

# Disciplinary and Other FINRA Actions

## Firm and Individual Fined

**Stoeber, Glass & Company Inc. (CRD® #7031, New York, New York) and Michael Francis Carrigg (CRD #1061325, Registered Principal, Southbury, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$80,000. Carrigg was censured and fined \$10,000. Without admitting or denying the findings, the firm and Carrigg consented to the described sanctions and to the entry of findings that the firm, acting through Carrigg, failed to ensure that customer assets were properly protected from market risk exposure from the firm's daily activities. The findings stated that, as the firm's financial and operations principal (FINOP), Carrigg was responsible for performing the firm's reserve formula computations for its special reserve account in a timely manner, or ensuring that they were accomplished if he did not personally perform them. The findings also stated that the firm, through Carrigg, failed in two instances to perform the required computation in a timely manner. The findings also included that in failing to do so, the firm did not ensure that it had adequate deposits available to properly protect customer assets from risk exposure resulting from the firm's daily transactions, as required by Securities and Exchange Commission (SEC) Rule 15c3-3(e)(3).

FINRA® found that the firm, acting through Carrigg, exposed customer assets to undue risk by improperly pledging customer securities as collateral for firm bank loans. FINRA also found that the pledged securities had a market value of approximately \$43,000 (the customer had fully paid for \$15,181 of the securities). In addition, FINRA determined that the firm, acting through Carrigg, negligently pledged firm-owned securities with a market value of approximately \$32,000 as collateral for a customer bank loan during the same month. Moreover, FINRA found that the firm failed to have adequate written supervisory procedures in place to ensure that its employees maintained compliance with SEC Rules 15c3-3(e)(3), 8c-1 and 15c2-1, and throughout the period, Carrigg was fully responsible for the creation of and all updates to the firm's written supervisory procedures. **(FINRA Case #2009016901101)**

## Firms Fined

**Abel/Noser Corp. (CRD #7537, 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 findings, the firm consented to the described sanctions and to the entry of findings that it transmitted Route or Combined Order/Route Reports to the Order Audit Trail System (OATS™) that the OATS system was unable to link to the related order routed to NASDAQ or the corresponding new order the destination member firm transmitted due to inaccurate, incomplete or improperly formatted data. **(FINRA Case #2008013559001)**

## Reported for March 2011

FINRA has taken disciplinary actions against the following firms and individuals for violations of FINRA rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB).

**B.C. Ziegler and Company (CRD #61, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report information regarding transactions effected in municipal securities to the Real-time Transaction Reporting System (RTRS) within 15 minutes of trade time to an RTRS Portal. The findings stated that the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning the trade reporting of municipal securities transactions. **(FINRA Case #2009017085101)**

**BNY Mellon Capital Markets, LLC (CRD #17454, New York, New York)** 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 regarding municipal securities reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct trade date to the RTRS in numerous reports of transactions in municipal securities; the firm also improperly reported information to the RTRS on numerous other occasions by submitting reports that represented sub-allocations to trusts a money manager managed, rather than reporting only the cumulative block trades encompassing those bundled sub-allocation events that represented the firm's transactions with the money manager. The findings stated that the firm failed to purchase municipal securities for its own account from a customer at a price that was fair and reasonable, including the expense involved, the total dollar amount of the transaction and that the firm was entitled to a profit. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to municipal securities reporting. **(FINRA Case #2008014737101)**

**Burt Martin Arnold Securities, Inc. dba BMA Securities (CRD #108219, Rolling Hills Estates, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to transmit Reportable Order Events (ROEs) to OATS that it was required to transmit on numerous business days. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning OATS reporting requirements. **(FINRA Case #2008012394201)**

**Calyon Securities Inc. nka Credit Agricole Securities (USA) Inc. (CRD #190, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$70,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it inaccurately computed its weekly reserve account formula resulting in an understatement of its customer credits for about one year. The findings stated that the firm classified a non-proprietary qualified security as a debit instead of a credit, and as a result, its Proprietary Accounts of Introducing Brokers (PAIB) reserve account understated customer credits by approximately \$5 million for about a year. The findings stated that the firm failed to maintain sufficient excess

debits for many weeks in its PAIB and failed to make required weekly deposits. **(FINRA Case #2009019242701)**

**Canaccord Genuity Inc. fka Canaccord Adams, Inc. (CRD #1020, 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 findings, the firm consented to the described sanctions and to the entry of findings that, as an active participant in the U.S. Private Investment in Private Equity (PIPE) market, it failed to have in place reasonable information barrier procedures with respect to its PIPE business. The findings stated that the firm failed to have a reasonable system in place to track employees who were brought “over the wall” on specific PIPE transactions, and while the firm had a procedure in place requiring the maintenance of a “wall-crossing log,” it did not maintain such a log. The findings also stated that the firm stored information about over-the-wall employees in a computer file that was not readily accessible to persons with responsibilities to monitor trading and review emails of employees brought over the wall on investment banking matters. The findings also included that the firm failed to maintain a specific log of employee transactions in securities on the firm’s grey list and/or restricted list, and the firm was unable to provide documentation evidencing that it had investigated employee trading in grey list securities to determine whether employees had misused material, non-public information.

FINRA found that the firm failed to have a reasonable system in place to monitor the flow of information concerning PIPE transactions to potential investors, and while the firm’s procedures required sales persons to obtain verbal agreements from potential investors to keep information concerning PIPE transactions confidential and refrain from trading on such information, the firm did not reasonably ensure that the procedure was followed or document that such verbal agreements were obtained. FINRA also found that the information that was maintained concerning the disclosure of information on PIPE transactions was not used for supervisory or compliance purposes. In addition, FINRA determined that the firm’s system for review of email correspondence was unreasonable; while the firm’s procedures required the review of a sample of email communications, the sample included mail boxes for users no longer employed at the firm and permitted Compliance Department employees, at their discretion, to mark emails as reviewed based solely on a review of the sender’s name, recipient’s name and subject line of an email; stated differently, the firm permitted “bulk review” of emails without any written guidelines informing compliance staff of the parameters for such review. Moreover, FINRA determined that the firm also utilized an internal chat room system that allowed members of its business units, including but not limited to, the investment banking and research departments, to communicate and/or review each other’s communications. Furthermore, FINRA found that the firm did not have in place any written procedures relevant to monitoring internal communications between its business units on the internal chat room system and could not document that it actively monitored such communication. **(FINRA Case #2008012243901)**

**Citigroup Global Markets Inc. (CRD #7059, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000, and required to amend its Unit Investment Trust (UIT) confirmations to include a disclosure concerning deferred sales charges and to have a firm officer notify FINRA in writing that it has amended its UIT confirmations. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it sold UITs that imposed a deferred sales charge without disclosing that the UITs were subject to a deferred sales charge on its confirmations as NASD<sup>®</sup> Rule 2830(n) required. The findings stated that the rule provides that purchase confirmations of investment company products in which a deferred sales charge is imposed on redemption include the legend, "On selling your shares, you may pay a sales charge. For the charge and other fees, see the prospectus." The findings also stated that the firm issued more than 250,000 UIT purchase confirmations without such a disclosure. **(FINRA Case #2008015701201)**

**Credit Suisse Securities (USA) LLC (CRD #816, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted numerous reports to OATS that contained inaccurate, incomplete or improperly formatted data, in that the firm submitted Execution or Combined Order/Execution Reports with a Reporting Exception Code (REC) of "P" (representing a transaction between two proprietary accounts) but with a capacity code other than "P" (representing a principal capacity); submitted Execution or Combined Order/Execution reports for orders that had been routed to a national securities exchange for execution; improperly submitted Execution or Combined Order/Execution Reports with a REC when they were required to be matched to a related trade report in a FINRA transaction reporting system; submitted Execution or Combined Order/Execution Reports for proprietary orders that had been routed away from the firm for execution; improperly submitted Execution or Combined Order/Execution reports with a REC of "P" for executions that did not represent a trade between two firm accounts; submitted Execution or Combined Order/Execution Reports with a REC of "A" (representing an agency average price transaction) but with a capacity code other than "A" (representing an agency capacity); submitted Execution or Combined Order/Execution reports for orders that had been routed away from the firm for execution and/or reported the inaccurate price and execution time for agency average price executions; and improperly submitted Execution or Combined Order/Execution reports with a REC of "A" for executions that did not represent an agency average price transaction. The findings stated that the firm failed to provide accurate written notification disclosing to its customer the correct compensation type and/or the correct capacity in transactions. The findings also stated that the firm erroneously double reported last sale reports to the OTC<sup>™</sup> Reporting Facility (OTCRF). **(FINRA Case #2007008724901)**

**Crucible Capital Group, Inc. (CRD #133542, New York, New York)** submitted an Offer of Settlement 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, acting through its owner, it failed to ensure that its ledgers and other records accurately reflected all of the firm's assets, liabilities and expenses, causing the firm's records and net capital computations for those periods to be inaccurate. The findings stated that the firm, acting through the individual, provided revised financial statements that amended the amounts the firm reported for a non-allowable inter-company receivable from an affiliated company owned by the firm's owner. The findings also stated that additional inaccuracies existed related to the firm's expense sharing agreement with the affiliated company, and the expense-sharing agreement was inadequate to allow the firm to avoid recognition of liabilities. The findings also included that the firm's financial statements were inaccurate due to the failure to record certain liabilities.

FINRA found that the firm improperly netted a negative "retention receivable" balance against a non-allowable asset rather than report the amount as a liability as required. FINRA also found that the owner was responsible for the firm's inaccurate financial books and records because he was the firm's president and had responsibility for the firm's financial and operations systems at the time the financial books and records were prepared. In addition, FINRA determined that the firm, acting through the individual, filed inaccurate FOCUS™ reports, which arose largely as a result of the firm's failure to record liabilities. **(FINRA Case #2008011705901)**

**Dahlman Rose & Company, LLC (CRD #23510, 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 findings, the firm consented to the described sanctions and to the entry of findings that it permitted a person registered solely as a general securities principal who had not passed the necessary qualification examination to approve research reports a firm research analyst prepared, which the firm issued. The findings stated that the firm published a research report regarding a company, which did not disclose that the firm had co-managed an initial public offering of securities for the company during the past 12 months. The findings also stated that the firm began making a market in a company's securities, and on the same day the firm published a research report concerning the same company that did not disclose that it was making a market in the company's securities. The findings also included that the firm published research reports containing disclosures NASD Rule 2711(h) required that were not presented on or referred to on the front page of such reports. **(FINRA Case #2009016138801)**

**Deutsche Bank Securities, Inc. (CRD #2525, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$65,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted to NASD short interest position reports in NASDAQ securities that were incorrect, and submitted to the New York Stock Exchange

(NYSE) a short interest position report in securities listed on the NYSE that was incorrect. The findings stated that the firm transmitted ROEs to OATS that OATS rejected for context or syntax errors and were repairable; but the firm failed to repair some of them, so they were not transmitted to OATS. The findings also stated that the firm transmitted reports to OATS that reported ROEs with a “Y” resubmission flag when no previous ROE had been submitted to OATS. The findings also included that the firm failed to timely file with NASD accurate Large Options Position Reports (LOPRs) covering numerous separate positions in conventional options. FINRA found that the firm failed to accept or decline in the NASD/NASDAQ Trade Reporting Facility® (NNTRF) or the FINRA/NASDAQ Trade Reporting Facility (FNTRF) transactions in reportable securities within 20 minutes after execution that the firm had an obligation to accept or decline as the order entry firm (OEID). **(FINRA Case #2006006500501)**

**Domestic Securities, Inc. (CRD #34721, Montvale, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$142,500, ordered to pay \$4,046.82, plus interest, in restitution to investors, and to revise its written supervisory procedures regarding market order protection, NASDAQ Rule 4755, trade reporting, riskless principal transactions, best execution, not held orders, riskless principal transactions, best execution, principal transactions, and disclosure of order execution information. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to execute customer limit orders in NASDAQ securities after it traded each subject security for its own market-making account at a price that would have satisfied each customer’s limit order, and failed to contemporaneously or partially execute customer limit orders in NASDAQ securities after it traded each subject security for its own market-making account at a price that would have satisfied each customer’s limit order. The findings stated that the firm accepted and held customer market orders, traded for its own account at prices that would have satisfied the customer market orders, and failed to immediately thereafter execute the customer market orders up to the size and at the same price at which it traded for its own account or a better price. The findings also included that the firm failed to fully and promptly execute orders.

FINRA found that in transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. FINRA also found that the firm executed a short sale transaction and failed to report it to the FNTRF with a short sale modifier; the firm executed short sale transactions and failed to report them to the FNTRF with the correct symbol indicating whether the transactions were a buy, sell, sell short or cross for transactions in reportable securities. In addition, FINRA determined that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing market order protection, NASDAQ Rule 4755, trade reporting, riskless principal transactions, best execution, not held orders, riskless

principal transactions, best execution, principal transactions, and disclosure of order execution information. Moreover, FINRA found that the firm made available reports on the covered orders in national market system securities that it received for execution from any person that included incorrect information. Furthermore, FINRA found that the firm failed to document the terms and conditions of all orders received from one of its customers by failing to show the terms and conditions on numerous brokerage order memoranda from this customer for orders. **(FINRA Case #2005003185202)**

**D. Weckstein & Co., Inc. (CRD #20338, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures regarding OATS reporting requirements. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to transmit numerous ROEs to OATS that it was required to transmit. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning OATS reporting requirements. **(FINRA Case #2009017685401)**

**Emmet & Co., Inc. (CRD #15993, Far Hills, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report information regarding transactions effected in municipal securities to the RTRS within 15 minutes of trade time to an RTRS Portal. The findings stated that the firm failed to report the correct trade time to the RTRS in reports of transactions in municipal securities. The findings also stated that the firm failed to show the correct execution time on memoranda of transactions in municipal securities executed with another broker or dealer. **(FINRA Case #2009020514501)**

**First Clearing, LLC (CRD #17344, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$400,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its anti-money laundering (AML) program was inadequate, in that the firm reviewed transactions covering only a limited amount of potentially suspicious activity. The findings stated that although the firm generated many exception reports and alerts dealing with potentially suspicious securities transactions and money movements in customer accounts that were introduced by unaffiliated broker-dealers to the firm, these reports were tools that the firm provided to its correspondent brokers to satisfy the introducing brokers' AML obligations. The findings also stated that the firm did not consistently review reports for suspicious activity reporting, and the firm reviewed only a limited number and type of transaction for its own suspicious activity report (SAR) reporting obligation. The findings also included that the firm failed to establish and implement an adequate AML compliance program for detecting, reviewing and reporting suspicious activity.

