstate commerce or the mails, private placement memoranda (PPM) that contained material misrepresentations or omissions, and (2) failing to supplement or amend the PPMs so that they did not contain material misrepresentations or omissions of fact that occurred after the PPMs were issued.

The complaint also alleges that the firm, acting through Mathis, offered and sold securities without registration statements having been filed with the SEC. The complaint further alleges that the firm, acting through Mathis, participated in the distribution of securities by acting as placement agent for private placements; failed to make filings with NASD containing an estimate of the maximum underwriting discount or commission that the firm anticipated receiving as a result of its participation, and any documents and information pertaining to the terms, conditions, and arrangements relating to the underwriting or distribution of shares; failed to receive an opinion of "no objections" from NASD to the proposed compensation and other terms, conditions, and arrangements; and participated in a public offering of securities in which the underwriting terms were unfair and unreasonable. In addition, the complaint alleges that Mathis willfully failed to amend his Form U4 and willfully failed to disclose material information on his Form U4.

Moreover, the complaint alleges that the firm failed to report a written customer complaint; failed to report timely a written customer complaint; and failed to report the settlement of customer complaints to NASD. The complaint further alleges that the firm and the individual failed to amend timely a Uniform Application for Broker-Dealer Registration (Form BD) disclosing a consent order with the Commonwealth of Massachusetts. In addition, the complaint alleges that the firm, acting through Mathis, permitted a person to engage in activity requiring registration as a general securities principal and general securities representative without obtaining the required registrations.

The complaint also alleges that the firm, acting through Mathis, failed to establish qualified escrow accounts on contingency offerings. Furthermore, the complaint alleges that the firm, acting through Mathis, failed to maintain its minimum net capital. In addition, the complaint alleges that the firm failed to preserve complete electronic mail communications by routinely deleting the contents of electronic mail folders of all employees who left the firm. The complaint alleges that the firm failed to implement, maintain, and enforce an effective supervisory system that would have enabled the firm to comply with federal securities laws and NASD rules, and failed to implement and maintain reasonable systems and procedures to ensure that PPMs did not contain material misrepresentations and omissions; that unregistered private placement offerings qualified for exemption from registration and that such exemptions were not destroyed; that the firm complied with NASD rules relating to corporate financing and conflicts of interest in distribution of securities of members and affiliates; that filings with NASD concerning customer complaints and state regulatory restrictions were made timely and accurately; that employees of the firm and its affiliates obtained all required NASD registrations; that the firm complied with the Net Capital Rule; that the accounts used for the deposit of contingency

offerings conducted by the firm complied with SEC Rule 15c2-4; and that the firm retained e-mail records related to its business in compliance with NASD Rule 17a-4 of the Securities Exchange Act and NASD Rule 3110. **(NASD Case C10040052)**

Edward Linzer (CRD #1050490, Registered Representative, Mineola, New York) was named as a respondent in an NASD complaint alleging that he made material misrepresentations to public customers in connection with so-called "mortgage programs" in which the customers invested and incurred substantial losses. The complaint also alleges that Linzer misused the customers' funds in that he did not utilize the funds as he represented he would. In addition, the complaint alleges that Linzer failed to return the principal and interest that he promised he would repay to the customers. The complaint further alleged that Linzer failed to respond to NASD requests for documents and information, and to appear for an on-the-record interview. **(NASD Case #CLI040027)**

James Patrick Smith (CRD #4473267, Registered Principal, Decatur, Illinois) was named as a respondent in an NASD complaint alleging that he converted \$81,568.55 in funds intended for the purchase of traditional life insurance products or fixed annuities by public customers. The complaint also alleges that Smith deposited the funds into a checking account that he controlled and used the funds for his own purposes. **(NASD Case #C8A040086)**

Samuel John Trigillo (CRD #1303837, Registered Representative, Spled, Illinois) was named as a respondent in an NASD complaint alleging that he affixed the signature of a public customer on a transfer between accounts request and an annuity change request, changed the address for the customer's accounts to a post office box controlled by Trigillo, removed funds from a fixed annuity owned by the customer, and transferred the funds to a variable annuity with his member firm without the customer's knowledge or consent. The complaint further alleges that Trigillo affixed the signature of another registered representative on documents related to the transfer of accounts owned by public customers without the representative's knowledge or consent. In addition, the complaint alleges that Trigillo accepted \$84,307 in compensation from insurance companies for the sale of insurance policies to public customers and failed and neglected to provide prompt written notice to his member firm of his outside business activities. **(NASD Case #C8A040082)**

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

E Street Access Securities, Inc.
Englishtown, New Jersey
(October 7, 2004)

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

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

Anderson, Rene C.
Palm Beach Gardens, Florida
(August 5, 2004)

Del Valle, Jose E.
Rio Piedras, Puerto Rico
(August 5, 2004)

Floyd, Brian C.
Orlando, Florida
(September 17, 2004)

Gray, Barry K.
West Columbia, South Carolina
(September 23, 2004)

Grist, Deborah L.
Chicago, Illinois
(August 16, 2004)

Gupta, Arvind K.
Flushing, New York
(October 4, 2004)

Hall, Nutashia
Kenneshaw, Georgia
(October 4, 2004)

Heimbach, Charles T.
Tampa, Florida
(August 5, 2004)

Ippolito, Anthony E.
Stockton, California
(September 27, 2004)

Regan, Jr., Henry Paul
Miami, Florida
(August 3, 2004)

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.)

