

# Notices to Members

## April 2000

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## IMPORTANT ANNOUNCEMENT FOR NASD MEMBERS

### Series 55 Exam Grace Period Expires May 1, 2000

On April 1, 1998, NASD Regulation, Inc., amended the National Association of Securities Dealers, Inc. (NASD®) Registration Rules regarding the qualification of representatives who trade equity securities in The Nasdaq Stock Market, Inc. and/or over-the-counter. A new qualification examination was established – the Limited Representative—Equity Trader Examination (Series 55). Registered persons who functioned as equity traders were given a two-year grace period and are required to pass the Series 55 exam by May 1, 2000.

Equity traders who have not completed the Series 55 exam should take the exam as soon as possible. On May 1, 2000, any equity trader who has not passed the Series 55 will have to cease all trading activities in Nasdaq® and/or over-the-counter equity securities.

Questions regarding this announcement may be directed to Carole Hartzog, Testing and Continuing Education Department, at (301) 590-6696.



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Each member firm's Executive Representative is entitled to one annual subscription to *Notices to Members* at cost (\$15 per year). Additional annual subscriptions are available for \$225; single issues cost \$25. To order, send a check or money order (payable to the National Association of Securities Dealers, Inc.) to NASD MediaSource, P.O. Box 9403, Gaithersburg, MD 20898-9403; to order with a credit card (American Express, MasterCard, or Visa), call (301) 590-6142, Monday to Friday, 9 a.m. to 5 p.m., Eastern Time. Back issues may be ordered by calling MediaSource at (301) 590-6142.

*Notices to Members* (December 1996 to current) are also available on the Internet at [www.nasdr.com](http://www.nasdr.com).

**INFORMATIONAL**

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**Mutual Fund Performance**

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**NASD Regulation Reminds Members Of Their Responsibilities When Advertising Recent Mutual Fund Performance****SUGGESTED ROUTING**

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Advertising/Investment Companies
- Internal Audit
- Legal & Compliance
- Mutual Fund
- Registered Representatives
- Senior Management
- Variable Contracts

**KEY TOPICS**

- Advertising
- Mutual Fund Performance

**Executive Summary**

Recent unusually strong equity market performance helped some mutual funds, particularly those that are heavily invested in technology stocks, to achieve extraordinary total return figures during the last year (or shorter period). Some members are using advertisements that promote this total return information to attract new investors. NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) reminds members of their responsibilities to present fund performance information in a fair and balanced manner and not to create unrealistic investor expectations with regard to future fund performance.

**Questions/Further Information**

You may direct questions concerning this *Notice* to Thomas M. Selman, Vice President, Investment Companies/Corporate Financing, NASD Regulation, at (202) 728-8068; Thomas A. Pappas, Director, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8330; Joseph P. Savage, Counsel, Advertising/Investment Companies Regulation, NASD Regulation, at (202) 728-8233; or Stephanie Dumont, Assistant General Counsel, NASD Regulation, at (202) 728-8176.

**Background**

In 1999, strong equity market performance helped certain mutual funds achieve unusually high total returns. In some cases, equity mutual funds or subaccounts for variable contracts, particularly those with significant investments in technology stocks, achieved total returns exceeding 100 percent for the most recent 12-month period, or even for a shorter period. Some members that distribute or sell

these mutual funds or variable contracts are issuing sales material that prominently advertises this unusually high performance. Additionally, certain technology-related funds have been in existence for one year or less, and thus do not have a longer-term track record for investors to consider.

This *Notice* reminds members of their responsibilities to base their communications on principles of fair dealing and good faith and to avoid statements that are exaggerated, unwarranted, or misleading. In particular, this *Notice* cautions members that if they choose to present extraordinary recent fund performance information, they should do so in a manner designed to lessen the possibility that investors will have unreasonable expectations concerning the future performance of these mutual funds.

**General Standards**

National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 2210(d)(1)(A) requires all member communications with the public to be based on principles of fair dealing and good faith, and such communications must provide a sound basis for evaluating the facts in regard to any particular security or securities, type of security, industry discussed, or service offered. Members may not omit any material fact or qualification if the omission would cause the communication to be misleading.

Likewise, Rule 2210(d)(1)(B) prohibits member communications with the public from including exaggerated, unwarranted, or misleading statements or claims. The rule provides that in preparing public communications, members should bear in mind that investments inherently involve the

risks of fluctuating prices and the uncertainty of dividends, rates of return, and yield.

The manner in which a member presents performance is equally important. In this regard, Rule 2210(d)(1)(D)(iii) requires members to consider the overall clarity of a communication. The rule notes that disclosures made in an unclear manner can result in a serious misunderstanding of the statement. Similarly, material disclosures relegated to footnotes may not enhance a reader's understanding of the communication.<sup>1</sup>

### **Application Of General Standards To Mutual Fund Performance Presentations**

Taken together, these rules require members to carefully craft their advertisements and other communications, including those intended to promote the sale of mutual funds. In particular, depending on the circumstances, it may be necessary to include information beyond what is required under Securities and Exchange Commission Rule 482 when

unusual performance is presented in order for the sales material not to be misleading.

Members should take special care in crafting sales material that presents extraordinary performance. While advertising such performance may increase demand for a fund's shares, it also may lead investors to believe that a fund will continue to achieve the same rates of return in the future. Accordingly, in order to comply with the requirements of Rule 2210(d)(1), members should avoid overemphasizing recent high performance figures or implying that they will recur.

In addition, if a fund's recent performance was the result of its investment focus in an unusually "hot" industry or other factors (such as investing primarily in initial public offerings) that may not continue to exist, we believe members should include prominent, cautionary language in the text of the communication that balances the extraordinary performance presentation. For example, it may be necessary to prominently disclose in such sales material that

the advertised performance was attributable to the unusually favorable conditions that are likely not sustainable; to disclose what these conditions were; and to warn that the conditions might not continue to exist and that the advertised performance probably will not be repeated in the future.

### **Endnote**

<sup>1</sup>Securities and Exchange Commission (SEC) Rule 482 under the Securities Act of 1933 and SEC Rule 34b-1 under the Investment Company Act of 1940 also require certain disclosures when mutual fund performance is presented in sales material. In sales material for mutual funds (other than money market funds) that presents performance, the sales material must include a legend disclosing that the performance data quoted represents past performance and that the investment return and principal value will fluctuate, so that an investor's shares, when redeemed, may be worth more or less than their original cost.

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**INFORMATIONAL**

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**Single Arbitrator Pilot Program**

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SEC Approves New Voluntary Single Arbitrator Pilot Program For A Two-Year Period; **Effective Date: May 15, 2000**

**SUGGESTED ROUTING**

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Legal & Compliance
- Registered Representatives
- Senior Management

**KEY TOPICS**

- Arbitration
- Direct Communication with Single Arbitrator
- Neutral List Selection System
- Reduced Hearing Session Fees
- Single Arbitration Pilot

**Executive Summary**

On February 15, 2000,<sup>1</sup> the Securities and Exchange Commission approved the proposal of NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) to add a new rule to the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Code of Arbitration Procedure (Code). The new rule—Rule 10336—will be entitled “Single Arbitrator Pilot Program” and will be effective for a two-year period. The Pilot Program is voluntary and will allow parties with claims of \$50,000.01 to \$200,000 to select a single arbitrator to hear their cases, rather than the panel of three arbitrators they would otherwise select. The Pilot Program will also allow the parties to communicate directly with the single arbitrator under certain conditions. Rule 10336, which will become effective on May 15, 2000, will result in lower arbitration fees to the parties and will enhance the dispute resolution process by affording quicker resolution of arbitration claims by participants.

Included with this *Notice* is Attachment A, the text of the amendments that will become effective on May 15, 2000.

**Questions/Further Information**

Questions regarding this *Notice* may be directed to Jean I. Feeney, Special Advisor, Office of Dispute Resolution, NASD Regulation, at (202) 728-6959, or via e-mail at: [jean.feeney@nasd.com](mailto:jean.feeney@nasd.com).

**Background**

In developing a proposal to provide parties in a public customer case with the alternative of a single arbitrator at a reduced cost, NASD Regulation sought feedback from the Public Investors Arbitration Bar

Association, the Securities Industry Association, and the Small Firm Advisory Board of the NASD to determine if investors and the industry would support such a program. After evaluating the feedback provided, NASD Regulation decided to offer, on a trial basis, an optional modification of current Neutral List Selection System (NLSS) procedures. NLSS is a computerized program developed in November 1998 to generate lists of proposed arbitrators (neutrals) for selection by the parties under Rule 10308 of the Code.