FINRA found that the firm did not review or monitor suspicious activity in most of the exception reports that it prepared for, and distributed to, the introducing broker-dealers or otherwise conduct sufficient risk-based monitoring of activity in accounts its unaffiliated introducing broker-dealers introduced. FINRA also found that the firm reviewed a limited amount of potentially suspicious money movements and penny stock activity and, as a result, it failed to establish and implement a transaction monitoring program reasonably designed to achieve compliance with the SAR reporting provisions of 31 U.S.C. 5318(g) and the implementing regulations as required by NASD Rule 3011(a). **(FINRA Case #2008012791101)**

**First New York Securities L.L.C. (CRD #16362, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$65,000 and required to revise its written supervisory procedures concerning retention and review of electronic communications. The sanction reflected certain mitigating factors. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to preserve for a period of not less than three years, the first two in an accessible place, copies of instant messages sent and received between several of the firm's traders and an external party on certain days within a total of approximately 10 weeks, and the new account form and clearing agreement for one of the firm's accounts at another broker-dealer. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning retention and review of electronic communications. The findings also stated that in response to an NASD Rule 8210 request, a firm principal orally asked the associated person originally responsible for the firm's reviews of such electronic communications to gather and deliver the evidence of such reviews but the associated person realized he had misplaced the file and was directed by his supervisor to duplicate past reviews. The findings also included that instead of duplicating such reviews using the same parameters as were in effect during the review period, the associated person re-conducted such reviews using changed and expanded parameters, signed and hand-wrote in dates of when he estimated the reviews took place, and delivered them to the secretary of the firm principal who was responding to the inquiry on the firm's behalf. FINRA found that without conducting any review of the newly created reports, the firm's principal submitted them to FINRA as evidence of the past reviews and the firm failed to take reasonable steps to confirm that the subject reports represented authentic and contemporaneous evidence of supervisory reviews that were actually conducted during the review period. **(FINRA Case #2006005271003)**

**Georgeson Securities Corporation (CRD #46749, 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 findings, the firm consented to the described sanctions and to the entry of findings that it failed to adequately ensure that it maintained a complete record of all free-credits due to customers. The findings stated that this caused

the firm's customer reserve computation and books and record to be inaccurate. The findings also stated that the firm failed to include in its customer reserve computation \$134,715.60 of customer checks it received on a specific day, thereby miscalculating its customer reserve. The findings also included that instead, the firm relied on a bank statement to determine the credit amounts to include in its reserve formula; the bank statement did not reflect checks that the firm received on the date of the bank statement. **(FINRA Case #2009016205701)**

**ICAP Corporates LLC (CRD #2762, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$23,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to the FNTRF the correct symbol indicating the capacity in which it executed transactions in reportable securities. The findings stated that the firm failed to report to the FNTRF last sale reports of transactions in designated securities and incorrectly reported the second leg of "riskless" principal transactions as "principal" to the FNTRF. The findings also stated that the firm failed to submit to the FNTRF for the offsetting, "riskless" portion of "riskless" principal transactions in designated securities either a clearing-only report with a capacity indicator of "riskless principal" or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The findings also stated that the firm failed to report to the OTCRF the correct symbol indicating the capacity in which the firm executed transactions in reportable securities. The findings also included that the firm failed to report to the OTCRF last sale reports of transactions in OTC equity securities; the firm failed to submit to the OTCRF for the offsetting, "riskless" portion of "riskless" principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal" or a non-tape, non-clearing report with a capacity indicator of "riskless principal."

FINRA found that the firm transmitted reports to OATS that contained an incorrect capacity, inaccurate order entry times and incorrect codes, and the firm failed to submit or improperly submitted certain reports. FINRA also found that the firm provided written notifications to its customers that contained inaccurate or incomplete information, including a failure to disclose that the transaction was executed at an average price, failure to disclose the correct type of remuneration and failure to disclose its correct capacity. In addition, FINRA determined that the firm failed to show the correct entry time on brokerage order memoranda; the firm's trading ledger failed to accurately indicate that principal sales were long or short in numerous instances. Moreover, FINRA found that the firm documented the incorrect remuneration on its order records in several instances. Furthermore, FINRA found that the firm failed to preserve for a period of not less than three years, the first two in an accessible place, brokerage order memoranda and a customer confirmation, and failed to preserve for a period of not less than six years, the first two in an accessible place, a trading ledger or other comparable trading record in several instances. **(FINRA Case #2009016999101)**

**Infinex Investments, Inc. (CRD #35371, Meriden, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to maintain adequate order tickets with respect to certain corporate bond and municipal bond transactions, including order tickets that did not reflect the order type, order tickets that did not reflect whether the trade was solicited or unsolicited, order tickets that did not disclose the firm's capacity and order tickets that reflected an execution time that was before the order entry time. The findings stated that the firm failed to maintain its corporate and municipal bond order ticket information in an easily accessible place for a period of two years, as required by SEC Exchange Act Rule 17a-4(b) and MSRB Rule G-9(d). The findings also stated that the firm failed to establish and maintain a supervisory system, and establish, maintain and enforce written supervisory procedures (WSPs), reasonably designed to achieve compliance with corporate and municipal bond order ticket recordkeeping and retention requirements. The findings also included that the procedures failed to provide instruction or guidance to firm personnel on the manner in which required order ticket information would be obtained and preserved. FINRA found that the firm did not provide for the adequate training of firm staff with respect to the comprehensive entry of all required order ticket information and for the retrieval of that information within a reasonable time frame. **(FINRA Case #2009016320901)**

**Jefferies & Company, Inc. (CRD #2347, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$110,000, ordered to pay \$4,786.83, plus interest, in restitution to investors and to revise its written supervisory procedures regarding the publishing of quotations on the Pink Sheets, LLC relating to unsolicited customer orders received from another broker-dealer. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the related order routed to the NNTRF due to inaccurate, incomplete or improperly formatted data. The findings stated that the firm failed to fully and promptly execute orders. The findings also stated that in transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions.

The findings also included that the firm published quotations for an OTC equity security or a non-exchange-listed security, or directly or indirectly submitted such quotation for publication in a quotation medium (the Pink Sheets, LLC) and did not have in its records the documentation and information required by SEC Rule 15c2-11(a)(Paragraph (a) information), and based upon a review of the information, did not have a reasonable basis under the circumstances for believing that the Paragraph (a) information was accurate in all material respects and the sources of the Paragraph (a) information were reliable; the

quotations did not represent a customer's indication of unsolicited interest. FINRA found that for each quotation, the firm failed to file a Form 211 with FINRA at least three business days before the quotation was published or displayed in a quotation medium.

FINRA also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning the publishing of quotations on the Pink Sheets, LLC relating to unsolicited customer orders received from another broker-dealer. In addition, FINRA determined that the firm failed to accept or decline transactions in reportable securities in the FNTRF within 20 minutes after execution that the firm had an obligation to accept or decline as the OEID. **(FINRA Case #2007009344301)**

**LPL Financial Corporation nka LPL Financial LLC (CRD #6413, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. **(FINRA Case #2007011340401)**

**LPL Financial Corporation nka LPL Financial LLC (CRD #6413, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to enforce its supervisory system and written supervisory procedures relating to the review of electronic communications in certain branch locations. The findings stated that approximately 3 million emails firm financial advisors transmitted and received from numerous bank branch locations related to one bank program were not processed through the Office of Supervisory Jurisdiction Review Tool (ORT) due to a technology problem concerning the interface between one bank program's email system and the firm's ORT; therefore, those emails were not subject to supervisory review by firm managers and principals. The findings also stated that the firm's ORT flagged for supervisory review emails financial advisors in a branch office transmitted and received, but a branch manager or principal never reviewed them. **(FINRA Case #2009016570001)**

**LPL Financia Corporation nka LPL Financial LLC (CRD #6413, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$100,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain and enforce a supervisory system, including written supervisory procedures reasonably designed to review and monitor all transmittals of funds and securities from customer accounts to third party accounts and to registered representatives' accounts. The findings stated that the firm's supervisory control procedures for third-party transmittals included

the use of an ORT to monitor third-party disbursements; ORT was designed to identify only transmittals of cash, e.g. in the form of checks, Automated Clearing House (ACH) transactions, or wire transfers to third parties. The findings also stated that the firm's control procedures for review using ORT did not address journals between accounts and one of the firm's registered representatives exploited this failure and journaled \$40,000 in cash as well as securities out of customers' accounts to his personal account, and converted the cash and proceeds from the sale of the journaled securities in the aggregate amount of over \$1 million. The findings also included that the firm's procedures required that any journal that results in assets being journaled into a registered representative's personal account must be submitted to a supervisor for approval, and the firm failed to document any approvals of the subject journals or document that the requests were escalated to a supervisor for further review. FINRA found that while the firm's procedures required that the firm send a written confirmation to the customer's address of record in conjunction with all third-party journals, the firm failed to send written confirmations in conjunction with some third-party journals. **(FINRA Case #2009016922702)**

**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, fined \$304,000 and ordered to pay \$48,416.83, plus interest, in restitution to investors. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. The findings stated that the firm failed to memorialize the terms and conditions and the order receipt times for brokerage orders. The findings also stated that the firm purchased municipal securities for its own account from customers and/or sold municipal securities for its own account to a customer at an aggregate price (including any markdown or markup) that was not fair and reasonable, taking into consideration all relevant factors, including the best judgment of the broker, dealer or municipal securities dealer as to the fair market value of the securities at the time of the transaction and of any securities exchanged or traded in connection with the transaction; the expense involved in effecting the transaction; the fact that the broker, dealer or municipal securities dealer is entitled to a profit; and the total dollar amount of the transaction. The findings also included that the firm double reported transactions in Trade Reporting and Compliance Engine™ (TRACE™)-eligible securities to TRACE, and the firm failed to report transactions in TRACE-eligible securities within 15 minutes of the execution time.

FINRA found that the firm failed to report numerous positions in conventional options by the close of business on the next business day following the day on which the positions were established. FINRA also found that the firm submitted to NASD incorrect short interest position reports in NASDAQ and over-the-counter securities, and submitted to the NYSE incorrect short interest position reports in securities listed on the NYSE. In addition, FINRA

determined that the firm failed to accept or decline transactions in reportable securities in the NNTRF within 20 minutes after execution that the firm had an obligation to accept or decline as the OEID. Moreover, FINRA found that the firm transmitted trade reports for odd-lot trades and failed to report the transactions with the required odd-lot modifier of .RO to the NNTRF or the FNTRF. Furthermore, FINRA found that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in consolidated quotation system (CQS) securities to the NNTRF. The findings also stated that the firm incorrectly designated as “.T” to the NNTRF last sale reports of transactions in designated securities executed during normal market hours. The findings also included that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in OTC equity securities to the OTCRF.

FINRA found that the firm 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. FINRA also found that the firm accepted short sale orders in an equity security from another person or effected a short sale in an equity security for its own account, without borrowing the security or entering into a *bona fide* arrangement to borrow the security; or having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. In addition, FINRA determined that the firm made available a report on the covered orders in national market system securities that it received for execution from any person, and the report included incorrect information as the classification of some market orders as limit orders; failed to provide inclusion/exclusion information for some other orders; and published inaccurate statistics in one order and size type category. **(FINRA Case #2006005266601)**

**M.L. Stern & Co., LLC. (CRD #8327, Beverly Hills, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,500 and required to pay \$1,846.50, plus interest, in restitution to investors. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it sold (bought) corporate bonds to (from) customers and failed to sell (buy) such bonds at a price that was fair, taking into consideration all relevant circumstances, including market conditions with respect to each bond at the time of the transaction, the expense involved and that the firm was entitled to a profit. **(FINRA Case #2009017417801)**

**Morgan Keegan & Company, Inc. (CRD #4161, Memphis, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted ROEs to OATS that OATS rejected for context or syntax errors and were repairable, but the firm failed to repair many of the rejected ROEs,

so it failed to transmit them and also failed to repair some of the rejected ROEs within the required five business days. **(FINRA Case #2007007756701)**

**Morgan Keegan & Company, Inc. (CRD #4161, Memphis, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$55,000, ordered to pay \$5,208.75, plus interest, in restitution to customers, and ordered to revise its written supervisory procedures regarding supervisory system, procedures and qualifications, best execution, anti-intimidation/coordination, sale transactions, trading during a trading halt, and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings stated that the firm 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 failed to report accurate information to the trade reporting facility for transactions in reportable securities. The findings also included that the firm executed sell orders and failed to properly mark the orders as long or short.