Bridges, Thomas
Murphysboro, Illinois
(October 8, 2004)

Durney, William
Staten Island, New York
(October 4, 2004)

Henry, Ryan R.
Denver, Colorado
(September 28, 2004)

King, Jeffrey
Sellersberg, Indiana
(September 17, 2004)

McConnell, John M.
Shreveport, Louisiana
(September 27, 2004)

Shih-Hsieh, Darla Jade
Delray Beach, Florida
(September 17, 2004)

Styles, William D.
Santa Clara, Utah
(September 23, 2004)

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

Derrico, John J.
Farmingdale, New Jersey
(October 7, 2004)

Frankel, Alan
Merrick, New York
(October 7, 2004)

Individuals Suspended Pursuant to NASD Rule 9553 for Failure to Pay Fees Resulting from Arbitration Proceedings

Maldonado, Kevin
Yonkers, New York
(September 22, 2004)

Parsons, David
Baldwin, New York
(September 22, 2004)

Default Decision Dismissed

Edwin Houston Hayes (CRD# 2398669) On November 1, 2004, NASD's Office of Hearing Officers granted NASD's Department of Enforcement's motion to set aside the default decision rendered in NASD Case #C06030018 on December 3, 2003, which barred Mr. Hayes from associating with any NASD member in any capacity, and to dismiss the underlying complaint in that action. The initial sanction was based on findings that Hayes failed to respond to NASD requests for information. However, NASD was unaware that Hayes was on active military duty both at the time of the investigation and when NASD filed its complaint and its motion for default in 2003. (NASD Case #C06030018)

NASD Fines Citigroup Global Markets, Inc. \$250,000 In Largest Hedge Fund Sales Sanction To Date;

Sales Materials Included Unsubstantiated Claims, Inadequate Risk Disclosure

In its largest enforcement action to date involving hedge fund sales by broker-dealers, NASD has censured and fined Citigroup Global Markets, Inc., \$250,000 for disseminating inappropriate sales literature. More than 100 pieces of sales literature distributed between July 1, 2002 and June 30, 2003, cited a targeted rate of return without providing a sound basis for evaluating the target, improperly used hypothetical returns in charts or graphs, and/or failed to include adequate risk disclosure. "As hedge funds and 'funds of hedge funds' are marketed more and more aggressively to individual investors, ensuring that those investors receive full and accurate information is critical," said NASD Vice Chairman Mary L. Schapiro. "This enforcement action underscores our commitment to making certain that firms provide the investing public with a sound basis for evaluating hedge fund investments, and adequately disclose all of the risks." Ninety-five of the pieces of sales literature contained targeted rates of return for particular funds but did not provide a sound basis for investors to evaluate the reasonableness of the stated target. Among the objectionable statements:

"The Portfolio seeks to earn an annualized return of 15% or more, net of all fees, over a three- to five-year investment horizon, while maintaining volatility below that of world equities."

"...targets a 12-14% annual net return..."

"The portfolio seeks to earn an annualized return of LIBOR + 500 basis points."

Twenty-eight of the sales pieces for recently started funds of hedge funds improperly presented hypothetical performance for these funds. This hypothetical performance showed results for the funds before they had begun operating, and therefore did not reflect the actual performance of the funds of hedge funds. Instead, these hypothetical results were calculated by selecting a portfolio of individual advisors with whom the fund of hedge funds intended to or had recently begun to invest, and then combining the historic performance results of these selected advisors, using a hypothetical allocation of assets.

Because it reflected the selection of potential advisors and asset allocations made after the performance of those advisors was already known, the hypothetical performance invariably showed positive rates of return. Further, there was no guarantee that the particular fund of hedge funds being promoted would continue to invest with any or all of the selected advisors—or that allocation of assets to those advisors would be the same as that used in the hypothetical performance.

In addition, in some instances, the sales literature presented hypothetical performance results in a chart or graph in combination with the actual historical performance of the fund of hedge funds. Such presentations created the misimpression that the particular fund of hedge funds had a longer investment track record than it actually possessed.

Forty-four pieces of sales literature failed to include adequate risk disclosure. Each of these pieces contained some risk disclosure, but not full and complete risk disclosure. Among the disclosures that were not included: that the funds are speculative and involve a high degree of risk; that an investor could lose all or a substantial amount of his or her investment; that there is no secondary market nor is one expected to develop for investments in the funds; that there may be restrictions on transferring fund investments; that the funds may be leveraged; that the funds' performance may be volatile; that the funds have high fees and expenses that would reduce returns; and other specific risks as to the particular funds' investments and strategies.

In settling this matter, Citigroup neither admitted nor denied the allegations, but consented to the entry of findings. As a result of a review of brokers and firms selling hedge funds and registered products (closed-end funds) that invest in hedge funds, NASD

has become concerned that some may not be fulfilling their sales practice obligations, especially when selling and marketing these instruments to retail customers. NASD issued an Investor Alert in August 2002 (Funds Of Hedge Funds—Higher Costs And Risks For Higher Potential Returns) and a *Notice to Members* in

February 2003 advising firms of their suitability obligation to investors whenever recommending or selling hedge funds (www.nasdr.com/pdf-text/0307ntm.pdf). In addition, NASD has brought several enforcement actions against firms relating to their marketing and sales of hedge funds.