**Description Of The Single Arbitrator Pilot Program**

The Single Arbitrator Pilot Program is designed to allow parties in a public customer case with claims of \$50,000.01 to \$200,000, inclusive of interest, attorneys’ fees, and other costs, to agree to select a single arbitrator to hear their cases, rather than a panel of three arbitrators as would normally be the procedure under the Code. The Pilot Program will exclude any case seeking punitive damages unless all of the parties in such a case request a single arbitrator. All types of claims by all parties, including counterclaims, third-party claims, and cross-claims, will be counted in the \$200,000 claim limitation. Forum fees provided for in Rule 10332(c) of the Code will not be counted in the \$200,000 limitation.

The Pilot Program provides that the parties will participate in the selection of the single arbitrator. After the parties receive notice that a panel of three arbitrators has been selected, the parties will have 15 days to determine whether they want to choose one of the three selected arbitrators to serve as the single arbitrator under the Pilot Program. The 15-day period

corresponds with the 15-day period that parties have to select a chairperson of the panel under Rule 10308(c)(5) of the Code. Thus, if the parties decide not to proceed in the Pilot Program, they can proceed under regular NLSS selection procedures without delay.

The Pilot Program also allows the parties to communicate directly with the arbitrators under certain conditions, a unique feature not found elsewhere in the Code.

### **Frequently Asked Questions Relating To The Single Arbitrator Pilot Program**

To help explain the details of the Single Arbitrator Pilot Program to investors, members, and associated persons, NASD Regulation staff designed the following comprehensive list of questions and answers:

#### **Q. What is the Single Arbitrator Pilot Program (Pilot Program) designed to do?**

A. The Pilot Program is designed to allow parties with claims of \$50,000.01 to \$200,000, inclusive of interest, attorneys' fees, and other costs, to agree to select a single arbitrator to hear their cases, rather than a panel of three arbitrators as would normally be the case under the Code. This will result in lower arbitration fees and quicker resolution of arbitration claims. The Pilot Program also allows the parties to communicate directly with the arbitrators under certain conditions, as described below.

#### **Q. Is the Pilot Program mandatory or voluntary?**

A. The Pilot Program is voluntary. All parties must agree to the use of the Pilot Program.

#### **Q. What types of claims are eligible for the Pilot Program?**

A. Claims arising between a customer and an associated person or a member are eligible for the Pilot Program. The Pilot Program will be limited to cases involving aggregate claims between \$50,000.01 and \$200,000. Cases involving claims of \$50,000 or less normally have only one arbitrator under the Code.

#### **Q. Are there any types of claims not eligible for the Pilot Program?**

A. The Pilot Program is not available for the resolution of employment disputes or other intra-industry disputes.

#### **Q. Are claims that include a request for punitive damages eligible for the Pilot Program?**

A. No. The Pilot Program will exclude any case seeking punitive damages unless all of the parties in such a case request a single arbitrator. If the parties agree to include requests for punitive damages, the \$200,000 limitation will still apply unless the parties agree to a higher amount.

#### **Q. Will interest, attorneys' fees, and other costs be included within the Pilot Program's \$200,000 claim limitation?**

A. Yes.

#### **Q. Will filing fees, hearing session fees, member surcharges, and member process fees be included within the Pilot Program's \$200,000 claim limitation?**

A. No.

#### **Q. Will all types of claims by all parties, including any counter-claims, third-party claims, and cross-claims be counted towards the \$200,000 limitation?**

A. Yes.

#### **Q. When do the parties decide on whether to use the Pilot Program?**

A. The parties will participate in the usual arbitrator selection method provided under the Code, known as the Neutral List Selection System. After the parties receive notice that a panel of three arbitrators has been selected, Rule 10308(c)(5) of the Code provides that they have 15 days in which to select a chairperson. If it appears that the case fits the criteria for the Pilot Program, the parties can determine pursuant to Rule 10336(b)(1) whether they want to choose one of their three selected arbitrators to serve as the single arbitrator in the Pilot Program.

#### **Q. May the parties choose any of the three arbitrators as the single arbitrator?**

A. Yes. The parties may choose any of the three arbitrators, including the non-public arbitrator, to serve as the single arbitrator.

#### **Q. How many days do the parties have to agree on a single arbitrator?**

A. Rule 10336(b)(2) provides that the parties will have 15 days from the date the Director sends notice of the names of the arbitrators to agree on a single arbitrator. This 15-day period will run concurrently with the time period to select a chairperson under Rule 10308(c)(5).

**Q. What if the parties do not agree on a single arbitrator?**

A. If the parties do not agree on a single arbitrator, Rule 10336(b)(3) provides that the case will proceed under the usual procedures of Rule 10308. This means the case will be heard by a panel of three arbitrators, with the parties being given a chance to select the chair from among these arbitrators.

**Q. May parties communicate orally with the arbitrator outside the presence of other parties?**

A. No. The parties may not communicate orally with the arbitrator unless all parties participate.

**Q. May the parties communicate directly in writing with the single arbitrator?**

A. Yes. The Pilot Program will allow parties to agree to communicate directly with the arbitrator without Office of Dispute Resolution (ODR) staff involvement. Rule 10336(c)(1) provides that parties will be permitted to send written materials, including information (discovery) requests and motions, directly to the selected arbitrator. This is different from the procedures normally used under the Code, and is a special feature of the Pilot Program. Copies of such materials must be sent simultaneously and in the same manner to all parties and to the ODR staff member assigned to the case.

**Q. Are the parties required to send proof of service of written materials?**

A. Yes. Parties must send to the ODR staff member assigned to the case, the arbitrator and all

parties proof of service of written materials, indicating the time, date, and manner of service upon the arbitrator and all parties.

**Q. Do you require a particular format for proof of service?**

A. No. Parties may use the same type of Certificate of Service used in state or federal courts or another format that includes the necessary information, including the address to which the materials were sent. As is true under Rule 5(b) of the Federal Rules of Civil Procedure, service by mail is complete upon mailing.

**Q. May parties serve the materials on the arbitrator by facsimile (fax) or other electronic means?**

A. Yes. If the arbitrator and all parties agree, written materials may be served by fax or other electronic means. Such agreement might be given at the point of entry into the Pilot Program or at any time thereafter by providing an electronic mail (e-mail) address or a fax number. Once such agreement is reached, it will be presumed to continue unless the arbitrator and parties are notified otherwise. If the arbitrator or any party does not have access to an electronic means of communication, then such means may not be used.

**Q. May parties initiate conference calls with the arbitrator?**

A. Yes. Rule 10336(c)(2) provides that, if the arbitrator agrees, parties may initiate conference calls with the arbitrator, provided that all parties are on the line before the arbitrator joins the call.

**Q. May the arbitrator initiate conference calls with the parties?**

A. Yes. Rule 10336(c)(3) provides that the arbitrator may initiate conference calls with the parties, provided all parties are on the line before the conference begins.

**Q. Will filing fees, member surcharges, and member process fees change under the Pilot Program?**

A. No.

**Q. Are any fees reduced in the Pilot Program?**

A. Yes. Hearing session fees have been reduced in the Pilot Program to reflect lower arbitrator honoraria (payments) and other cost savings:

- For claims of \$50,000.01 to \$100,000, hearing session fees under the Pilot Program will be \$550 per session or \$1,100 for a two-session day.
- For claims of \$100,000.01 to \$200,000, hearing session fees under the Pilot Program will be \$750 per session or \$1,500 for a two-session day.

**Q. What are the savings?**

A. For claims of \$50,000.01 to \$100,000, the Pilot Program fee structure represents a reduction of \$200 per session for the parties as compared with normal case procedures (or a \$400 reduction for a two-session day).

For claims of \$100,000.01 to \$200,000, the new fee structure represents a reduction of \$375 per session for the parties as compared with normal case

procedures (or a \$750 reduction for a two-session day).

**Q. What if, after agreeing to the Single Arbitrator Pilot Program, a party learns of information that leads the party to believe there are additional claims or higher claims than originally made, which would raise the total amount in controversy over the \$200,000 maximum for the Pilot Program?**

A. Because the Pilot Program is designed to add flexibility to the Code, parties and arbitrators faced with these facts could, for example, agree to continue with a single arbitrator who would be empowered to award more than \$200,000, or determine whether two other arbitrators already ranked in the initial list selection process might still be available, allowing the case to continue without serious interruption as a three-arbitrator case (fees would be adjusted to the normal three-arbitrator schedule).

The single arbitrator has discretion to determine whether to allow a party to file a new or amended pleading, except when a party is responding to a new or amended pleading. See Rule 10328(b). Accordingly, if a party seeks to amend a pleading to raise the total amount in controversy over the \$200,000 maximum, the party must first receive the arbitrator's consent.