FINRA found that the firm accepted short sale orders in an equity security from another person, or effected a short sale in an equity security for its own account without borrowing the security or entering into a *bona fide* arrangement to borrow the security or having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and documenting compliance with SEC Rule 203(b) (1) of Regulation SHO. FINRA also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing supervisory system, procedures and qualifications, best execution, anti-intimidation/coordination, sale transactions, trading during a trading halt, and books and records. In addition, FINRA determined that the firm failed to execute orders fully and promptly in transactions for or with a customer, and failed to report the correct contra correspondent to the RTRS in transaction reports in municipal securities. **(FINRA Case #2005003256801)**

**Odeon Capital Group LLC (CRD #148493, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it effected transactions in securities that were eligible to be reported to TRACE, but at the time of the transactions, the firm had failed to execute a TRACE Participation Agreement with FINRA. The findings stated that as a result of the

firm's failure to execute a TRACE Participation Agreement and obtain a Market Participant Identifier (MPID), the transactions effected were incorrectly reported to TRACE using the MPID of another member firm with which it had a sub-clearance arrangement. The findings also stated that after the firm executed and submitted a TRACE Participation Agreement with FINRA, the firm failed to timely report transactions in TRACE within 15 minutes after execution. The findings also included that with respect to the transactions in TRACE-eligible securities effected prior to the firm submitting the TRACE Participation Agreement with FINRA, the firm's order memoranda failed to show the times of order receipt, order entry and order execution; and after the firm submitted the TRACE Participation Agreement with FINRA, the firm's order memoranda failed to show the order execution time. FINRA found that the firm's WSPs were inadequate with respect to compliance with TRACE rules; the firm's WSPs failed to identify the person(s) responsible for supervision with respect to TRACE, the steps to be taken to supervise compliance with TRACE rules and how supervision of TRACE rules was to be documented. **(FINRA Case #2009018780901)**

**Puritan Securities Inc. aka First Union Securities, Inc. (CRD #129502, Shelton, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. In light of the firm's revenues and financial resources, a lower fine was imposed. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it entered into an agreement with an entity to sell a private placement for which the firm's brokers sold \$1,415,940 of the private placement interests to customers, and the firm failed to create and maintain a reasonable supervisory system to detect and prevent sales practice violations in these transactions. The findings stated that the firm did not collect financial and other relevant information for the customers who purchased the private placement, and did not review these transactions to determine if the recommendations for the purchases were suitable for these customers. The findings also stated that the firm failed to implement a supervisory system reasonably designed to review and retain electronic correspondence. The findings also included that the firm did not establish an email retention system that captured all of its brokers' emails. FINRA found that the firm's brokers were allowed to use email addresses using external domains, and the firm did not have the capability to review, capture and retain these emails. **(FINRA Case #2008012927503)**

**QA3 Financial Corp. (CRD #14754, Omaha, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain adequate net capital. The findings stated that the firm's net-capital violations resulted from improperly treating a debt its parent company owned as an allowable asset for purposes of its net-capital calculations, and improperly treating as allowable the excess amount of concessions receivable for trails over the amount of corresponding commissions payable. **(FINRA Case #2009017136102)**

**S.L. Reed & Company (CRD #40744, Los Angeles, California)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$37,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to make available reports on its routing of non-directed orders in covered securities, and failed to make publicly available reports on its routing of non-directed orders in covered securities within one month after the end of the quarter addressed in the reports. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning SEC Rule 606 of Regulation NMS. **(FINRA Case #2009019466101)**

**Sterne, Agee & Leach, Inc. (CRD #791, Birmingham, Alabama)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$150,000, ordered to pay \$2,854.39, plus interest, in restitution to customers, and ordered to revise its written supervisory procedures regarding short interest reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders fully and promptly. The findings stated that in transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm transmitted ROEs to OATS that OATS rejected for context or syntax errors and were repairable, but the firm failed to repair most of the rejected ROEs, so it failed to transmit them to OATS. The findings also included that the firm failed to repair many rejected ROEs within the required five business days.

FINRA found that the firm failed to report its short interest positions in OTC equity securities to NASD for several months. FINRA also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning short interest reporting. In addition, FINRA determined that the firm failed to report the correct contra-party's identifier for transactions in TRACE-eligible securities to TRACE; failed to report numerous transactions in TRACE-eligible securities within 15 minutes of execution time using a particular MPID; and failed to report the correct trade execution time for transactions in TRACE-eligible securities, using a particular MPID. Moreover, FINRA found that the firm improperly reported information to the RTRS that it was not required to report. Furthermore, FINRA found that the firm failed to report to the RTRS block transactions within 15 minutes of the execution time. The findings also stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, in that it reported incorrect order entry times; failed to submit desk reports, and execution reports, and failed to report correct order entry times; and reported an incorrect share quantity. The findings also included that the firm executed short sale orders and failed to properly mark the orders as short. FINRA found that the firm made available reports on the covered orders in

national market system securities that it received for execution from any person, and one report included “not held” order execution information which, by definition, is excluded from SEC Rule 605 of Regulation NMS order execution statistics, and in another, it included “child” order execution information and incorrect order size quantities. **(FINRA Case #2006006010501)**

**UBS Financial Services Inc. (CRD #8174, Weehawken, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$30,000 and required to make restitution to firm customers disadvantaged by certain transactions in the total amount of \$15,051.88, plus interest. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. **(FINRA Case #2008012355401)**

**Van Kampen Funds Inc. (CRD #6939, Houston, Texas)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it did not inform investors purchasing UITs through its in-kind exchange program the manner in which discounted sales charges would be assessed. The findings stated that investors could have reasonably concluded from written disclosures the firm prepared that they were eligible to receive certain sales charge discounts (exchange or volume discounts) when, in fact, neither option applied to in-kind exchanges; in a number of instances, investors paid more by receiving the net asset value price instead of an exchange discount. The findings also stated that different UIT series offered the in-kind exchange, and in some, in-kind exchange investors paid a higher per unit price than the exchange investors while in others, the in-kind exchange investors paid a lower price than the exchange investors. The findings also included that the firm has remediated customers who paid more than the exchange discount described in the prospectus, a total of about \$200,000, including interest. FINRA found that the firm prospectuses currently disclose the in-kind exchange discount fully and accurately. **(FINRA Case #2009020770801)**

**Vining-Sparks IBG, Limited Partnership dba as Vining Sparks (CRD #27502, Memphis, Tennessee)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report information regarding transactions effected in municipal securities to the RTRS within 15 minutes of trade time. The findings stated that the firm failed to report the correct trade time to the RTRS in transaction reports in municipal securities. The findings also stated that the firm failed to show the correct execution time on the memoranda of transactions in municipal securities executed with another broker or dealer. **(FINRA Case #2009019435101)**

**Wells Fargo Institutional Securities, LLC (CRD #5958, Charlotte, North Carolina)** 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 regarding municipal securities reporting and books and records. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report information regarding transactions effected in municipal securities to the RTRS in the manner prescribed by MSRB Rule G-14 RTRS Procedures and the RTRS Users Manual, in that the firm failed to report the correct trade time to the RTRS in these transactions, failed to include the applicable special condition indicator on some of the reports and failed to report some of the reports within 15 minutes of trade time to an RTRS Portal. The findings stated that the firm failed to show the correct execution time on the memoranda of some of the transactions in municipal securities for the account the firm executed with another broker or dealer. 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/or MSRB rules addressing municipal securities reporting and books and records. **(FINRA Case #2009020502701)**

**Wilmington Capital Securities, LLC (CRD #133839, Garden City, New York)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,500 and required to revise its written supervisory procedures regarding trade reporting for municipal securities. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report information regarding transactions effected in municipal securities to the RTRS within 15 minutes of trade time to an RTRS Portal. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and MSRB rules concerning trade reporting for municipal securities. **(FINRA Case #2010022381701)**

**Wolverine Execution Services, LLC (CRD #120719, Chicago, Illinois)** 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 regarding trade reporting, short sales, OATS, books and records, supervisory systems, and procedures and qualifications. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct execution time to the FNTRF in last sale reports of most of its transactions in CQS securities. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning trade reporting, short sales, OATS, books and records, supervisory systems, and procedures and qualifications. The findings also stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data; the firm incorrectly submitted a received method code of "E," incorrectly submitted a cancel timestamp instead of a cancel report, incorrectly submitted a destination code of "E," and in one instance, incorrectly submitted a cancel timestamp. **(FINRA Case #2008014172902)**

## Individuals Barred or Suspended

**Jordan Anne Arnold (CRD #4551033, Registered Representative, Lancaster, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Arnold consented to the described sanction and to the entry of findings that she participated in a scheme to obtain confidential information and documentation regarding insurance policies by impersonating policy owners during calls with insurance companies. The findings stated that in connection with a review of certain customer life insurance policies, Arnold and another individual called insurance companies even though neither were agents of record on the policies or otherwise entitled to have access to that information. The findings also stated that Arnold impersonated different insurance policy owners in order to obtain the information and documentation so that the other individual could perform a review analysis of the policies. **(FINRA Case #2009018327001)**

**Craig Michael Bettencourt (CRD #3230665, Registered Representative, Concord, Massachusetts)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Bettencourt consented to the described sanction and to the entry of findings that without his client's authorization, he created a debit memorandum from his client's account for \$35,000 and directed that the debit memorandum be converted to a check payable to a bank where Bettencourt held a personal account. The findings stated that Bettencourt endorsed the check and deposited it into his personal account at the bank, converting the funds to his personal use and benefit. The findings also stated that to disguise the conversion, Bettencourt created a false Certificate of Deposit (CD) in his client's name for \$35,000, created a false CD account in his client's name and delivered a receipt to his client. **(FINRA Case #2010023336301)**

**David Wayne Bombard (CRD #1982265, Registered Representative, Liverpool, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Bombard's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Bombard consented to the described sanctions and to the entry of findings that he signed customer names to insurance disclosure forms and disclosure statements in order to avoid meeting with the customers in person, in violation of New York State Department of Insurance Regulation 60, which requires that when agents sell annuity products, they complete a Definition of a Replacement Form, a Disclosure Form and a Disclosure Statement with the applicant signing each one. The findings stated that the customers intended to purchase the annuity products from Bombard notwithstanding their failure to sign the required documents.

The suspension is in effect from February 7, 2011, through August 6, 2011. **(FINRA Case #2009019977001)**

**David Michael Brown (CRD #3223271, Registered Representative, Gibson City, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Brown consented to the described sanction and to the entry of findings that he received an \$80,000 check from a customer of his member firm to deposit into the customer's account. The findings stated that instead, Brown deposited \$18,000 of the customer's funds into an unrelated client's account without the customer's authorization or knowledge. The findings also stated that Brown failed to appear for a FINRA on-the-record interview. **(FINRA Case #2009016590801)**

**Vincent Michael Bruno (CRD #1845833, Registered Principal, Middletown, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any principal capacity for one month. Without admitting or denying those findings, Bruno consented to the described sanctions and to the entry of findings that as his member firm's Chief Compliance Officer, he failed to ensure that his firm established, maintained and enforced a supervisory system and WSPs reasonably designed to achieve compliance with the rules and regulations in connection with private offering solicitations. The findings stated that the firm, acting through Bruno, maintained a deficient supervisory system and WSPs with respect to private offering solicitations in that those procedures did not specify who at the firm was responsible for performing due diligence, what activities firm personnel were required to satisfy the due diligence requirement, how due diligence was to be documented, who at the firm was responsible for reviewing and approving the due diligence that was performed and for authorizing the sale of the securities, and who was to perform ongoing supervision of the private offerings once customer solicitations commenced. The findings also stated that as a result of its deficient WSPs, the firm failed to conduct adequate due diligence on private placement offerings, and Bruno failed to take any other steps to otherwise ensure that it was conducted.

The suspension was in effect from February 7, 2011, through March 6, 2011. **(FINRA Case #2009018771701)**

**John Brian Busacca III (CRD #2302780, Registered Principal, Orlando, Florida)** was fined \$30,000 and suspended from association with any FINRA member in any principal capacity for six months. The SEC sustained the sanctions following appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that Busacca failed to reasonably supervise the firm's operations system conversion and its operations activities to detect and/or prevent certain violations, including, but not limited to, inaccurate box counts, erroneous records of customer securities, failure to timely validate or take exception to transfer instructions, failure to make timely buy-ins, failure to timely liquidate unpaid-for customer securities positions in cash accounts in violation of Regulation T of the Federal Reserve Board, violation of margin requirements as prescribed by NASD Rule

2520(c), and failure to report data to FINRA. The findings stated that Busacca failed to reasonably supervise the firm's operations considering his extensive travel and focus on business development despite his knowledge of the firm's significant operational problems, the lack of adequate personnel in place to address the firm's problems, and Busacca's failure to diligently and promptly address all of the firm's operational issues. The findings also stated that Busacca, acting on his member firm's behalf as its president, employed an unregistered chief compliance officer.

This decision has been appealed to the United States Court of Appeals for the Eleventh Circuit, and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #E072005017201)**

**Richard Anthony Cavileer (CRD #4384490, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 15 business days. Without admitting or denying the findings, Cavileer consented to the described sanctions and to the entry of findings that he charged a customer an excessive and unreasonable commission of \$12,500, when he sold shares from the customer's account at his member firm; the commission was later reduced to \$2,500. The findings stated that the same customer had authorized Cavileer to sell shares from his account with the firm at the prevailing market price and Cavileer effected the transaction on a discretionary basis without the customer's written authorization. The findings also stated that Cavileer engaged in unauthorized transactions in other customers' accounts.

The suspension was in effect from February 22, 2011, through March 14, 2011. **(FINRA Case #2008011574402)**

**Dana Ann Davis aka Dana Pickens (CRD #5639014, Associated Person, Houston, Texas)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Davis willfully failed to disclose material information on her Uniform Application for Securities Industry Registration or Transfer (Form U4) and failed to respond to FINRA requests for information. **(FINRA Case #2009017292801)**

**M. Paul De Vietien (CRD #1121492, Registered Representative, Tampa, Florida)** was fined \$16,000 and suspended from association with any FINRA member in any capacity for one year. The NAC imposed the sanctions following De Vietien's appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that De Vietien participated in private securities transactions without the required prior written notice to, and written approval from, his member firm. The findings stated that De Vietien participated in outside business activities without providing written notice to his firm.

The suspension is in effect from March 7, 2011, through March 6, 2012. **(FINRA Case #2006007544401)**

**Dante Joseph DiFrancesco (CRD #2482531, Registered Representative, Croton on Hudson, New York)** was fined \$10,000 and suspended from association with any FINRA member in any capacity for 10 business days. The NAC affirmed the sanctions following appeal of an OHO decision. The sanctions were based on findings that without his member firm's or its customers' authorization, DiFrancesco downloaded customer information that constituted nonpublic personal information from his firm's computer system onto a flash drive on his last day of employment. The findings stated that DiFrancesco used the information for his personal use and benefit, and sent it to his new member firm's branch manager. The findings also stated that DiFrancesco and his new branch manager used the customer information to send a "welcome letter" to DiFrancesco's customers. DiFrancesco's actions prevented his former firm from giving its customers a reasonable opportunity to opt out of the disclosures, as required by Regulation S-P. DiFrancesco's misconduct also caused his new firm to improperly receive non-public personal information about his former firm's customers.

This decision has been appealed to the SEC and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #2007009848801)**

**Donna Marlene DiMaggio (CRD #1840271, Registered Representative, Daytona Beach, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, DiMaggio consented to the described sanction and to the entry of findings that in connection with customers' purchases of a private placement offering, DiMaggio falsely represented to each of the customers that she had personally invested funds with the issuer. The findings stated that based on DiMaggio's representation and recommendation, each of the customers invested \$60,000 in the offering. The findings also stated that DiMaggio settled and/or attempted to settle potential customer complaints regarding undisclosed fees, failing to add a living benefit rider to a variable annuity and making unsuitable investment recommendations, without her member firm's knowledge or approval. The findings also included that DiMaggio exchanged business-related emails with customers using an unapproved email account, thereby causing her firm to violate its recordkeeping requirements. **(FINRA Case #2009018193801)**

**William Echeverri (CRD #3120242, Registered Representative, Park Ridge, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any FINRA member in any capacity for 60 days. Without admitting or denying the findings, Echeverri consented to the described sanctions and to the entry of findings that he failed to disclose to his member firms that he held an outside brokerage account at another member firm. The findings stated that while associated with one of the firms, Echeverri made written attestations to the firm that he did not have an outside brokerage account when, in fact, he did have one.

The suspension is in effect from February 22, 2011, through April 22, 2011. **(FINRA Case #2009016948201)**

**Kyle Egress (CRD #4457010, Registered Representative, West Hartford, Connecticut)**

submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for one month. Without admitting or denying the findings, Egress consented to the described sanctions and to the entry of findings that certain states began requiring financial advisors to successfully complete a long-term care (LTC) continuing education (CE) course before selling LTC insurance products to retail customers. The findings stated that Egress allowed an individual to improperly complete an LTC CE exam for him in a state in which he had a prospect who was interested in an LTC product. The findings also stated that the individual took the exam for Egress using identification information received from Egress, which included his social security number, insurance license number and expiration date, and address. The findings also included that the prospect never purchased the insurance product through Egress.

The suspension is in effect from February 22, 2011, through March 21, 2011. **(FINRA Case #2009021029705)**

**Allan Christopher English (CRD #861313, Registered Representative, Carmichael, California)**

was barred from association with any FINRA member in any capacity. The sanction was based on findings that English failed to provide complete and timely responses to FINRA requests for information and documents. **(FINRA Case #2009016878701)**

**Roger Craig Fulton (CRD #3268583, Registered Principal, Richmond, Texas)**

submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any FINRA member in any capacity for three months. In light of Fulton's financial status, no monetary sanctions were imposed. Without admitting or denying the findings, Fulton consented to the described sanction and to the entry of findings that he submitted a variable annuity application and other documents to his member firm knowing that they contained falsified customer signatures. The findings stated that Fulton recommended that a customer switch a variable annuity he owned for another variable annuity, which had advantageous riders. The findings also stated that the customer agreed to the switch, but Fulton agreed to delay the switch until market conditions improved. The findings also included that Fulton determined that market conditions were appropriate for the switch on a certain date, but the customer was out of town on an extended trip at that time. FINRA found that Fulton and the customer then agreed that the customer's relative would sign the customer's name to the variable annuity application and the other documents necessary to complete the switch transaction, which she did with Fulton's knowledge. FINRA also found that Fulton then submitted the annuity application and other documents the relative falsely signed to his firm as authentic, knowing that the customer's signature on the documents was not authentic. In addition, FINRA determined that Fulton's submission of the falsified application and other documents to his firm caused the firm's books and records to be inaccurate.

The suspension is in effect from February 7, 2011, through May 6, 2011. **(FINRA Case #2009018041101)**

**Edwin Osvaldo Gerena Jr. (CRD #4887362, Registered Representative, Gastonia, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Gerena consented to the described sanction and to the entry of findings that he converted a total of \$1,500 from bank customers while working as a personal banker with his member firm's bank affiliate, intending to use the funds for his own personal use. The findings stated that Gerena was requested to consolidate customers' accounts but secretly prepared deposit tickets less cash back withdrawals totaling \$1,500, which he placed in his desk drawer. The findings also stated that the customers were unaware of the withdrawals and did not consent to them. The findings also included that another personal banker questioned Gerena about one of the withdrawals and reversed the consolidation transaction; Gerena then deposited the cash back into the customer's account in an effort to mask his misconduct. **(FINRA Case #2010023671101)**

**Lawrence Ira Goldstein (CRD #3223787, Registered Representative, Beverly Hills, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$6,623, which includes the financial benefit Goldstein received, and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Goldstein consented to the described sanctions and to the entry of findings that he recommended purchases and sales of securities to a customer of his member firm that were unsuitable for that customer based upon the customer's financial status, tax status, investment objectives, and other information available to him about the customer's circumstances and needs. The findings stated that the customer opened an account at Goldstein's member firm, deposited a \$100,000 inheritance into her account and indicated investment objectives of "current income (conservation)" and "current income (aggressive)." The findings also stated that Goldstein initially recommended that the customer invest in auction rate securities; the customer followed Goldstein's recommendation and Goldstein invested the entirety of her account in auction rate securities even though these recommendations were not unsuitable for the customer. The findings also included that Goldstein later recommended that the customer begin to liquidate the auction rate securities and transition into preferred securities, focusing on new issues, with the understanding that if a particular preferred security appreciated to a degree that Goldstein believed it beneficial to sell the security rather than receive dividends, the security would be sold and another preferred security would be purchased; the customer agreed to follow his recommendation.

FINRA found that Goldstein recommended the purchase of preferred securities that were rated below investment grade. FINRA also found that Goldstein recommended, and the customer purchased, preferred securities that were increasingly below investment grade or not rated, and the recommendations that the customer purchase below-investment-grade securities were unsuitable for the customer because they exposed her principal to excessive risk of loss. In addition, FINRA determined that by recommending and then investing the customer's assets in these preferred securities that were below investment grade, and

also by over-concentrating the customer's account in below investment-grade preferred securities, Goldstein recommended and made investments in the customer's account that were unsuitable for the customer.

The suspension was in effect from February 22, 2011, through March 7, 2011. **(FINRA Case #2008013000801)**

**Robert John Griffin (CRD #866094, Registered Representative, Evanston, Illinois)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any FINRA member in any capacity for seven months. The fine must be paid either immediately upon Griffin's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Griffin consented to the described sanctions and to the entry of findings that he borrowed a total of \$10,000 from a friend who was also a customer of his member firm through loans against the customer's life insurance policy, contrary to his firm's written supervisory procedures that required written approval from the firm before an employee could borrow money from any customer, including friends. The findings stated that Griffin supplied the customer with the necessary paperwork and asked the customer not to tell anyone at his firm about the loan. The findings also stated that Griffin failed to obtain his firm's pre-approval in writing of the loans before accepting the loans. The findings also included that Griffin provided false responses during firm face-to-face annual compliance interviews and on questionnaires regarding borrowing or lending money to clients.

The suspension is in effect from February 7, 2011, through September 6, 2011. **(FINRA Case #2009020328201)**

**Mark Steven Gutentag (CRD #4108390, Registered Principal, Northridge, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Gutentag consented to the described sanction and to the entry of findings that he facilitated securities investments away from his member firm without providing written or other notice of those investments to, and without obtaining approval from, his firm prior to facilitating the investments. The findings stated that the investments, titled "Secured Investment Notes" totaled at least \$7 million. **(FINRA Case #2009018550601)**

**Kent Michael Houston (CRD #1514831, Registered Representative, Carlsbad, California)** was barred from association with any FINRA member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Houston failed to appear and provide testimony as FINRA requested. The findings stated that Houston failed to provide prompt written notice of outside business activities to his member firm and misrepresented on a firm compliance form that he had not conducted any outside business activities.

This decision has been appealed to the SEC, and the bar is in effect pending consideration of the appeal. **(FINRA Case #2006005318801)**

**Timothy Welland Hyde aka Joseph D. Bonanno (CRD #4337254, Registered Principal, Massillon, Ohio)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Hyde willfully failed to disclose material information on his Form U4 and failed to appear for a FINRA on-the-record interview. **(FINRA Case #2008016179401)**

**Dustin Kent Jefferies (CRD #4376154, Registered Principal, Columbus, Ohio)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, barred from association with any FINRA member in any principal capacity, and suspended from association with any FINRA member in any capacity for one year. The fine must be paid either immediately upon Jefferies' reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Jefferies consented to the described sanctions and to the entry of findings that he signed or traced customers' signatures on applications to purchase life insurance or critical care insurance through an electronic application system available at his member firm, without the customers' knowledge or consent and contrary to firm policy. The findings stated that Jefferies submitted life insurance applications for fictitious customers and, along with creating fictitious customer names and addresses, he created fictitious social security numbers, driver's license numbers and other information about the purported customers. The findings also stated that Jefferies submitted these applications for fictitious customers in order to give the appearance that he was meeting his required production for insurance policies sold. The findings also included that when Jefferies submitted each of the fictitious applications, he listed fictitious credit card numbers made up of all zeros for the initial premium payment, knowing that the credit card would be rejected with no payment being collected or the customers billed, while at the same time, his firm would give him immediate credit for submitting a new insurance policy.

FINRA found that when questioned by his manager about the applications, Jefferies initially denied having any knowledge of the practice and when later pressured by his manager, he then offered that newer agents may have been engaged in the activity. FINRA also found that it was only after his manager noted that almost all of the applications with zeros for credit card numbers were submitted from his office that Jefferies admitted to his misconduct, stating he did so because the applications would be credited to his production numbers more promptly that month. In addition, FINRA determined that Jefferies also admitted that he had submitted applications using fictitious names and other information.

The suspension is in effect from February 7, 2011, through February 6, 2012. **(FINRA Case #2009018919701)**

**Eric Damien Kallies (CRD #4753714, Registered Representative, Waunakee, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Kallie's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Kallies consented to the described sanctions and to the entry of findings that he executed purchases of exchange-traded fund (ETFs) in a managed joint account of public customers without the customers' knowledge or consent, and without having obtained the customers' prior written authorization to exercise discretion and his firm's prior written acceptance of the account as discretionary. The findings stated that Kallies made a presentation consisting of several slides to the customers in connection with an investment strategy program he was recommending and was considered "sales literature." The findings also stated that Kallies made the presentation without first obtaining approval from the appropriate registered principal of the firm, and it was never filed with FINRA within 10 business days of its first use. The findings also included that the presentation generally failed to disclose the risks of investing in the securities that were discussed, failed to disclose the general risks associated with investing in mutual funds and ETFs, and failed to disclose the heightened risk of investing in inverse types of ETFs.

FINRA found that the absence of certain disclosures resulted in the presentation not being fair and balanced and not providing the investor with a sound basis for evaluating facts in regard to a particular security or service, and the slides contained unwarranted and/or misleading information. FINRA also found that charts in some slides failed to include the total annual fund operating expense ratio, a prospectus offer and standardized average annual total returns for one, five and ten years; rather, they included the annualized rates of return, which is considered non-standardized performance and must be accompanied by the standardized performance listed. In addition, FINRA determined that the charts in some slides failed to include the performance disclosures required by SEC Rule 482(b)(3); these disclosures generally require that the sales material disclose that the performance data quoted represents past performance, that past performance does not guarantee future results and that performance may be lower or higher.