**Q. What if the parties do not agree to amend the claim and continue with either a single arbitrator or a three-arbitrator panel?**

A. A party may move to dismiss the claim without prejudice and, if the arbitrator grants the motion, the claim can then be re-filed as a regular, three-person case.

Parties considering the option to re-file the revised claim as a regular, three-arbitrator case should understand that filing a new case would involve the payment of the initial filing fees and hearing session deposit for the new case. They should also consider any applicable eligibility or statute of limitations defenses the new filing date might raise.

**Q. What is the procedure for seeking a dismissal without prejudice?**

A. Rule 10305(a) provides that arbitrators may dismiss a proceeding at the request of a party or on the arbitrator's own initiative. Another party to the case may object to the dismissal. The single arbitrator has the discretion to determine whether or not to grant a request for dismissal. Rule 10305(c) provides that arbitrators shall dismiss a proceeding at the joint request of all the parties.

**Q. What happens if the request to dismiss without prejudice is denied?**

A. If the request to dismiss is denied, then the case will proceed with the single arbitrator, who cannot award more than the \$200,000 jurisdictional limit (unless the parties have agreed otherwise).

**Q. What happens if the request to dismiss without prejudice is granted?**

A. When a case is dismissed, hearing session deposits will be returned for any hearings that were not held. Filing fees, member surcharges, and process fees are non-refundable. If any hearing sessions were held, the arbitrator will determine the allocation of forum fees.

**Q. Where can I get more information on the Pilot Program?**

A. Speak with the staff in any ODR office, or visit the Arbitration/Mediation Web pages on the NASD Regulation Web Site at [www.nasdr.com](http://www.nasdr.com).

### **Endnote**

<sup>1</sup>Exchange Act Release No. 42226 (February 15, 2000) (File No. SR-NASD-99-54), 65 Federal Register 8753 (February 22, 2000).

## ATTACHMENT A

### Text Of Amendments

*(All rule language is new.)*

### Rules Of The Association

#### 10000. Code Of Arbitration Procedure

\* \* \* \* \*

#### 10336. Single Arbitrator Pilot Program

*This Rule allows parties with claims of \$50,000.01 to \$200,000 to select a single arbitrator to hear their cases, rather than the panel of three arbitrators they would otherwise select. This Pilot Program is voluntary, and includes provisions that allow the parties to communicate directly with the arbitrators under certain conditions. The Pilot Program should result in lower arbitration fees and quicker resolution of arbitration claims for participants.*

#### (a) Claims Eligible for Single Arbitrator Pilot Program

(1) Claims arising between a customer and an associated person or a member for amounts from \$50,000.01 to \$200,000, including damages, interest, costs, and attorneys' fees, will be eligible to be heard by a single arbitrator pursuant to this Rule ("Pilot Program"), except as provided in paragraph (a)(2) or (b)(3) below.

(2) Claims that include a request for punitive damages will not be eligible for the Pilot Program unless all parties agree.

#### (b) Arbitrator Selection Procedure

(1) After parties receive notice that a panel of three arbitrators has been selected for their case, as provided in Rule 10308, the parties may agree to have one of the arbitrators serve as the single arbitrator who will hear their case.

(2) The parties shall have 15 days from the date the Director sends notice of the names of the arbitrators to agree on a single arbitrator. This 15-day period will run concurrently with the time period to select a chairperson under Rule 10308(c)(5).

(3) If the parties do not agree to have one of the arbitrators serve as the single arbitrator, then the claim will not be eligible for the Pilot Program and will proceed instead under the usual procedures of Rule 10308.

#### (c) Communications with Arbitrators

(1) Parties may send written materials, including information requests and motions, directly to the single arbitrator, provided that copies of such materials are sent simultaneously and in the same manner to all parties and to the Director. Parties shall send the Director, arbitrator, and all parties proof of service of such written materials, indicating the time, date, and manner of service upon the arbitrator and all parties. Service by mail is complete upon mailing. If the arbitrator and all parties agree, written materials may be served electronically.

(2) If the arbitrator agrees, parties may initiate conference calls with the arbitrator, provided that all parties are on the line before the arbitrator joins the call. At the discretion of the arbitrator, such conference calls may be tape recorded.

(3) The arbitrator may initiate conference calls with the parties, provided all parties are on the line before the conference begins. At the discretion of the arbitrator, such conference calls may be tape recorded.

(4) Parties may not communicate orally with the arbitrator unless all parties are present.

#### (d) Fees

(1) Filing fees, member surcharges, and process fees for the Pilot Program will be the same as in Rules 10332 and 10333.

(2) Hearing session deposits for the Pilot Program are as follows:

(A) Hearing session deposits for claims of \$50,000.01 to \$100,000 will be \$550 per session.

(B) Hearing session deposits for claims of \$100,000.01 to \$200,000 will be \$750 per session.

(C) The forum fee for a telephone pre-hearing conference call with the arbitrator will be \$450.

#### (e) Awards

The single arbitrator may not award the parties more than a total of

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## **NASD Notice to Members 00-22**

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\$200,000, including damages, interest, costs, and attorneys' fees, unless all parties agree that the arbitrator may award a larger amount. In addition, the arbitrator shall allocate forum fees to the parties as provided in Rule 10332(c).

### **(f) Applicability of Code**

Except as provided in this Rule, the remaining provisions of the Code will apply to the Pilot Program.

### **(g) Temporary Effectiveness**

This Rule shall remain in effect until May 15, 2002.

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**INFORMATIONAL**

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**Bond Mutual Fund Volatility Ratings**

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**SEC Approves New Rules Relating To Bond Mutual Fund Volatility Ratings****SUGGESTED ROUTING**

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Advertising/Investment Companies
- Executive Representatives
- Legal & Compliance
- Mutual Fund
- Registered Representatives
- Senior Management

**KEY TOPICS**

- Bond Mutual Fund Volatility Ratings
- NASD Rule IM-2110-5

**Executive Summary**

On February 29, 2000, the Securities and Exchange Commission (SEC) approved a National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rule change relating to bond mutual fund volatility ratings. New NASD Rule IM-2210-5 permits members and associated persons to include bond mutual fund volatility ratings in supplemental sales literature for an 18-month pilot period. Previously, NASD rules prohibited the use of bond fund volatility ratings. The rules are effective immediately and the pilot program will expire on August 31, 2001, unless extended or permanently approved by the NASD at or before such date.

The new rule permits the use of bond fund volatility ratings subject to certain conditions and disclosure requirements. In addition, NASD Rule 2210 regarding communications with the public was amended by adding new subparagraph (c)(3) to require supplemental sales literature containing bond mutual fund volatility ratings to be filed with the Advertising/Investment Companies Regulation Department (the Department) for review and approval at least 10 days prior to use.

Included with this *Notice* are Attachment A (text of the new rule and rule amendments) and Attachment B (sample Disclosure Statement).

**Questions/Further Information**

Questions or comments concerning this *Notice* may be directed to Thomas M. Selman, Vice President, Investment Companies/Corporate Financing, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) at (202) 728-8330; Thomas A. Pappas, Director, Advertising/Investment Companies Regulation, NASD Regulation, at

(202) 728-8330; or Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

**Background**

Bond mutual fund volatility ratings describe the sensitivity of bond mutual fund portfolios to changing market conditions. Previously, NASD Regulation interpreted its rules to prohibit members from using bond mutual fund volatility ratings in supplemental sales literature. Supplemental sales literature refers to sales literature that is given to customers or prospective customers when, or after, a prospectus is given to them and supplements, but does not replace, the information contained in the prospectus. Supplemental sales literature is thus differentiated from mass media advertising or other sales material that is provided to prospective investors who have not yet received a prospectus. The prohibition derived from the concern that judgments of how a bond mutual fund may react to changes in various market conditions may be predictive of fund performance or misleading.<sup>1</sup>

In *Notice to Members 96-84* (December 1996), NASD Regulation requested comment on the appropriateness of its interpretation prohibiting the use of bond mutual fund volatility ratings in supplemental sales literature. A majority of the commenters believed that NASD Regulation should allow members to use the volatility ratings in supplemental sales literature, and all of the commenters representing investor groups supported the goal of making accurate information regarding risk and volatility characteristics of bond mutual funds available to investors. A special subcommittee of the NASD

Regulation Board of Directors also recommended permitting the use of volatility ratings subject to certain conditions. In 1997, the NASD Regulation Board of Directors and the NASD Board of Governors approved the rule change and its filing with the SEC. The rule change was amended several times prior to approval by the SEC. In particular, the rule change was amended to remove the prohibition against using "a single symbol, number or letter" to describe a volatility rating. The rule change, as amended, was approved by the SEC on February 29, 2000.<sup>2</sup>

### **Description Of The New Rule Pilot Period**

The new bond mutual fund volatility ratings rule, IM-2210-5, permits during an 18-month pilot period, ending August 31, 2001, the use of bond fund volatility ratings in supplemental sales literature, subject to certain conditions. As indicated in the SEC order approving the rule, during the 18-month pilot period the staff will consider whether:

- the rule has facilitated the dissemination of useful, understandable information to investors;
- the rule has prevented the dissemination of inappropriate or misleading information by members and associated persons;
- additional guidance concerning the use of certain terminology may be necessary;
- the rule should apply to in-house ratings;
- the rule should apply to all investment companies; and

- additional standards or guidance is needed to prevent investor confusion or minimize excessive variability among ratings of similar portfolios.

In addition, the staff will consider whether the use of a single symbol, number or letter describing a volatility rating, particularly those that are similar to or the same as credit ratings, might confuse investors. At the conclusion of its evaluation, NASD Regulation will determine whether to continue to permit use of the ratings; permit their use with modifications to the rule; or prohibit their use.

### **Definition Of Bond Mutual Fund Volatility Rating**

Section (a) of the new rule defines the term "bond mutual fund volatility rating" to mean, in part, a description issued by an independent third party relating to the sensitivity of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, based on an evaluation of objective factors regarding the fund's current characteristics and its past performance. The definition applies only to bond mutual fund volatility ratings provided by an independent third party and only to open-end investment companies.

### **Prohibitions**

Section (b) of the new rule permits members and associated persons to use a bond mutual fund volatility rating only in supplemental sales literature and only when the following requirements are satisfied.

- Subsection (b)(1) prohibits the use of a bond mutual fund volatility rating that uses the word "risk" to describe the rating.

- Subsection (b)(2) prohibits the use of a bond mutual fund volatility rating unless it incorporates the most recently available rating and is current to the most recent calendar quarter ended prior to use. This prohibition is intended to ensure that stale ratings are not provided to investors.

- Subsection (b)(3) prohibits the use of a bond mutual fund volatility rating that is not based exclusively on objective, quantifiable factors. This subsection also requires that the rating and the accompanying Disclosure Statement (as described below) be clear, concise, and understandable.

- Subsection (b)(4) prohibits the use of a bond mutual fund volatility rating unless the supplemental sales literature containing the rating conforms to the disclosure requirements in section (c) (as described below).

- Subsection (b)(5) prohibits the use of a bond mutual fund volatility rating unless the entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web site, or both. Access to such supplemental information will enable investors to obtain answers to questions regarding the meaning of the rating or how it is calculated or derived.

### **Disclosure Requirements**

Section (c) of the new rule requires that the following disclosures accompany any bond mutual fund volatility rating used in supplemental sales literature by members or associated persons of members.

- Subsection (c)(1) requires that supplemental sales literature containing a bond mutual fund volatility rating include a Disclosure Statement containing all the information required by the rule, but also permits the Disclosure Statement to contain any additional information that is relevant to an investor's understanding of the rating. Permitting the Disclosure Statement to contain additional relevant information could help elucidate the meaning of the rating.
- Subsection (c)(2) requires that supplemental sales literature containing a bond mutual fund volatility rating include all other current volatility ratings that have been issued with respect to the same fund. This subsection also permits information concerning multiple ratings to be combined in the Disclosure Statement, provided that the applicability of the information to each rating is clear. This serves the purpose of avoiding redundant and potentially confusing information. Subsection (c)(3) requires that all bond mutual fund volatility ratings be contained within the text of the Disclosure Statement.
- Subsections (c)(3)(A) - (B) of the new rule require that supplemental sales literature containing a bond mutual fund volatility rating disclose the name of the rating entity, the most current rating accompanied by the date of the

rating and, if there is any change in the current rating from the most recent prior rating, an explanation of the change. It is important for investors to see how a fund's rating may have changed and understand the reasons for the change.

- Subsection (c)(3)(C) of the new rule requires that supplemental sales literature containing a bond mutual fund volatility rating describe the rating in narrative form. Under subsections (c)(3)(C)(i) - (vii), the narrative description must also include:

(i) a statement that there is no standard method for assigning ratings;

(ii) a description of the criteria and methodologies used to determine the rating;

(iii) a statement that not all bond funds have volatility ratings;

(iv) a statement concerning whether consideration was paid in connection with obtaining the issuance of the rating;

(v) a description of the types of risks the rating measures, such as short-term volatility;

(vi) a statement that the portfolio may have changed since the date of the rating; and

(vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

A sample Disclosure Statement is included in Attachment B to assist members in drafting Disclosure Statements that comply with the requirements of the rule.

### ***Filing Requirement***

The rule change also amends NASD Rule 2210 regarding communications with the public by adding new subsection (c)(3) to require sales literature containing bond mutual fund volatility ratings to be filed with the Department for review and approval at least 10 days prior to use. Members filing sales literature containing bond mutual fund volatility ratings also must provide any supplemental information requested by the Department pertaining to the rating that is in the member's possession. Members must complete any changes requested by the Department and await approval by the Department before using the sales literature.

The rules are effective immediately and will expire on August 31, 2001, unless extended or permanently approved by the NASD at or before such date.

### **Endnotes**

<sup>1</sup>NASD Conduct Rule 2210 prohibits the use by members and associated persons of information that is misleading; that contains exaggerated, unwarranted, or misleading statements or claims; or that predicts or projects investment results.

<sup>2</sup>See Securities Exchange Act Release No. 42476 (February 29, 2000).

**ATTACHMENT A**

*(Note: Text of the new rule and rule amendments is underlined.)*

**IM-2210-5. Requirements for the Use of Bond Mutual Fund Volatility Ratings**

**(This rule will expire on August 31, 2001, unless extended or permanently approved by the Association at or before such date.)**

**(a) Definition of Bond Mutual Fund Volatility Ratings**

For purposes of this Rule and any interpretation thereof, the term "bond mutual fund volatility rating" is a description issued by an independent third party relating to the sensitivity of the net asset value of a portfolio of an open-end management investment company that invests in debt securities to changes in market conditions and the general economy, and is based on an evaluation of objective factors, including the credit quality of the fund's individual portfolio holdings, the market price volatility of the portfolio, the fund's performance, and specific risks, such as interest rate risk, prepayment risk, and currency risk.

**(b) Prohibitions on Use**

Members and persons associated with a member may use a bond mutual fund volatility rating only in supplemental sales literature and only when the following requirements are satisfied:

- (1) The rating does not identify or describe volatility as a "risk" rating.
- (2) The supplemental sales literature incorporates the most recently available rating and

reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.

(3) The criteria and methodology used to determine the rating must be based exclusively on objective, quantifiable factors. The rating and the Disclosure Statement that accompanies the rating must be clear, concise, and understandable.

(4) The supplemental sales literature conforms to the disclosure requirements described in paragraph (c).

(5) The entity that issued the rating provides detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web site, or both.

**(c) Disclosure Requirements**

(1) Supplemental sales literature containing a bond mutual fund volatility rating shall include a Disclosure Statement containing all the information required by this Rule. The Disclosure Statement may also contain any additional information that is relevant to an investor's understanding of the rating.

(2) Supplemental sales literature containing a bond mutual fund volatility rating shall contain all current bond mutual fund volatility ratings that have been issued with respect to the fund. Information concerning multiple ratings may be combined in the Disclosure Statement, provided that the applicability of the information to each rating is clear.

(3) All bond mutual fund volatility ratings shall be contained within

the text of the Disclosure Statement. The following disclosures shall be provided with respect to each such rating:

(A) the name of the entity that issued the rating;

(B) the most current rating and date of the current rating, with an explanation of the reason for any change in the current rating from the most recent prior rating;

(C) a description of the rating in narrative form, containing the following disclosures:

(i) a statement that there is no standard method for assigning ratings;

(ii) a description of the criteria and methodologies used to determine the rating;

(iii) a statement that not all bond funds have volatility ratings;

(iv) whether consideration was paid in connection with obtaining the issuance of the rating;

(v) a description of the types of risks the rating measures (e.g., short-term volatility);

(vi) a statement that the portfolio may have changed since the date of the rating; and

(vii) a statement that there is no guarantee that the fund will continue to have the same rating or perform in the future as rated.