The suspension is in effect from February 7, 2011, through March 21, 2011. **(FINRA Case #2009016654401)**

**Stanley Jerome Keyes (CRD #1211573, Registered Principal, Crowley, Louisiana)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. Without admitting or denying the allegations, Keyes consented to the described sanctions and to the entry of findings that he borrowed at least \$214,000 from customers without disclosing such borrowings to his member firm, and used the loan proceeds to meet personal financial obligations. The findings stated that each loan was an undocumented personal loan and functioned like a

line of credit; Keyes would borrow an amount, repay a portion and then borrow additional funds. The findings also stated that Keyes repaid the outstanding balances owed to each of the customers but did not fully repay two customers until after he was terminated from his member firm and FINRA began its investigation. The findings also included that Keyes failed to disclose the existence of the initial loans or the subsequent borrowings from them to his firm contrary to firm policy forbidding registered representatives from borrowing funds from customers except under certain circumstances, none of which fit Keyes' borrowing. FINRA found that Keyes was aware of the firm's procedures, certified to the firm that he had received and read the firm's policies and procedures, and understood that he was prohibited from borrowing money from customers. FINRA also found that Keyes falsely certified to the firm that he had not received checks from customers made payable to him, and had not borrowed money from customers.

The suspension is in effect from February 22, 2011, through May 21, 2011. **(FINRA Case #2009017605101)**

**Jeffrey Alan Lee (CRD #2136374, Registered Representative, Oak Park, California)** was fined \$5,000 and suspended from association with any FINRA member in any capacity for one year. The fine shall be due and payable upon Lee's return to the securities industry. The sanctions were based on findings that Lee willfully failed to disclose material information on his Form U4 and to amend his Form U4 to disclose material information.

The suspension is in effect from January 18, 2011, through January 17, 2012. **(FINRA Case #2008014233602)**

**Brian William Livingston (CRD #1271034, Registered Representative, Louisville, Kentucky) and Michael Andrew Livingston (CRD #2525452, Registered Representative, Louisville, Kentucky)** submitted a Letter of Acceptance, Waiver and Consent in which they were barred from association with any FINRA member in any capacity. Without admitting or denying the findings, the Livingstons consented to the described sanctions and to the entry of findings that they willfully failed to disclose material information on their Forms U4 and failed to appear to give testimony in response to FINRA requests. **(FINRA Case #2008015186001)**

**Adam Howard Markowitz (CRD #4509956, Registered Representative, Hidden Hills, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Markowitz consented to the described sanction and to the entry of findings that he facilitated investments away from his member firm and failed to provide written notice to, or obtain approval from, his firm prior to facilitating the investments. The findings stated that Markowitz facilitated investments titled "Secured Investment Notes," totaling \$1,025,000. The findings also stated that Markowitz failed to respond to FINRA requests for information and documentation. **(FINRA Case #2009018550901)**

**Joseph Jeffrey Mattia (CRD #1301821, Registered Supervisor, New York, New York)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Mattia's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the allegations, Mattia consented to the described sanctions and to the entry of findings that he authorized an email to be sent from him to his member firm's Office of General Counsel that contained statements concerning the resolution of a customer complaint against a firm registered representative that he knew, or should have known, were false and caused the firm to improperly report the resolution on the representative's Form U4. The findings stated that the client settlement had been improperly reported as withdrawn even though the client's accounts had been credited with \$9,198 and Mattia had personally agreed to settle the complaint. The findings also stated that even if Mattia believed the email might be accurate, he should have made a reasonable inquiry into the status of the complaint prior to authorizing the email to be sent, and he would have discovered that the complaint had not been withdrawn.

The suspension is in effect from February 7, 2011, through May 6, 2011. **(FINRA Case #2008016120501)**

**Michael Joseph McCullough (CRD #2838632, Registered Representative, St. Paul, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 45 days. Without admitting or denying the findings, McCullough consented to the described sanctions and to the entry of findings that he devised a strategy for allowing customers who owned shares in his member firm's Asset Strategy Mutual Fund to avoid tax liability for a capital-gains distribution and instead to realize a tax loss on their mutual fund holdings for the year. The findings stated that on McCullough's recommendation, customers liquidated their holdings in the Asset Strategy Fund before the fund made a distribution. The findings also stated that at McCullough's recommendation, the customers held the liquidation proceeds in cash for a brief period before reinvesting those moneys in other firm mutual funds. The findings also included that McCullough believed that it was necessary to structure the transaction this way to achieve the desired tax benefit.

FINRA found that the customers collectively paid \$27,239 in sales charges on their new mutual-fund purchases, of which McCullough received \$13,650 as commissions. FINRA also found that these sales charges largely—but not entirely—negated the tax benefit to each customer of avoiding capital-gains liability. In addition, FINRA determined that had the customers simply exchanged their Asset Strategy Fund shares for shares of other funds within the same family of funds, they would not have incurred any sales charges, and their net gain would have been substantially larger. Moreover, FINRA found that at the time of the transactions at issue, McCullough was unaware that the affected customers

could have achieved the desired tax savings through a mutual fund exchange, while also avoiding any sales charges. Furthermore, FINRA found that although this information was readily available, McCullough neglected to review relevant IRS publications or to consult with anyone else at his firm about more cost-effective ways of achieving the desired tax benefits. The findings also stated that McCullough provided misleading information to his firm in a Purchase Account Service Request that he prepared in connection with each of the customers' mutual-fund repurchases; McCullough answered "no" on each customer's form as to whether the proceeds from the sale of another security were being used to open the account despite the fact that each customer's purchase occurred within a matter of days of the customer's liquidation, and in amounts either equal or nearly equal to the liquidation amounts.

The suspension is in effect from February 22, 2011, through April 7, 2011. **(FINRA Case #2009017951701)**

**Stuart Phillip Miller (CRD #4851567, Registered Representative, San Diego, California)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for one year. The fine must be paid either immediately upon Miller's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Miller consented to the described sanctions and to the entry of findings that he and another individual were trainees in a member firm's professional development program and formed a partnership through which they jointly solicited and handled customer accounts as well as splitting any production credits that either generated. The findings stated that as part of their efforts to attract clients, Miller and the individual created a spreadsheet that set a model fund portfolio that they either presented to potential customers during meetings or sent by email or mail to prospective customers. The findings also stated that Miller and the individual sent a version of their model fund portfolio that included a mix of conservative and risky securities along with a chart of history of returns the individual securities and overall portfolio earned; Miller and the individual, in some communications with potential customers, misrepresented that this was a portfolio that they managed and that the stated returns were their returns. The findings also included that neither Miller nor the individual sought or received a firm supervisor's prior approval for the use of the model fund portfolio or permission of its dissemination, nor was the model portfolio's spreadsheet filed with FINRA's Advertising Regulation Department, within 10 business days after first dissemination of the material as required.

FINRA found that the model fund portfolios did not include any information regarding the risks associated with the funds, and the chart did not include a sound basis for the performance evaluation for each of the securities included in the portfolio. FINRA also found that the model portfolio failed to identify or to display in a prominent fashion

Miller's and the other individual's association with their firm. In addition, FINRA determined that Miller had his assistant type up a stop transfer letter and he forged the customer's signature on the letter meant to prevent the customer from transferring his account to another firm. Moreover, FINRA found that Miller admitted to his branch manager that he had forged the stop transfer request and the firm immediately terminated Miller's employment.

The suspension is in effect from February 7, 2011, through February 6, 2012. **(FINRA Case #2009018219101)**

**Roger Jack Mouallem (CRD #1815781, Registered Principal, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Mouallem consented to the described sanction and to the entry of findings that he effected transactions in customers' accounts without their prior knowledge, authorization or consent. The findings stated that Mouallem attempted to settle a customer's complaint of, among other things, unauthorized transactions, by offering to pay the customer \$33,000 in exchange for the customer not notifying the firm of the complaint or that Mouallem had offered to pay \$33,000 to resolve it. The findings also stated that Mouallem failed to respond, and failed to timely and completely respond to FINRA requests for information and documents. **(FINRA Case #2010021587801)**

**Christina Marie Neumeyer (CRD #4728799, Registered Representative, Frankenmuth, Michigan)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 days. The fine must be paid either immediately upon Neumeyer's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Neumeyer consented to the described sanctions and to the entry of findings that she affixed customer signatures and a registered representative's name on documents without their knowledge or consent. The findings stated that during the course of routine review of account documents, Neumeyer's member firm notified a registered representative whom Neumeyer assisted, that corrections were necessary on certain account documents, including obtaining customer signatures on forms for a number of accounts. The findings also stated that Neumeyer sent by fax to her firm the documents with corrections that had been requested and upon review of the account documents that Neumeyer faxed, certain customer signatures were identified as appearing to have been cut and pasted on to the forms. The findings also included that when Neumeyer was questioned about the suspected falsified documents, she admitted to altering the documentation for a customer, by cutting and pasting the customer's signature on separate forms without the customer's knowledge or consent; the forms included disclosures about the nature of the customer's investments.

FINRA found that Neumeyer also signed the name of the registered representative whom she assisted on numerous different documents for a number of different customers. FINRA also found that the forms on which Neumeyer signed the registered representative's name were acknowledgments that the registered representative reviewed the customer account documents "for completeness, accuracy, suitability and proper disclosures" and acknowledgments that the registered representative had scrutinized the customer's information in compliance with the Office of Foreign Asset Control (OFAC) and the customer identification program (CIP), relating to the firm's compliance with AML rules.

The suspension was in effect from February 7, 2011, through March 8, 2011. **(FINRA Case #2009018415201)**

**David Eric Niederkrome (CRD #2220569, Registered Principal, Snoqualmie, Washington) and Stephen Rudolph Rodgers (CRD #1870455, Registered Principal, Ruston, Louisiana)** submitted a Letter of Acceptance, Waiver and Consent in which Niederkrome was fined \$15,000 and suspended from association with any FINRA member in any principal capacity for six months. Rodgers was fined \$5,000 and suspended from association with any FINRA member in any principal capacity for 60 days. Without admitting or denying the findings, Niederkrome and Rodgers consented to the described sanctions and to the entry of findings that Niederkrome authorized an associated person's participation in private securities transactions primarily involving the sales of hedge fund interests to investors, but failed to supervise the sales for suitability, or to review and retain monthly performance statements that were sent to hedge fund investors as required by NASD Rule 3040. The findings also stated that Niederkrome and Rodgers, as principals responsible for the review and approval of all new account applications, approved the opening of the accounts for prospective hedge fund investors without inquiring into whether the intended investment was actually suitable for them.

Niederkrome's suspension is in effect from February 7, 2011, through August 6, 2011. Rodgers' suspension is in effect from February 22, 2011, through April 22, 2011. **(FINRA Case #2008016403302)**

**Jeffrey Scott Pool (CRD #4226678, Registered Representative, Tulsa, Oklahoma)** was barred from association with any FINRA member in any capacity. The sanction was based on findings that Pool misappropriated \$10,224.20 from a checking account an insurance company maintained for the deposit and processing of insurance premium payments for his personal use. The findings stated that the company did not authorize the withdrawals. The findings also stated that Pool admitted to his supervisors that he had taken the funds for his personal use after the insurance company audited Pool's account and discovered the funds missing. **(FINRA Case #2009018037201)**

**Michael D. Rhodes (CRD #2487097, Registered Representative, Liberty, Utah)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 30 days. Without admitting

or denying the findings, Rhodes consented to the described sanctions and to the entry of findings that he failed to give notice to his member firm as required by the firm and FINRA rules that he was engaged in an outside business activity and was being compensated by an individual for providing financial services. The findings stated that an individual contacted Rhodes for financial advice on several businesses the individual owned and on a number of issues and Rhodes met with his firm's officers to develop a plan for working with the individual. The findings also stated that Rhodes firm's officers told him that he had to qualify and become registered as an investment adviser representative (Series 65) before he could provide the services the individual requested and be compensated for those services. The findings also included that Rhodes was paid \$25,000 per month from one of the individual's businesses even though he was not registered as an investment adviser representative. FINRA found that the firm learned about the compensation through other means.

The suspension was in effect from February 7, 2011, through March 8, 2011. **(FINRA Case #2009018521601)**

**James Robert Riolo (CRD #2609419, Registered Principal, Boca Raton, Florida)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Riolo consented to the described sanction and to the entry of findings that he referred customers of his member firm to entities controlled by his relative, who was purportedly engaging in trading off-exchange foreign currency (forex) contracts, but in fact was running a fraudulent scheme. The findings stated that the customers invested more than \$3.3 million with one entity, and for referring these customers, Riolo received more than \$960,000 from his relative. The findings also stated that both entities were fraudulent schemes and Riolo's relative was subsequently convicted and sentenced in court for his fraudulent activities. The findings also included that customers that Riolo referred lost a combined amount of over \$120,000. FINRA found that in referring these customers to his cousin and receiving compensation, Riolo engaged in an outside business activity, but did not provide written notice or receive approval from his firm. FINRA also found that Riolo falsely stated in signed monthly compliance questionnaires that he was not engaging in any outside business activity. In addition, FINRA determined that Riolo failed to respond to FINRA requests for information and documents. **(FINRA Case #2010022499001)**

**Nancy Sherr Rizzo (CRD #1605100, Registered Supervisor, New York, New York)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Rizzo's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Rizzo consented to the described sanctions and to the entry of findings that she submitted requests to her member firm to make charitable sponsorship payments to a non-profit

organization that she served as a vice president and a member of the board of directors, which was disclosed in writing to, and approved by, her firm. The findings stated that the firm approved Rizzo's requests and made the sponsorship payments through checks. The findings also stated that the founder and executive director of the non-profit wrote checks totaling \$20,275 to himself from the non-profit's account at Rizzo's firm. The findings also included that Rizzo communicated with the founder about his personal use of the funds in a series of emails through her firm email account, which show that the founder used the funds for a move to a new place of residence, for rent and utilities and for cell phone bills, among other expenses; in one of his emails to Rizzo, the founder promised to pay the funds back.