\* \* \* \* \*

**2200. COMMUNICATIONS  
WITH CUSTOMERS AND THE  
PUBLIC**

**2210. Communications with  
the Public**

\* \* \* \* \*

**(c) Filing Requirements and  
Review Procedures**

\* \* \* \* \*

(3) Sales literature concerning  
bond mutual funds that include or

incorporate bond mutual fund  
volatility ratings, as defined in  
Rule IM-2210-5, shall be filed  
with the Department for review at  
least 10 days prior to use (or  
such shorter period as the  
Department may allow in  
particular circumstances) for  
approval and, if changed by the  
Association, shall be withheld  
from publication or circulation  
until any changes specified by  
the Association have been made  
or, if expressly disapproved, until  
the sales literature has been  
refiled for, and has received,

Association approval. Members  
are not required to file advertising  
and sales literature which have  
previously been filed and which  
are used without change. The  
member must provide with each  
filing the actual or anticipated  
date of first use. Any member  
filing sales literature pursuant to  
this paragraph shall provide any  
supplemental information  
requested by the Department  
pertaining to the rating that is  
possessed by the member.

\* \* \* \* \*

**ATTACHMENT B****Sample Disclosure Statement**

The volatility rating for this fund issued by [XYZ rating entity] (XYZ) is: [insert narrative rating]. The rating seeks to measure [description of what risks the rating measures, e.g., "how the value of the fund's current portfolio might respond to changing market conditions"]. XYZ arrived at its rating in the following way: [insert description of methodology]. There is no standard method for determining volatility ratings. The rating is current as of [date]. The fund's portfolio may have changed since this date and there is no guarantee that the fund will continue to have the same rating or perform in the future as rated. Not all bond mutual funds have volatility ratings and those that do may have paid for them. The fund [did/did not pay for] the volatility rating issued by XYZ. The fact that a fund has a rating is not an indication that it is more or less risky or volatile than a fund that does not. If you would like more specific information on the rating or the methodology used to determine the rating, call XYZ at (800) 000-000 or visit XYZ's web site at [insert web site address].

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## NASD Notice to Members 00-24

### INFORMATIONAL

## FIPS Changes

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of February 23, 2000

### SUGGESTED ROUTING

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Corporate Finance
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Senior Management
- Trading & Market Making

### KEY TOPIC

- FIPS

As of February 23, 2000, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
CRHI.GB	Carter Holdings Inc.	12.000	10/01/08
FMY.GA	Fred Meyer Inc.	7.375	03/01/05
FMY.GB	Fred Meyer Inc.	7.450	03/01/08
FMY.GC	Fred Meyer Inc.	7.150	03/01/03
MCDT.GA	McDermott Inc.	9.375	03/15/02
GRO.GA	Mississippi Chemical Corp.	7.250	11/15/17
NHI.GA	Nat'l Health Investors Inc.	7.300	07/16/07
NXTL.GC	Nextel Communications Inc.	9.375	11/15/09
RTHM.GB	Rhythms Netconnections Inc.	14.000	02/15/10
SRV.GB	Service Corp Int'l.	8.375	12/15/04
SRV.GC	Service Corp Int'l.	7.000	06/01/15
SRV.GD	Service Corp Int'l.	6.375	10/01/00
SRV.GE	Service Corp Int'l.	6.875	10/01/07
SRV.GF	Service Corp Int'l.	6.750	06/01/01
SRV.GG	Service Corp Int'l.	7.200	06/01/06
SRV.GH	Service Corp Int'l.	7.375	04/15/04
SRV.GK	Service Corp. Int'l	7.700	04/15/09
SRV.GI	Service Corp. Int'l.	6.000	12/15/05
SRV.GJ	Service Corp. Int'l.	7.875	02/01/13
STEI.GA	Stewart Enterprises Inc.	6.700	12/01/03
STEI.GB	Stewart Enterprises Inc.	6.400	05/01/13
TCBV.GA	Triarc Consumer/Bev Hldgs Corp.	10.250	02/15/09
TRTL.GA	Tritel PCS Inc.	12.750	05/15/09
ULAB.GB	Unilab Corp.	12.750	10/01/09
WCTT/GA	Warner Chilcott Inc.	12.625	02/15/08

As of February 23, 2000, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
AMLU.GA	Amer Cellular Corp.	10.500	05/15/08
BCC.GC	Boise Cascade Corp.	9.900	03/15/00
CHCA.GD	Chancellor Media Corp.	9.375	10/01/04
CCAL.CA	Chemical Leaman Corp.	10.375	03/15/00
CNMK.GA	Cinemark USA Inc.	12.000	06/01/02
CCMH.GA	Coinmach Corp.	11.750	11/15/05
ESOL.GC	Employee Solutions Inc.	10.000	10/15/04
MAK.GA	Group Maintenance Amer Corp.	9.750	01/15/09
LDCI.GA	Long Distance Int'l Inc.	12.250	04/15/08
MTZ.GA	Mastec Inc.	7.750	02/01/08
OVRD.GA	Overhead Door Corp.	12.250	02/01/00
PHNT.GA	Phonetel Technologies Inc.	12.000	12/15/06
TTG.GA	Trans Texas Gas Corp.	13.750	12/31/01
TRSM.GA	Trism Inc.	10.750	12/15/00

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## NASD Notice to Members 00-24

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As of February 23, 2000, changes were made to the symbols of the following FIPS bonds.

<b>New Symbol</b>	<b>Old Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
IPI.GA	IPCX.GA	PC Communications	10.875	05/01/08
SQAA.GA	SQA.GF	Sequa Corp.	9.000	08/01/09
WXS.GD	WPSN.GC	Westpoint Stevens Inc.	7.875	06/15/08
WXS.GC	WPSN.GD	Westpoint Stevens Inc.	7.875	06/15/05

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, Market Regulation, NASD Regulation<sup>SM</sup>, at (301) 590-6447.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq<sup>®</sup> Market Operations, at (203) 385-6310.

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**INFORMATIONAL**

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**Trade Date—  
Settlement Date**

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**Memorial Day: Trade  
Date—Settlement Date  
Schedule****SUGGESTED ROUTING**

*The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.*

- Internal Audit
- Legal & Compliance
- Municipal/Government Securities
- Operations
- Trading & Market Making

**KEY TOPIC**

- Holiday Trade Date—Settlement Date Schedule

**Memorial Day: Trade Date—Settlement Date Schedule**

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, May 29, 2000, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
May 23	May 26	May 31
24	30	June 1
25	31	2
26	June 1	5
29	Markets Closed	—
30	2	6

\*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."

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# A Collection Worth Noticing . . .

## Notices to Members Bound Volumes

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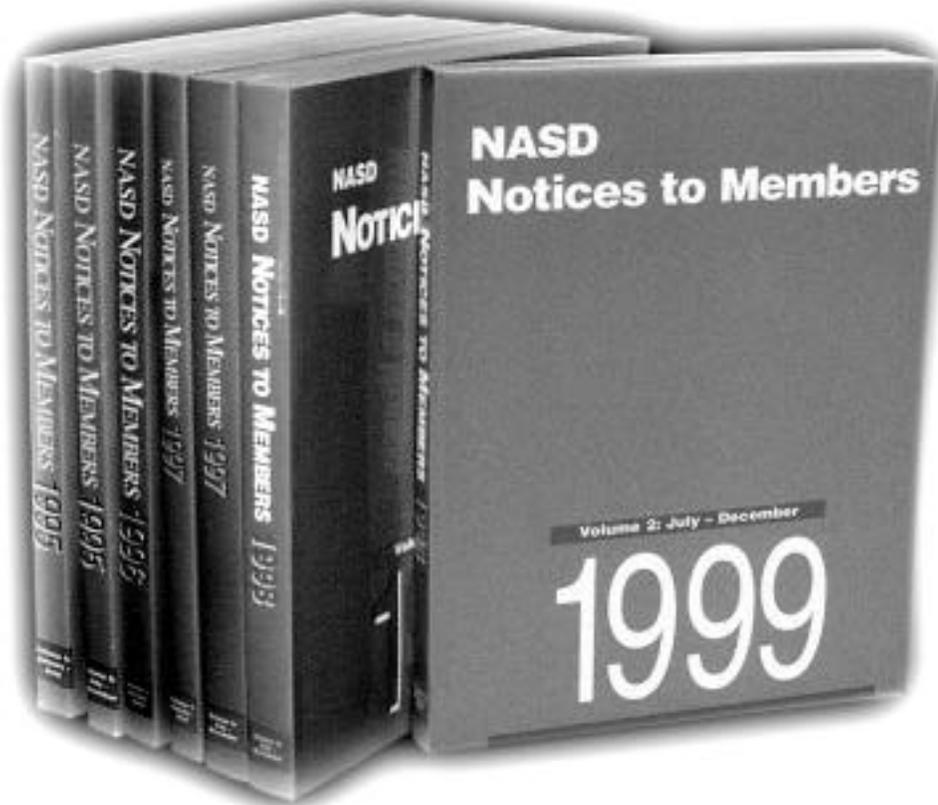
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**NASD**  
**REGULATION**

An NASD Company

# Disciplinary Actions

## Disciplinary Actions Reported For April

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, April 17, 2000. The information relating to matters contained in this *Notice* is current as of the end of March 24, 2000.

### Firms And Individuals Fined

**Capital Strategies Limited (CRD #10253, Philadelphia, Pennsylvania)** and **Bart Steven Kaplow (CRD #264208, Registered Principal, Philadelphia, Pennsylvania)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured; fined \$13,500, jointly and severally; and required to pay \$1,792.32 in restitution to public customers. Without admitting or denying the allegations, the firm and Kaplow consented to the described sanctions and to the entry of findings that the firm, acting through Kaplow, failed to evaluate and prioritize its training needs and failed to develop a written training plan. The findings also stated that the firm, acting through Kaplow, effected transactions in equity securities prior to receiving a modification to, or removal of, the restriction limiting its business transactions in specified securities which did not include equities. In addition, the firm, acting through Kaplow, failed to establish written procedures to supervise its equities business and the activities of its registered representatives in effecting equities transactions. Furthermore, the firm, acting

through Kaplow, failed to fulfill its obligation to obtain the best execution of market orders pertaining to an equity security in that it failed to process orders internally and transmit them to the firm's clearing house in a timely manner. **(NASD Case #C9A000009)**

**Charter One Securities, Inc. (CRD #13373, Cleveland, Ohio)** and **Robert Joseph Thompson, Jr. (CRD #2667325, Registered Principal, Cleveland, Ohio)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the firm and Thompson consented to the described sanctions and to the entry of findings that the firm, acting through Thompson, effected transactions in securities when it failed to maintain the minimum required net capital. The findings also stated that the firm, acting through Thompson, filed materially false monthly FOCUS reports. **(NASD Case #C8B000003)**

**First Security Investments, Inc. (CRD #24035, Kingston, Pennsylvania)** and **Margaret Charles Slusser (CRD #1977559, Registered Principal, Wilkes-Barre, Pennsylvania)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the firm and Slusser consented to the described sanctions and to the entry of findings that the firm, acting through Slusser, failed to evaluate the firm's training needs, to develop a written training plan, and to administer Firm Element training to its covered registered persons pursuant to a written plan. The findings also

stated that the firm, acting through Slusser, failed to prevent representatives from performing duties as representatives even though they had failed to complete the Regulatory Element of Continuing Education by the required date. **(NASD Case #C9A000006)**

**Janssen-Meyers Associates, L.P. (CRD #34171, New York, New York) and Bruce Meyers (CRD #1045447, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally. The firm was also fined an additional \$16,000 and ordered to pay \$5,819 in restitution to public customers. Without admitting or denying the allegations, the firm and Meyers consented to the described sanctions and to the entry of findings that the firm, acting through Meyers, failed to enforce the firm's written supervisory procedures regarding trading restrictions. The findings also stated that the firm traded ahead of the execution of customer limit orders. **(NASD Case #C3A000005)**

### **Firms Fined**

**Chase Securities, Inc. (CRD #10793, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent (AWC) pursuant to which the firm was censured, fined \$12,500, and required to submit revised written supervisory procedures concerning transaction reporting within 60 days of acceptance of this AWC by the National Adjudicatory Council (NAC). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in Nasdaq National

Market<sup>®</sup> (NNM) securities to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) in a timely manner and failed to designate them as late to ACT. The firm also failed to report transactions executed outside normal market hours, to report their time of transaction, and to report listed securities transactions to ACT in a timely manner. The findings also stated that the firm failed to accept or decline transactions in eligible securities in a timely manner. Furthermore, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning transaction reporting. **(NASD Case #CMS000012)**

**Credit Suisse First Boston Corporation (CRD #816, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$40,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale transactions, failed to make an affirmative determination for each of the transactions, and failed to report short-sale transactions to ACT with a short-sale indicator. The findings also stated that the firm submitted an erroneous short interest position paper to the NASD and failed to establish, maintain, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with the short-sale rules. **(NASD Case #CMS990030)**

**Direct Access Brokerage Service (CRD #30057, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to

which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to respond in a timely manner to NASD requests for an automated submission of trading data for securities included in The Nasdaq Stock Market<sup>®</sup>, traded on a national securities exchange, or for non-Nasdaq<sup>®</sup> securities. The findings also stated that the firm submitted automated submissions of trading data after the date such information was required to be provided. **(NASD Case #CMS000023)**

**Donald & Co. Securities, Inc. (CRD #7776, Tinton Falls, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to retain an independent consultant to review, and make recommendations to improve, the firm's net capital procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through an individual, it failed to maintain the required minimum net capital. **(NASD Case #C10970175)**

**First Albany Corporation (CRD #298, Albany, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute customer limit orders contemporaneously after it traded each security for its own market-making account at a price that would have satisfied each customer limit order. The firm failed to display customer limit orders immediately when the orders were at a

price that would have improved the firm's bid or offer in each security related to those orders. The findings also stated that the firm failed to display the full size of customer limit orders when the orders were priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a *de minimus* change in relation to the size associated with the firm's bid or offer in each security. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable rules regarding recordkeeping, best execution, limit order display, the Quote Rule, limit order protection, anti-competitive practices, and trade reporting for equity and fixed income transactions. **(NASD Case #CMS000029)**

**GKN Securities Corp. (CRD #19415, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured; fined \$68,500; required to pay \$1,356.25, plus interest, in restitution to public customers; and required to revise its written supervisory procedures relating to ACT compliance, best execution, limit order protection, trade reporting, and other rules and regulations within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it aggregated customer trades in NNM securities, Nasdaq SmallCap<sup>SM</sup> securities, and an OTC Bulletin Board<sup>®</sup> security for trade reporting purposes without designating reports with a .B modifier and without noting the aggregations on corresponding order tickets. The firm also reported transactions late without an .SLD modifier. The findings also stated that the firm failed to contemporaneously, or

partially, execute customer limit orders in Nasdaq securities after it traded each security for its own market-making account at a price that would have satisfied each customer's limit order and failed to use reasonable diligence to ascertain the best inter-dealer market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. The firm failed to display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders or when the full size of the orders was priced equal to the firm's bid or offer and the national best bid or offer and the orders represented more than a *de minimus* change in relation to the size associated with the firm's bid or offer in each security. The firm failed to report the correct capacity to ACT, failed to cancel a trade through ACT, and reported the wrong execution time to ACT. Furthermore, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with regard to the above matters. **(NASD Case #CMS000024)**

**Goldman, Sachs & Company (CRD #361, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$17,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it untimely filed transactions in OTC equity securities on Form Ts with the NASD. The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market for the security and to buy and sell in such market so that the resultant price to each

customer was as favorable as possible under prevailing market conditions. In addition, the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules relating to transaction reporting via Form T. **(NASD Case #CMS000016)**

**Pacific Growth Equities, Inc. (CRD #24835, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to revise the firm's written supervisory procedures relating to firm quote compliance within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders presented at its published bid or offer in an amount up to its published quotation size, thereby failing to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning the Securities and Exchange Commission (SEC) and the NASD firm quote rules. **(NASD Case #CMS000021)**

**William V. Frankel & Co. (CRD #1895, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures relating to firm quote compliance in a manner acceptable to the NASD within 60 days of acceptance of this AWC by the NAC. Without admitting or denying the

allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute orders presented at its published bid or offer in an amount up to its published quotation size, thereby failing to honor its published quotation. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations concerning the SEC and the NASD firm quote rules. **(NASD Case #CMS000018)**

### **Individuals Barred Or Suspended**

**Kent Anderson (CRD #2717386, Registered Representative, Waterford, Michigan)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Anderson deposited a customer refund check into his personal account without the customer's knowledge or consent, failed to pay the premium for the customer's insurance policy, and, instead, used the funds for some purpose other than for the customer's benefit, thereby improperly using customer funds. The findings also stated that Anderson failed to respond to NASD requests for information. **(NASD Case #C8A990053)**

**Mark Joel Appleton (CRD #702513, Registered Principal, Arvada, Colorado)** submitted an Offer of Settlement pursuant to which he was fined \$12,500 and suspended from association with any NASD member in any supervisory capacity for 10 business days. The fine is due and payable prior to reassociation with a member firm following the suspension. Without admitting or denying the allegations, Appleton

consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative in a manner reasonably designed to achieve compliance with applicable laws, rules, and regulations. The findings also stated that Appleton failed to establish written supervisory procedures to address adequately minimum sales contingencies, private securities transactions, membership and registration rules, and supervision. **(NASD Case #C3A990067)**

**Jason Todd Ash (CRD #2608941, Registered Representative, Miller Place, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Ash failed to respond to NASD requests for information regarding his termination from a member firm. **(NASD Case #C10990130)**