FINRA found that in an email to the founder, Rizzo told him to use the money from the non-profit's account to help him get established at his new place of residence and that they would find a way to build the funds back up over time. FINRA also found that thereafter, Rizzo submitted the final request for a sponsorship payment of \$5,000 to be made to the non-profit. In addition, FINRA determined that Rizzo was in possession of a checkbook belonging to the non-profit and, per the founder's oral authorization, Rizzo wrote checks and improperly signed the founder's name to those checks, but Rizzo did not have written authorization to sign the checks and did not place any notation on the checks indicating that she was signing the checks on the founder's behalf. Moreover, FINRA found that the checks totaled approximately \$7,723 and were made payable either to third parties or to "cash"; of this total, approximately \$3,415 was paid through checks written to "cash," thereby Rizzo improperly signed the name of an authorized signatory of a customer account on checks. Furthermore, FINRA found that Rizzo failed to timely comply with a FINRA request that she provide testimony in connection with a FINRA investigation.

The suspension is in effect from February 7, 2011, through February 6, 2013. **(FINRA Case #2008014144201)**

**Christine Mary Ryerson (CRD #2571686, Registered Principal, Pembroke, New Hampshire)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Ryerson consented to the described sanction and to the entry of findings that, even though she was a licensed insurance producer, she signed her own name as the "producer" or "agent" on annuity application transfer and exchange forms when, in fact, she was not the producer or agent on those particular applications. The findings stated that Ryerson signed the documents for the benefit of a person who, as Ryerson knew, sought to conceal his identity from his member firm as the true agent on those documents. The findings also stated that Ryerson misidentified herself as the "producer" or "agent" on annuity application transfer and exchange forms for other insurance agents as well under similar circumstances. The findings also included that Ryerson failed to produce some of the information FINRA requested. **(FINRA Case #2009020567801)**

**Lillian S. Scales (CRD #2003922, Registered Representative, Decatur, Georgia)** submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Scales consented to the described sanction and to the entry of findings that she was listed as a joint owner with a customer on a mutual fund account her member firm held, falsely maintaining that she and the customer were relatives because the firm allowed employees' immediate family members to maintain joint accounts with them. The findings stated that the customer contacted the firm and reported funds missing from the mutual fund account and that Scales had improperly taken approximately \$39,000 from the account and deposited the funds directly into her personal bank account, without the customer's knowledge or consent, for her own use and benefit. **(FINRA Case #2010023669001)**

**Edward Howard Schrufer Jr. (CRD #1072023, Registered Principal, Kamuela, Hawaii)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$30,600 and suspended from association with any FINRA member in any capacity for one year. The \$30,600 fine includes disgorgement of \$15,300 representing commissions and fees earned, payable upon notice the AWC was accepted. The fine in the amount of \$15,300 is due either immediately upon Schrufer's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier.

Without admitting or denying the findings, Schrufer consented to the described sanctions and to the entry of findings that he made unsuitable recommendations to customers to use the accumulated equity in their homes to generate cash to invest. FINRA found that Schrufer's recommendations that the customers borrow the money against their homes to invest in securities were made without reasonable grounds for believing that the recommendations were suitable based upon the financial situations and needs the customers disclosed. FINRA found that as a result of Schrufer's recommendations, the customers took "cash out" mortgages and invested hundreds of thousands of dollars in securities, for which Schrufer received advisory fees and commissions of approximately \$15,300. The findings stated that the customers disclosed to Schrufer that they lacked the funds necessary to purchase the securities Schrufer recommended without liquefying their home equity, and that they had insufficient assets and income to cover the monthly mortgage payments without the uncertain returns from the investments Schrufer recommended. The findings also stated that Schrufer told the customers that the investments they would make using the proceeds of their cash-out mortgages would generate enough income to make their monthly mortgage payments, even though Schrufer knew that there was a risk that the investment returns might not be sufficient to pay the mortgages over time. FINRA also found that Schrufer's statements to the customers that their investments would generate sufficient income to make the additional mortgage payments were misleading.

The suspension is in effect from February 7, 2011, through February 6, 2012. **(FINRA Case #2008013198902)**

**Craig Harold Schwarten (CRD #5255964, Registered Representative, Stacy, Minnesota)** submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Schwarten consented to the described sanction and to the entry of findings that he made an unsuitable recommendation to a customer, in light of the customer's financial situation and needs, for the purchase of a private placement offering. The findings stated that Schwarten recommended that the customer take equity out of her home through a refinanced mortgage and use \$100,000 of the proceeds to purchase the private placement offering. The findings also stated that Schwarten failed to appear for a FINRA on-the-record interview. **(FINRA Case #2008012927502)**

**Teri Sue Shepherd (CRD #4445815, Registered Principal, Elkhorn, Nebraska)** submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$7,500, suspended from association with any FINRA member in any principal capacity for 45 days and required to requalify by examination before acting in any FINOP capacity with any FINRA registered broker-dealer. The fine must be paid either immediately upon Shepherd's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Shepherd consented to the described sanctions and to the entry of findings that her member firm, acting through her, conducted a securities business while failing to maintain adequate net capital. The findings stated that Shepherd caused the firm's net-capital violations by improperly treating a debt the firm's parent company owned as an allowable asset for purposes of its net-capital calculations, and improperly treating as allowable the excess amount of concessions receivable for trails over the amount of corresponding commissions payable.

The suspension was in effect from January 18, 2011, through March 3, 2011. **(FINRA Case #2009017136101)**

**Edward Gerald Spinelli (CRD #4633904, Registered Representative, Malvern, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 20 business days. The fine must be paid either immediately upon Spinelli's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Spinelli consented to the described sanctions and to the entry of findings that he improperly marked order tickets for transactions, which his member firm's research did not cover, in accounts as "unsolicited" when, in fact, they were solicited, thereby causing the firm's books and records to be inaccurate. The findings stated that Spinelli solicited the purchase of securities for which the firm did not have a research opinion for family members' accounts even though he was aware that the firm prohibited its registered representatives from soliciting transactions in securities for which the firm's research department did not have a research opinion without firm approval. The findings

also stated that Spinelli effected transactions on a discretionary basis for the accounts, when neither customer had provided Spinelli or the firm with written authorization to exercise discretion.

The suspension was in effect from February 7, 2011, through March 7, 2011. **(FINRA Case #2009018288301)**

**Scott Douglas Stephenson (CRD #2057439, Registered Representative, Grants Pass, Oregon)** submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any FINRA member in any capacity for five months. The fine must be paid either immediately upon Stephenson's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the allegations, Stephenson consented to the described sanctions and to the entry of findings that he recommended and effected purchases of an exchange-traded, closed-end fund with predominantly speculative characteristics in customers' accounts without having reasonable grounds for believing his recommendations were suitable for the customers, in light of their risk tolerances, investment objectives and investment positions in relation to their entire liquid net worth. The findings stated that Stephenson signed customers' names to transaction, reinvestment/withdrawal and account application forms without their knowledge, authorization or consent, and submitted the forms to his member firm.

The suspension is in effect from February 7, 2011, through July 6, 2011. **(FINRA Case #2007011436902)**

**Dane Carl Sternecker (CRD #4272168, Registered Representative, Elk Mound, Wisconsin)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Sternecker's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Sternecker consented to the described sanctions and to the entry of findings that he attempted to determine a customer's total amount of investments; without the customer's knowledge or consent, Sternecker called a representative at another investment firm and inquired about the customer's investments at that firm. The findings stated that Sternecker requested a firm office assistant to impersonate the customer and authorize the representative at the other firm to provide Sternecker with information about the customer over the phone. The findings also stated that as part of the impersonation, the office assistant answered security questions about the customer from information the customer provided to Sternecker earlier; the security answers provided by the office assistant induced the other firm's representative to provide Sternecker with the customer's investment information. The findings also included that the office assistant reported the impersonation to her manager, which led to an internal investigation and after Sternecker admitted to his misconduct, the firm terminated him.

The suspension was in effect from January 18, 2011, through March 1, 2011. **(FINRA Case #2009016781201)**

**Joe Evan Still (CRD #1954982, Registered Representative, Nacogdoches, Texas) and John Richard Still (CRD #1094616, Registered Representative, Nacogdoches, Texas)** submitted an Offer of Settlement in which Joe Still was fined \$25,000 and suspended from association with any FINRA member in any capacity for 18 months; John Still was barred from association with any FINRA member in any capacity. The fine must be paid either immediately upon Joe Still's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the allegations, Joe and John Still consented to the described sanctions and to the entry of findings that they engaged in outside business activities for compensation without disclosing this to their member firm, in writing or otherwise. The findings stated that Joe and John Still referred or introduced prospective investors, including a customer of Joe Still's member firm, to an individual and to the individual's business, and failed to conduct any due diligence on the individual and his business prior to referring or introducing the prospective investors; the investors subsequently invested over \$4.8 million with the individual's business. The findings also stated that John Still received compensation totaling over \$300,000 for the referrals and Joe Still received compensation totaling over \$120,000 for the referrals and, with the exception of two checks, the referral fee checks were made payable to relatives who were not securities professionals and who had no role in referring customers to the business. The findings also included that John and Joe Still falsely represented on annual compliance questionnaires that they had disclosed all outside business activities.

Joe Still's suspension is in effect from February 22, 2011, through August 21, 2012. **(FINRA Case #2008014358101)**

**Walter Wesley Watts (CRD #4461163, Registered Representative, Boise, Idaho)** submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for four months. The fine must be paid either immediately upon Watts' reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Watts consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction outside the regular scope of his employment with his firm without providing prior written notice to the firm. The findings stated that Watts sold a joint venture agreement issued by an entity to a customer who invested \$250,000 and, based upon the terms outlined in the joint venture agreement, expected to receive a guaranteed return on his investment of 3 percent per month. The findings also stated that the entity ceased making payments to the customer.

The suspension is in effect from February 7, 2011, through June 6, 2011. **(FINRA Case #2008014930201)**

**John Leslie White (CRD #1743420, Registered Representative, Beaverton, Oregon)**

submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two months. Without admitting or denying the findings, White consented to the described sanctions and to the entry of findings that he borrowed \$20,000 from a customer at his member firm, in order to purchase a house, without providing prior written notice to or obtaining prior written approval from, the firm. The findings stated that at the time White borrowed the money, the firm's written procedures prohibited borrowing from customers unless the customer was either an immediate family member, or a person or entity regularly engaged in the business of lending money, and White's customer was neither. The findings also stated that White completed an annual firm compliance survey and answered falsely that he had not borrowed money from clients.

The suspension is in effect from February 22, 2011, through April 21, 2011. **(FINRA Case #2009016876801)**

## Decisions Issued

**The Office of Hearing Officers (OHO) issued the following decisions, which have been appealed to or called for review by the NAC as of January 31, 2011. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decision. Initial decisions where the time for appeal has not yet expired will be reported in future issues of FINRA Disciplinary and Other Actions.**

**Gregory Richard Imbruce (CRD #4392235, Registered Representative, New Canaan, Connecticut)** was censured, fined \$50,000 and suspended from association with any FINRA member in any capacity for 30 business days. The sanctions were based on findings that Imbruce willfully violated Rule 105 of Regulation M under the Securities Exchange Act of 1934 by purchasing equity securities in a secondary public offering from a participating underwriter after having directed the short sale of the same securities during the five business days before the pricing of the public offering (the restricted period). The findings stated that Imbruce's purchase, coupled with the short sales, enabled his member firm to realize a \$58,721.26 profit.

This decision has been appealed to the NAC and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #2008012137601)**

**Merrimac Corporate Securities, Inc. (CRD #35463, Altamonte Springs, Florida)** was fined \$18,500. The Hearing Panel considered the firm's precarious financial condition in determining the appropriate sanctions. The sanction was based on findings that the firm sold private placements, non-traded real estate investment trusts (REITs), limited partnerships and direct participation programs not authorized by its FINRA membership agreement, and that the sale of each was a material change in its business requiring the filing of an application for approval of a change in business operations and FINRA approval

prior to their sale. The findings stated that the firm failed to establish and maintain adequate written procedures with respect to private placements, non-traded REITs, limited partnerships, direct participation programs and variable annuities. The findings also stated that the firm willfully failed to preserve certain business-related incoming emails and did not retain internal emails at all for a period of time. The findings also included that the firm failed to save emails in a non-erasable, non-rewritable format, failed to maintain its emails in an easily accessible place, and failed to notify FINRA that its records would be maintained on electronic storage media; all of which were considered to be willful violations. The findings further stated that the firm willfully failed to make and keep current blotters for its direct application mutual fund and variable annuity businesses.