**Dudley Alexander Biggs (CRD #2994166, Registered Principal, Yonkers, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Biggs consented to the described sanctions and to the entry of findings that he failed to disclose criminal charges on a Form U-4. **(NASD Case #C10000028)**

**Merle Seth Brower, Jr. (CRD #1564817, Registered Representative, Austin, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brower consented to the described sanction and to the entry of findings

that he submitted life insurance applications to his member firm that were false and misleading in that they related to a fictitious person. **(NASD Case #C06000008)**

**Daniel James Butchello, Jr. (CRD #2247132, Registered Representative, Olean, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Butchello failed to respond to NASD requests for information concerning termination from his member firm. **(NASD Case #C8B990029)**

**Sylvester Cannon, Jr. (CRD #2766126, Registered Representative, Detroit, Michigan)** was fined \$25,000 and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The decision became final following Cannon's dismissed appeal to the SEC. The sanctions were based on findings that Cannon failed to respond to NASD requests for information. **(NASD Case #C8A980054)**

**Michael Kyle Faulkner (CRD #1182049, Registered Principal, Springfield, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Faulkner consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information relating to his conduct while at a member firm. **(NASD Case #C04000012)**

**Philip Ralph Friedenn, Jr. (CRD #2403375, Registered Representative, Ft. Lauderdale,**

**Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Friedenn consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to obtain prior written approval from his member firms. **(NASD Case #C07000010)**

**Laronda Joyce Fuller n.k.a. Laronda Franklin (CRD #2794996, Registered Representative, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fuller consented to the described sanction and to the entry of findings that she changed the addresses for accounts belonging to public customers and processed unauthorized withdrawal requests from these accounts that involved the unauthorized liquidation of securities. Fuller directed that checks totaling \$64,774.39 drawn against the accounts be sent to the addresses she had previously designated for these accounts where they were received, endorsed by a third party, and deposited into a bank account in which she had a beneficial interest. The findings also stated that Fuller failed to respond to an NASD request to provide testimony. **(NASD Case #C06000003)**

**Larry Lynn Graham (CRD #1965936, Registered Principal, Littleton, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$7,500 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the

allegations, Graham consented to the described sanctions and to the entry of findings that he participated in a course of conduct that constituted the mishandling of a customer's funds. **(NASD Case #C3A990073)**

**Joel Marc Grant (CRD #1518004, Registered Principal, Roslyn, New York)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grant consented to the described sanction and to the entry of findings that he made baseless and improper price predictions as to speculative securities to public customers, failed to execute customer sell orders, and placed unauthorized trades. The findings also stated that Grant required that customers purchase aftermarket shares as a condition of purchasing initial public offering (IPO) units. **(NASD Case #CAF980031)**

**Eliezer Gurfel (CRD #1409216, Registered Representative, Washington, D.C.)** was censured and barred from association with any NASD member in any capacity. The SEC affirmed the findings of the NAC. The decision became final following a denial of Gurfel's appeal petition by the U.S. Court of Appeals for the District of Columbia. The sanctions were based on findings that Gurfel forged, or caused to be forged, the signature of the firm's president on commission checks totaling \$9,625.64, and converted the proceeds to his own use. **(NASD Case #C9B950010)**

**George Earl Harper (CRD #1632256, Registered Representative, Dayton, Nevada)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and

suspended from association with any NASD member in any capacity for six months. The fine is due and payable prior to reassociation with a member firm. Without admitting or denying the allegations, Harper consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior notice to, or authorization from, his member firm. **(NASD Case #C01000005)**

**Horace Richard Hillberry (CRD #1136754, Registered Representative, Clearwater, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Payment of the fine shall be a prerequisite for consideration of any application for reentry into the securities industry. Without admitting or denying the allegations, Hillberry consented to the described sanctions and to the entry of findings that he misrepresented to public customers that a new variable life insurance policy could be acquired for little or no additional cash payments by using cash values and/or future dividends from existing life insurance policies when, in fact, the customers were required to make payments to keep the insurance in force. The findings also stated that Hillberry sold variable life insurance to customers for whom the purchases were not suitable. In addition, Hillberry misrepresented that variable life insurance was a pension plan and failed to disclose the life insurance elements of the product. **(NASD Case #CAF000004)**

**Cindy Rae Kolb (CRD #1433552, Registered Principal, San Marcos, Texas)** was fined \$10,000 and suspended from association

with any NASD member in any capacity for 30 business days for exercising discretion without her firm's approval. Kolb was also barred from association with any NASD member in any capacity and ordered to pay \$71,068.67, plus pre-judgment interest, in restitution to public customers for fraudulent conduct, conversion of customer funds, and excessive trading. The fine is due and payable prior to application for reentry into the securities industry. The sanctions are based on findings that Kolb effected unauthorized transfers and disbursements by forging, or causing the forgery of, signatures on letters of authorization and submitting requisitions to her member firm. Kolb, thereby, converted \$486,772.50 received from public customers to her personal benefit and the benefit of a third party. The findings also stated that Kolb engaged in excessive trading in the accounts of public customers and exercised discretion in customers' accounts without the prior authorization of the customers and the acceptance of the accounts as discretionary by her member firm. **(NASD Case #C05970037)**

**Ansula Pet Hwa Liu (CRD #1373612, Registered Representative, Minneapolis, Minnesota)** was fined \$50,000 and barred from association with any NASD member in any capacity. The fine was reduced from \$100,000 if Liu pays \$50,000, plus interest, in restitution to public customers within six months of this decision. The NAC imposed the sanctions following appeal of an OHO decision. The sanctions were based on findings that Liu engaged in private securities transactions without providing prior written notification to her member firm and failed to respond to NASD requests for information. **(NASD Case #C04970050)**

**Troy Wayne Long (CRD #2708824, Registered Representative, Antelope, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Long failed to respond to NASD requests for information relating to his termination from a member firm. **(NASD Case #C01990017)**

**Herman Paul Manalili (CRD #856842, Registered Representative, Hilo, Hawaii)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for 120 days. Without admitting or denying the allegations, Manalili consented to the described sanction and to the entry of findings that, prior to his association with member firms, he opened a brokerage account with another member firm, and continued to engage in securities trades in that account during the course of his association with the firms. Furthermore, the findings stated that Manalili failed to disclose the existence of the account to his member firms and failed to inform the executing firm that he had become an associated person. Manalili also failed to disclose his involvement in private securities transactions to his member firms. **(NASD Case #C01000004)**

**John Vincent McEwan (CRD #2238252, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$15,000, suspended from association with any NASD member in any capacity for 13 months, and required to pay \$5,784.02 in restitution to a public customer within 60 days of acceptance of this AWC by the

NASD. McEwan was also required to requalify by exam in all capacities within 90 days from the date the AWC was issued by the NASD. If McEwan fails to requalify within that time, he will be suspended from acting in any capacity requiring registration until such exams are successfully completed. Payment of the fine and satisfactory proof of payment of restitution, plus interest, shall be prerequisites for consideration of any application for reentry into the securities industry. Without admitting or denying the allegations, McEwan consented to the described sanctions and to the entry of findings that he effected securities transactions in a public customer's account without the customer's prior knowledge or consent. The findings also stated that McEwan completed and signed a new account form for the customer when he knew that the customer's residence address on the new account form was incorrect. **(NASD Case #C10000024)**

**Phillip John Milligan (CRD #1874103, Registered Principal, Guttenberg, New Jersey)** was barred from association with any NASD member in any capacity. The decision became final following Milligan's dismissed appeal to the NAC. The sanction was based on findings that Milligan failed to respond to NASD requests to appear for on-the-record testimony. **(NASD Case #C10990058)**

**Marc Schuman Nemeth (CRD #2573956, Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 90 business days. The fine is payable in full 30 days after the conclusion of the suspension. Without

admitting or denying the allegations, Nemeth consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C10990077)**

**Mark Edward Nichols (CRD #1778988, Registered Principal, Naples, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Nichols consented to the described sanction and to the entry of findings that he sold \$1,491,888 in promissory notes to investors without providing prior written notification to, or receiving prior written approval from, his member firm. **(NASD Case #C07000009)**

**Michael William O'Donnell (CRD #1254156, Registered Principal, Northridge, California)** submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, O'Donnell consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firms describing the proposed transactions and his proposed role therein. The findings also stated that O'Donnell made material misrepresentations and/or omissions to investors regarding the risk and registration status of an investment company. O'Donnell also misrepresented to public customers his qualifications, his indebtedness, his placement of funds in an escrow account, and his purchase of life insurance policies naming investors as beneficiaries to

protect their investments in case of his death. In addition, O'Donnell made unrealistic projections regarding expected profitability. **(NASD Case #C02990047)**