This decision has been appealed to the NAC and the sanction is not in effect pending consideration of the appeal. **(FINRA Case #2007007151101)**

## Complaints Filed

**FINRA issued the following complaints. Issuance of a disciplinary complaint represents FINRA's initiation of a formal proceeding 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 these allegations in the complaint.**

**Thomas Michael Aretz (CRD #1083897, Registered Representative, Destin, Florida)** was named as a respondent in a FINRA complaint alleging that he engaged in an outside business activity and never made a written request to, or received permission from, his member firm for this activity. The complaint alleges that, in connection with the outside business, Aretz borrowed approximately \$242,800 from firm customers without requesting or obtaining his firm's permission, in violation of FINRA rules and firm policy, and has yet to repay the loans. The complaint also alleges that Aretz failed to respond to FINRA requests for information and documents. **(FINRA Case #2009017764301)**

**Harold Edwin Bissett Jr. (CRD #858422, Registered Principal, New Bern, North Carolina)** was named as a respondent in a FINRA complaint alleging that he used discretion in a customer's account without the customer's written authorization or his member firm's acceptance of the customer's account as discretionary. **(FINRA Case #2009016924901)**

**Kristopher William Bush (CRD #4626069, Registered Representative, San Diego, California)** was named as a respondent in a FINRA complaint alleging that he and another individual were part of their member firm's professional development program and formed a partnership through which they would jointly develop a customer base and split any production credits that either generated. The complaint alleges that Bush and the individual created a model fund portfolio that included mutual funds from among the

firm's approved funds. The complaint also alleges that the portfolio illustrated Bush and the individual's recommended strategy of a diversified portfolio, which they back-tested, and created a spreadsheet to track the hypothetical portfolio's performance. The complaint further alleges that as a way to market their business, Bush and the individual began mailing or emailing the model portfolio to certain prospective clients and sent a version of the model fund portfolio to several hundred potential customers, with Bush personally responsible for mailing or emailing the model portfolio to prospective customers. In addition, the complaint alleges that Bush and the individual failed to receive a registered principal's approval prior to disseminating the model portfolio, and failed to provide FINRA's Advertising Department with a copy of the spreadsheet 10 business days prior to use. Moreover, the complaint alleges that the spreadsheet Bush and the individual sent to prospective customers did not include the requisite risk disclosures and the spreadsheet did not identify the source of the performance numbers, or disclose to potential investors that they were created with the benefit of back-testing and hindsight. Furthermore, the complaint alleges that the spreadsheet failed to display in a prominent fashion that Bush and the other individual were associated with their firm, or reference the firm in any way. The complaint also alleges that in certain communications to potential customers, Bush and the individual misrepresented that they managed the model portfolio and obtained the stated returns on the portfolio. The complaint further alleges that Bush made the misrepresentations in some of the communications that he sent to prospective customers and was aware that his partner made similar misrepresentations to customers since he was copied on and received many of the communications containing similar misrepresentations that his partner sent to prospective customers. **(FINRA Case #2009018219102)**

**Michael Wayne Evans (CRD #1726255, Registered Representative, Mount Sinai, New York)** was named as a respondent in a FINRA complaint alleging that, in order to engage in "unspecified transactions," he received checks from customers, who were joint account holders at the respondent's brokerage firm employer and at an affiliated bank. The checks were in blank form without a specified payee and not signed by the customers, and one check was signed by one of the customers but not otherwise completed. The complaint alleges that Evans, without the customers' permission, knowledge or authority, converted securities in their brokerage account when he sold the securities, transferred the funds into their bank deposit account, withdrew funds by forging the signature of one of the customers on checks given to him which were linked to the customers' bank deposit account and made some of the checks payable to "cash," made the others payable to himself, and on one occasion, forged one of the customer's signature on a cash withdrawal form related to the bank deposit account, converting a total of \$60,000. The complaint also alleges that, without the customers' knowledge, authorization or consent, Evans sold shares totaling \$30,000 of their securities from their brokerage account, transferred \$10,000 of the sale proceeds to the bank deposit account and applied \$10,000 to their brokerage account margin balance. The complaint further alleges that Evans failed to respond to FINRA requests for information. **(FINRA Case #2009017222501)**

**Randolph Andrew Fisher Jr. (CRD #2795365, Registered Representative, Flemington, New Jersey)** was named as a respondent in a FINRA complaint alleging that he sold securities in the form of installment plan contracts offered by a non-profit corporation that misrepresented itself to the public as an approved 501(c)(3) charitable organization to elderly customers without first providing prompt written notice to and obtaining written approval from, his member firm. The complaint alleges that Fisher earned approximately \$37,489.75 in commissions in connection with his sales having a combined total value of approximately \$800,000. The complaint also alleges, in the alternative, that by participating in the sale of these installment plan contracts, Fisher engaged in outside business activities without providing notice to his member firm. The complaint further alleges that Fisher sold the installment plan contracts without first conducting adequate due diligence about the product he was selling and consequently failed to uncover the existence of a State-issued cease and desist order against the purported charitable organization and to determine the manner in which it would invest customer funds. Moreover, the complaint alleges that Fisher negligently misrepresented to his customers that they were entitled to receive a tax deduction/benefit without an adequate basis to make the representation, which was not true, and failed to tell certain customers the non-profit's application for tax-exempt status had not been approved; the misrepresentations and omissions were material as the tax-exempt status and the resulting tax benefits would be considered significant by a reasonable investor considering the non-profit's product.

Furthermore, the complaint alleges that Fisher solicited the sales by providing advertisements and sales literature to customers that failed to present a fair and balanced view of the product and/or were oversimplified and misleading. The complaint further alleges that Fisher did not present the advertisement and sales literature materials to a registered principal of his member firm for review and approval prior to showing them to customers in connection to his sales of the installment plan contracts. **(FINRA Case #2009019041802)**

**John Duncan Montfort (CRD #832458, Registered Supervisor, Nacogdoches, Texas)** was named as a respondent in a FINRA complaint alleging that he exercised discretion in customers' accounts and also exercised discretionary trades in the account of a business entity owned by these customers without the customers' prior written authorization or his member firm's written acceptance of the accounts as discretionary. The complaint alleges that the firm did not permit discretion to be utilized in retail brokerage accounts. **(FINRA Case #2008015172301)**

**Lazaro E. Salado (CRD #2899323, Registered Representative, Miami, Florida)** was named as a respondent in a FINRA complaint alleging that he misappropriated \$186,114.28 from customers of his member firm. The complaint alleges that Salado caused a bank to issue checks made payable to his personal account over which the customers had no possession or control. The complaint also alleges that the checks were deposited into Salado's personal account and bore signatures purporting to be those of the customers; the customers did

not authorize the withdrawals nor did they sign the checks. The complaint further alleges that Salado failed to comply with FINRA requests for documents and information. **(FINRA Case #2009021081301)**

**Andrew George Spotts (CRD #2660556, Registered Representative, Hummelstown, Pennsylvania)** was named as a respondent in a FINRA complaint alleging that he wrongfully misappropriated approximately \$197,860 from a coworker at his member firm. The complaint alleges that Spotts took blank personal checks from the coworker, making the checks payable to himself and to third parties, without the coworker's knowledge or authorization, and forged the coworker's name on the checks, which were then deposited into his personal account or issued to third parties. The complaint also alleges that Spotts failed to respond to a FINRA request for information and to appear for an on-the-record interview. **(FINRA Case #2009018661801)**

**Mack Henry Wheat (CRD #5280243, Registered Representative, Ojai, California)** was named as a respondent in a FINRA complaint alleging that he knowingly permitted a relative of an individual to falsely sign the individual's name to a life insurance application of which the relative was the beneficiary. The complaint alleges that Wheat instructed the relative to sign the individual's life application in different handwriting from his own to make it look as if the individual really signed it and submitted the application to his firm's non-member affiliate in order to obtain a life insurance policy in the individual's name. The complaint also alleges that Wheat knowingly submitted a saliva specimen, a requirement of the affiliate, from the relative for the individual's life application, falsely representing that the sample was from the individual. The complaint further alleges that the individual contacted the affiliate questioning his receipt of a bill to pay a premium on a life insurance policy he never took out, and told the affiliate that he never signed a life application, provided underwriting requirements or remitted a premium to the affiliate in connection with a policy. In addition, the complaint alleges that after an investigation, the affiliate and the firm terminated Wheat and cancelled the policy. Moreover, the complaint alleges that Wheat also signed the names of potential customers on life applications and submitted their falsified life applications to the affiliate. **(FINRA Case #2009016887201)**

**Angelo Xagoraris (CRD #2495422, Registered Principal, Fremont, California)** was named as a respondent in a FINRA complaint alleging that he made unsuitable recommendations to a customer of his member firm to purchase variable universal life (VUL) policies without offering any alternative investment recommendations even though the customer's investment objectives were income, and she neither wanted nor needed life insurance; Xagoraris received commissions totaling \$3,736.02 from the customer's investment in the VUL policies. The complaint alleges that Xagoraris recommended that the customer refinance her primary residence, through his mortgage brokerage business, in an amount greater than the existing loan, and to utilize a portion of the excess cash to invest in real estate and/or securities and, by entering into a business arrangement with the customer that entitled him to a portion of any profits generated by the property purchased with the

customer's funds, Xagoraris accepted compensation and/or was employed outside the scope of his employment with his member firm without providing the firm with prompt written notice. The complaint also alleges that Xagoraris recommended the purchase of a VUL policy to another customer without discussing other investment alternatives even though the customer did not want or need life insurance. The complaint further alleges that Xagoraris recommended that the customer refinance her home mortgages into a single "pick a payment" mortgage through his mortgage brokerage business, which resulted in material financial harm to the customer because she lacked sufficient current income to make any of the payments that would prevent negative amortization. In addition, the complaint alleges that the customer front-loaded payment of the VUL from funds obtained in the refinance because she could not afford the monthly premium payments from current income; Xagoraris received approximately \$1,278.90 in commission from the sale of the VUL. Moreover, the complaint alleges that the firm rescinded the VUL policy and repaid the premiums to the customer. Furthermore, the complaint alleges that the customer gave Xagoraris approximately \$60,000 to purchase mutual funds from her home mortgage refinance without Xagoraris having a reasonable basis for believing the VUL and mutual fund purchases were suitable in light of her financial circumstances, needs and investment objectives. The complaint also alleges that Xagoraris completed and signed compliance questionnaires his firm required, and falsely answered "yes" to the question that he had not accepted from a customer or a firm representative, any cash, a check made payable to himself, or shared in any profit or loss in a customer's or any of his firm's representative account. **(FINRA Case #2008012767401)**

**Firm Expelled for Failure to Pay Fines and/or Costs Pursuant to FINRA Rule 8320**

**Westrock Advisors, Inc. (CRD #114338)**  
 New York, New York  
 (January 12, 2011)  
**FINRA Case #2007008162201**

**Firm Cancelled for Failure to Meet Eligibility Standards Pursuant to FINRA Rule 9555**

**Todd & Company, Inc. (CRD #5651)**  
 Garden City, New York  
 (January 14, 2011)

**Firms Suspended for Failure to Supply Financial Information Pursuant to FINRA Rule 9552**

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

**Howard Feigenbaum dba Sharemaster (CRD #24019)**  
 Hemet, California  
 (October 6, 2010 – January 24, 2011)  
**FINRA Case #FPI100008/20100228551**

**Gremo Investments, Inc. (CRD #132121)**  
 North Aurora, Illinois  
 (January 6, 2011)

**OptionVue Securities Corp. (CRD #146085)**  
 Libertyville, Illinois  
 (November 5, 2010 – January 11, 2011)

**Firms Suspended for Failure to Pay Arbitration Fees Pursuant to FINRA Rule 9553**

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

**Equitas America, LLC (CRD #39806)**  
 Farmington Hills, Michigan  
 (January 17, 2011 – February 1, 2011)  
**FINRA Arbitration Case #10-02669**

**Seaboard Securities, Inc. (CRD #755)**  
 Florham Park, New Jersey  
 (January 5, 2011)  
**FINRA Arbitration Case #09-06227 & FINRA Arbitration Case #10-02585**

**Individuals Barred Pursuant to FINRA Rule 9552(h)**

(If the bar has been vacated, the date follows the bar date.)

**John Michael Andrews (CRD #1717820)**  
 Potomac, Maryland  
 (January 10, 2011)  
**FINRA Case #2009017246001**

**Raymond Eugene Bolton Jr. (CRD #1638964)**  
 Louisville, Kentucky  
 (January 18, 2011)  
**FINRA Case #2010022771801**

**Indre Bugyte (CRD #5639092)**  
 Clearwater, Florida  
 (January 18, 2011)  
**FINRA Case #2010021488301**

**Trudy K. Bui (CRD #5743352)**  
Houston, Texas  
(January 3, 2011)  
**FINRA Case #2010021662001**

**Victor Labi (CRD #2460237)**  
Eastchester, New York  
(January 11, 2011)  
**FINRA Case #2009017709901**

**Donald Carl Levings (CRD #1183437)**  
Whitefish Bay, Wisconsin  
(January 24, 2011)  
**FINRA Case #2010022957201**

**Adam David Moore (CRD #4825238)**  
Plainfield, Indiana  
(January 21, 2011)  
**FINRA Case #2010021423501**

**Matthew J. Niu (CRD #5280506)**  
Coolidge, Arizona  
(January 31, 2011)  
**FINRA Case #2010022757201**

**Anthony M. Simone (CRD #5243504)**  
Niskayuna, New York  
(January 18, 2011)  
**FINRA Case #2009018733701**

**Ronald Harris Sirota (CRD #872341)**  
Jamesville, New York  
(January 18, 2011)  
**FINRA Case #2009018203401**

**Ronald Dale Tenison (CRD #2323481)**  
Grants Pass, Oregon  
(January 18, 2011)  
**FINRA Case #2009017489301**

**Genina Victoria Vaughn (CRD #4514918)**  
Blue Bell, Pennsylvania  
(January 4, 2011)  
**FINRA Case #2009018381901**

**Charles Roger Webster (CRD #4666584)**  
Lincroft, New Jersey  
(January 31, 2011)  
**FINRA Case #2009018303601**

**Individual Revoked for Failing to Pay Fines and/or Costs Pursuant to FINRA Rule 8320**  
**(If the revocation has been rescinded, the date follows the revocation date.)**

**Joe Michael Kirk (CRD #2985434)**  
Sylmar, California  
(January 5, 2011)  
**FINRA Case #2009017797201**

**Individuals Suspended Pursuant to FINRA Rule 9552(d)**

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

**Judy Davis Bass (CRD #1165415)**  
Kenly, North Carolina  
(January 24, 2011)  
**FINRA Case #2010022128001**

**Paul Joseph Cataldo (CRD #3097386)**  
San Antonio, Texas  
(January 18, 2011)  
**FINRA Case #2010023540301**

**Alfredo Cedeno Jr. (CRD #5795962)**  
Reno, Nevada  
(January 20, 2011)  
**FINRA Case #2010023551501**

**Donald Louis Chouinard (CRD #4120041)**

Kalispell, Montana  
(January 18, 2011)

**FINRA Case #2009018413401**

**Anna Maria Clark (CRD #4695045)**

Tucson, Arizona  
(January 10, 2011)

**FINRA Case #2010023761101**

**Eric Edouard Coly (CRD #4288536)**

Los Angeles, California  
(January 20, 2011)

**FINRA Case #2010024455301**

**Christopher Robert Cushman  
(CRD #5564560)**

Corona Del Mar, California  
(January 24, 2011)

**FINRA Case #2010022715602**

**David August Desrochers (CRD #2331201)**

Redding, California  
(January 24, 2011)

**FINRA Case #2010023818901**

**Luis D. Grullon (CRD #5734701)**

Passaic, New Jersey  
(January 7, 2011)

**FINRA Case #2010023473901**

**David Bruce Jones (CRD #1229992)**

Shepherdstown, West Virginia  
(January 20, 2011)

**FINRA Case #2010023331601**

**George Kavouris (CRD #5070318)**

Piscataway, New Jersey  
(January 6, 2011)

**FINRA Case #2010022155401**

**Timothy W. Magness (CRD #5631398)**

Copperas Cove, Texas  
(January 7, 2011)

**FINRA Case #2010023473501**

**Joseph Vincent Massaro (CRD #5195215)**

Arlington, Virginia  
(January 24, 2011)

**FINRA Case #2010022427701**

**Rodney James McClellan (CRD #2051105)**

Boynton Beach, Florida  
(January 20, 2011)

**FINRA Case #2010023482901**

**Brian Keith Miller (CRD #2121346)**

Maryville, Tennessee  
(January 13, 2011)

**FINRA Case #2010024006101**

**Brian Kyle Napierski (CRD #4677478)**

Aliquippa, Pennsylvania  
(January 24, 2011)

**FINRA Case #2010023496201**

**David Jon Olinger (CRD #1856945)**

Ankeny, Iowa  
(January 18, 2011)

**FINRA Case #2010023590201**

**John Martin Pojeta (CRD #2433732)**

Carnegie, Pennsylvania  
(January 21, 2011)

**FINRA Case #2010021196601**

**Ted Alex Poulos (CRD #4614908)**

Pittsburgh, Pennsylvania  
(January 24, 2011)

**FINRA Case #2010021434701**

**Rameshkumar Chuharmal Sadhwani (CRD #1033135)**  
Hong Kong, HKG  
(January 31, 2011)  
**FINRA Case #2010024370001**

**Theodore Aloysius Schuman (CRD #415921)**  
Billings, Montana  
(January 24, 2011)  
**FINRA Case #2010022161501**

**Justin David Silberman (CRD #4244487)**  
Fairfax, Virginia  
(January 3, 2011 – February 14, 2011)  
**FINRA Case #2010022118101**

**Robert Keith Storey (CRD #5600119)**  
Manhattan Beach, California  
(January 24, 2011)  
**FINRA Case #2010022715601**

**Helen Grace Estacio Torralba (CRD #4781844)**  
North Hills, California  
(January 6, 2011)  
**FINRA Case #2010022179401**

**Jorge E. Villegas (CRD #5728702)**  
El Paso, Texas  
(January 24, 2011)  
**FINRA Case #2010023564201**

**Matthew Kaleimomi Walker (CRD #5140026)**  
San Luis Obispo, California  
(January 20, 2011)  
**FINRA Case #2010023823601**

**Daniel Curtis Williams (CRD #4791829)**  
Washington, DC  
(January 21, 2011)  
**FINRA Case #2009020834901**

**Individuals Suspended for Failure to Comply with an Arbitration Award or Settlement Agreement Pursuant to FINRA Rule 9554**

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

**John Michael Andrews (CRD #1717820)**  
Potomac, Maryland  
(January 7, 2011)  
**FINRA Arbitration Case #10-01080**

**Thomas Anthony Banus (CRD #4041962)**  
North Ridgeville, Ohio  
(January 6, 2011)  
**FINRA Arbitration Case #08-00466/ARB110006/20110261944**

**Thomas John Battista (CRD #2541832)**  
Waltham, Massachusetts  
(January 7, 2011)  
**FINRA Arbitration Case #10-01890**

**Tod Bretton (CRD #2258323)**  
Hazlet, New Jersey  
(January 6, 2011 – February 7, 2011)  
**FINRA Arbitration Case #08-04753**

**Gene Howard Burns (CRD #2657765)**  
Carmichael, California  
(January 13, 2011)  
**FINRA Arbitration Case #10-02084**

**Cheryl Clark Cox (CRD #2999911)**  
Signal Mountain, Tennessee  
(January 13, 2011)  
**FINRA Arbitration Case #10-02040**

**Francisco Alberto Diaz Jr. (CRD #2665862)**  
Miami, Florida  
(January 7, 2011)  
**FINRA Arbitration Case #10-01894**

**Richard Otis Dorman Jr. (CRD #2277862)**  
Venetia, Pennsylvania  
(January 7, 2011)  
**FINRA Arbitration Case #09-05727**

**David William Dube (CRD #3041983)**  
St. Petersburg, Florida  
(January 6, 2011)  
**FINRA Arbitration Case #09-05064**

**Sally Jean Gray (CRD #1801953)**  
Bellevue, Washington  
(January 13, 2011)  
**FINRA Arbitration Case #10-01057**

**Carolyn Jane Haik (CRD #2537050)**  
Honolulu, Hawaii  
(January 6, 2011)  
**FINRA Arbitration Case #10-02179**

**Ronald Edward Hardy Jr. (CRD #2668695)**  
Port Jefferson Station, New York  
(January 6, 2011)  
**FINRA Arbitration Case #08-03921**

**Mark Douglas Hatton (CRD #2587441)**  
Charlton, New York  
(January 13, 2011)  
**FINRA Arbitration Case #10-02947**

**Dean Loughin Holloway (CRD #1220376)**  
Key Biscayne, Florida  
(January 7, 2011)  
**FINRA Arbitration Case #10-02098**

**Kirk Kenneth Kepper (CRD #2980989)**  
Baton Rouge, Louisiana  
(January 13, 2011)  
**FINRA Arbitration Case #08-03534**

**David Edward Lamarche (CRD #2962063)**  
Los Angeles, California  
(January 7, 2011)  
**FINRA Arbitration Case #10-02359**

**Troy Alan Lambert (CRD #1842602)**  
Bechtelsville, Pennsylvania  
(January 13, 2011)  
**FINRA Arbitration Case #10-02807**

**Kenneth John Marchiol (CRD #1914305)**  
Aurora, Colorado  
(January 7, 2011)  
**FINRA Arbitration Case #09-00988**

**Donald Richard Marshall (CRD #803150)**  
Sun City West, Arizona  
(January 6, 2011)  
**FINRA Arbitration Case #10-00085**

**John Francis Means (CRD #2263604)**  
Lutherville, Maryland  
(January 6, 2011)  
**FINRA Arbitration Case #09-03831**

**James Grant Morse IV (CRD #2968502)**  
Coral Springs, Florida  
(January 6, 2011)  
**FINRA Arbitration Case #09-05075**

**Oscar Penn aka Oscar Garcia  
(CRD #2800907)**  
Austin, Texas  
(January 13, 2011)  
**FINRA Arbitration Case #09-06300**

**Mitchell Harris Sloane (CRD #2166032)**  
Brightwaters, New York  
(January 13, 2011)  
**FINRA Arbitration Case #09-03551**

**Michael Jay Strasser (CRD #1456856)**

Township of Washington, New York  
(June 19, 2003 – January 6, 2011)

**FINRA Arbitration Case #01-04781**

**Michael Jay Strasser (CRD #1456856)**

Township of Washington, New York  
(November 23, 2004 – January 6, 2011)

**FINRA Arbitration Case #02-06787**

**Kenneth Thom (CRD #5098147)**

New York, New York  
(January 13, 2011)

**FINRA Arbitration Case #09-02623**

**Hansel Clayton Toppin (CRD #4188845)**

Washington, DC  
(January 7, 2011 – February 11, 2011)

**FINRA Arbitration Case #10-01222**

**Tracy Allen Wildeman (CRD #3127369)**

Sierra Vista, Arizona  
(January 13, 2011)

**FINRA Arbitration Case #09-01515**

**Kenneth Thomas Williamson Jr.  
(CRD #1387562)**

Bradenton, Florida  
(January 13, 2011)

**FINRA Arbitration Case #09-06390**

**Matthew Bryan Wilson (CRD #2871004)**

St. Augustine, Florida  
(January 6, 2011)

**FINRA Arbitration Case #09-03831**

## FINRA Orders Schwab to Pay \$18 Million to Investors for Improper Marketing of YieldPlus Bond Fund

### Firm Made Inaccurate Statements and Omitted Material Information About the Fund

The Financial Industry Regulatory Authority (FINRA) announced that it has ordered Charles Schwab & Company, Inc., to pay \$18 million into a Fair Fund to be established by the Securities and Exchange Commission (SEC) to repay investors in YieldPlus, an ultra short-term bond fund managed by Schwab's affiliate, Charles Schwab Investment Management. The \$18 million consists of the \$17.5 million in fees that Schwab collected for sales of the fund, plus a fine of \$500,000, both of which will have been designated as restitution to customers.

FINRA's investigation found that despite changes in YieldPlus' portfolio that caused the fund to be disproportionately affected by the turmoil in the mortgage-backed securities market, Schwab failed to change its marketing of the fund. In written materials and in conversations with customers, some Schwab representatives omitted or provided incomplete or inaccurate material information relating to the fund's characteristics, risk and diversification, and continued to represent YieldPlus as a relatively low-risk alternative to money market funds and other cash alternative investments that had minimal fluctuations in net asset value (NAV).

Between Sept. 1, 2006, and Feb. 29, 2008, Schwab sold over \$13.75 billion in shares of YieldPlus to customers, which accounted for approximately 98 percent of the amount Schwab customers invested in ultra short-term bond funds. During this time period, Schwab's solicited sales of YieldPlus totaled approximately \$3.36 billion, approximately 40 percent of which were to customers 65 years of age or older. Schwab collected approximately \$17.5 million in fees from sales of the fund.

"Firms must ensure that their marketing materials are accurate and that their brokers are provided with current information about the products they are selling so they can provide investors with the information necessary to make informed decisions," said Brad Bennett, FINRA Executive Vice President and Chief of Enforcement. "Despite the drastic change in YieldPlus' holdings that increased the fund's risk and price volatility, Schwab failed to adequately provide this information to customers and its representatives, and instead continued to market the fund to customers as a cash alternative with minimal risk and price fluctuation."

FINRA found that in late August 2006, Schwab Investment's Board of Trustees approved a proposal from YieldPlus' fund manager to no longer classify non-agency mortgage-backed securities as an "industry" for purposes of the fund's concentration policies. This change purportedly allowed the fund manager to increase the amount of non-agency mortgage-backed securities in the portfolio to greater than 25 percent of the fund's assets. As a result, by February 2008, YieldPlus held over 50 percent of its assets in mortgage-backed securities, and about 40 percent in non-agency mortgage-backed securities.

FINRA found that Schwab was or should have been aware of the fund's significant exposure to mortgage-backed securities in light of the increasingly unfavorable financial markets. As YieldPlus' NAV declined in the latter part of 2007, Schwab acknowledged internally that YieldPlus was a higher-risk investment than it had been in the past. Internally, some Schwab employees even began referring to YieldPlus as "Yield Minus." Schwab nevertheless continued to describe to investors YieldPlus as being very low risk with minimal fluctuations in share price. Schwab also was aware that YieldPlus was being marketed improperly. The firm's product manager for YieldPlus advised others that the firm needed "to get away from saying YieldPlus is equivalent to a money market fund," but the firm failed to stop this practice.

FINRA found that Schwab's investment management unit was aware of the changes in the fund's portfolio and the significant increase in the percentage of the fund's mortgage-backed securities holdings, but it failed to appreciate the concomitant increase in the risk of the fund and price volatility. Meanwhile, Schwab's retail brokerage division did not change the way it marketed YieldPlus or the internal guidance it provided to its registered representatives.

In its advertisements and sales literature, Schwab described YieldPlus as a cash alternative investment. Schwab initiated marketing campaigns during the second half of 2006 and continued into 2007, one of which was internally called the "Cash" campaign, which compared the performance of YieldPlus to a money market fund and promoted YieldPlus as an alternative to money market funds. In the campaigns, Schwab did not disclose that the higher returns resulted from the greater risk in the portfolio. Other advertisements emphasized the "minimal risk" and "high degree of price stability" in YieldPlus.

The increased concentration in mortgage-backed securities caused YieldPlus to be severely impacted by the decline in the mortgage-backed securities market that began in the summer of 2007. YieldPlus' NAV dropped significantly, falling from a high of \$9.69 on Feb. 26, 2007, to \$8.79 on February 29, 2008, a decline of 9.3 percent.

In concluding this settlement, Schwab neither admitted nor denied the charges, but consented to the entry of FINRA's findings.