**Remo P. Rei (CRD #2348000, Registered Representative, Cugnasco, Italy)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Rei failed to respond to NASD requests for information relating to complaints concerning the misappropriation of customer funds. **(NASD Case #C10990155)**

**Daniel Reyes (CRD #2557051, Registered Representative, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Reyes failed to respond to NASD requests for information regarding his termination from a member firm. **(NASD Case #C10990157)**

**Dennis Frank Riggi (CRD #1052272, Registered Principal, Los Angeles, California)** was fined \$1,200, suspended from association with any NASD member in any capacity for 30 days, and barred from association with any NASD member in any principal capacity. The sanctions were based on findings that Riggi, while president and sole owner of a member firm, distributed a private placement memorandum that misrepresented the amount of commissions his firm would receive from the sale of securities. **(NASD Case #C02990017)**

**Bela Standard Rossmann (CRD #2296135, Registered Principal, Chalfont, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD

member in any capacity and required to pay \$50,000, plus interest, in restitution to a public customer. The restitution is due and payable prior to any application requesting relief from statutory disqualification. Without admitting or denying the allegations, Rossmann consented to the described sanctions and to the entry of findings that he received \$100,000 from a public customer to conduct securities transactions, failed to conduct the transactions, and, instead, converted the funds to his own use and benefit without the customer's knowledge or consent. The findings also stated that Rossmann failed to respond to NASD requests for information and documentation regarding the customer's complaint of conversion and other violative conduct. **(NASD Case #C9A000008)**

**Michael Humphrey Salandy (CRD #1686500, Registered Representative, Stone Mountain, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Salandy consented to the described sanction and to the entry of findings that he entered fictitious trades into a public customer's account and journaled trades between the firm's proprietary account and the customer's account via the firm's computer system, thereby creating \$216,002.24 in false and improper profits in the account of which Salandy personally received at least \$9,100 from the customer. **(NASD Case #C07000011)**

**Jean Guiteaud Severe (CRD #2688594, Associated Person, Orange, New Jersey)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and

suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Severe consented to the described sanctions and to the entry of findings that he failed to disclose a *nolo contendere* plea to non-securities related felony charges involving the wrongful taking of property on his Form U-4. **(NASD Case #C10990147)**

**Andrew Frank Soldo, Jr. (CRD #2448880, Registered Representative, East Islip, New York)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, Soldo consented to the described sanction and to the entry of findings that he made material misrepresentations, omitted to disclose material facts, and predicted the future prices of speculative securities in connection with the offer and sale of securities. The findings also stated that Soldo effected transactions in customer accounts without the customer's prior authorization. Soldo then represented to the customer that the failure to pay for the unauthorized purchase would cause the sale of a profitable position in his account and the entry of a judgment that would affect his credit rating. **(NASD Case #C3A990016)**

**David Ray Steele (CRD #1126752, Registered Representative, El Cajon, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Steele consented to the described

sanctions and to the entry of findings that he executed transactions in the securities account of a public customer and exercised discretionary power in the account without prior written authorization from the customer or written acceptance by his member firm of the account as discretionary. **(NASD Case #C02000002)**

**Christopher Duncan Strachan (CRD #2660920, Registered Principal, Fruit Heights, Utah)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Strachan consented to the described sanction and to the entry of findings that he engaged in business activities outside the scope of his employment with a member firm without providing the firm prompt written notice of his activities. The findings also stated that Strachan issued a promissory note to reimburse public customers in order to settle their complaint away from his member firm. In addition, Strachan failed to respond completely to NASD requests for information. **(NASD Case #C3A000009)**

**Kenneth Allen Thompson (CRD #1759914, Registered Principal, Morton, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Thompson failed to respond to NASD requests for information. **(NASD Case #C9A990042)**

**Charles Edward Warner (CRD #459110, Registered Representative, Nashville, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD

member in any capacity. Without admitting or denying the allegations, Warner consented to the described sanction and to the entry of findings that he received approximately \$25,500 from public customers for investing in variable annuity contracts, failed to make the investments on the customers' behalf, and, instead, converted the funds to his own use and benefit. The findings also stated that Warner failed to respond to NASD requests for information. **(NASD Case #C05000004)**

**Gail S. Yamauchi (CRD #2838913, Registered Representative, Los Angeles, California)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Yamauchi failed to respond to NASD requests for information regarding possible misappropriation of customer funds. **(NASD Case #C02990058)**

### Complaints Filed

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

**Thomas Patrick Gorman (CRD #3144585, Registered Representative, Hampden, Massachusetts)** was named as a respondent in an NASD complaint alleging that he received cash and checks totaling \$30,626.81 from a public customer for investment in

mutual fund accounts, failed to deposit the funds in the accounts, and converted the funds for his own use and benefit. The complaint also alleges that Gorman failed to respond to NASD requests for information. **(NASD Case #C11000003)**

**Millennium Securities Corp. (CRD #31695, New York, New York), Richard Allen Sitomer (CRD #1995999, Registered Principal, New York, New York) and Todd Michael Rome (CRD #2082803, Registered Principal, New York, New York)** were named as respondents in an NASD complaint alleging that they bid for, purchased, or induced others to purchase common stocks and warrants while the IPO was continuing or while the firm was engaged in a secondary distribution of the securities. The complaint also alleges that the firm, Sitomer, and Rome committed fraud by failing to disclose to public customers material facts relating to the distribution of the securities. **(NASD Case #CAF000005)**

**Bertram Howard Rosenblatt (CRD #1275489, Registered Principal, Syosset, New York)** was named as a respondent in an NASD complaint alleging that he fabricated, and forged the signature of a public customer on, a letter of authorization that purportedly directed Rosenblatt to transfer shares of stock from the customer's account to the joint account of other customers and forged the customer's signature on the letter. The complaint also alleges that Rosenblatt transferred shares of stock from the customer's account to the joint account of other public customers without the knowledge, authorization, or consent of the customer. In addition, the complaint alleges that Rosenblatt failed to respond to NASD requests for

information, documentation, and to appear for an on-the-record interview. **(NASD Case #C10000027)**

### **Firms Suspended**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**DPP Securities, Inc.**, Austin, Texas (March 7, 2000)

**MZB Select Management, L.L.C.**, New York, New York (March 7, 2000)

**RBG Investments, Inc.**, Chicago, Illinois (March 7, 2000)

**Talented Tenth Investments, Inc.**, New York, New York (March 16, 2000)

**TAP Capital, Inc.**, Plano, Texas (March 7, 2000)

### **NASD Regulation Issues Complaint Against Former CEO And 11 Brokers Of State Capital Markets Corporation**

NASD Regulation announced that it has issued a complaint charging the former Chief Executive Officer and 11 former brokers of now defunct State Capital Markets Corporation with fraudulent sales practices, supervision deficiencies, and the failure to cooperate with an NASD Regulation investigation.

The complaint charges State Capital's former Chairman and Chief Executive Officer, John Doukas, with several violations committed while at State Capital. Specifically, Doukas is alleged to have put in place or enforced a "policy" that prevented some customers from selling specific securities from their accounts. When Doukas imposed and/or enforced a "no net sell" policy at the firm, brokers were not allowed to sell certain securities unless another customer could be found to buy them. The complaint further alleges that as a result of this policy, customers in certain instances had their sales delayed or could not sell securities from their accounts.

Doukas violated NASD rules by permitting Felix Sater, a statutorily disqualified individual, to play a significant role in the firm's securities-related activities. Doukas allowed Sater to conduct meetings with the firm's brokers, hold sales contests, and award cash to brokers who sold the firm's securities despite the fact that Sater was disqualified from the securities industry as a result of a prior felony conviction.

NASD Regulation further alleges that 11 brokers engaged in improper sales practices in their sale of low-priced, highly speculative securities to retail customers, including:

- trading without customer authorization;
- failing to execute customer orders;
- failing to execute orders promptly; and
- making improper price and performance predictions.

The brokers named in the complaint are: Radcliffe Bent; George Christodoulou; Damien Douglas; Paul Guercio; Stephen Guercio; Robert Guidici Pietro, alias Robert Peters; Adam Kaplan; Anthony Mundy; Andrew Ruscio; John Sciascia; and Donald Sedy. In the complaint, NASD Regulation requests that these respondents make restitution to defrauded investors. According to the complaint, at least 40 investors were victimized through the brokers' violative practices.

Three of the individuals named are also charged with providing false or inaccurate information to the NASD Regulation staff about a number of matters including Sater's presence and involvement at the firm. Previously, six individuals associated with State Capital agreed to be suspended or barred from the securities industry as a result of the investigation of State Capital by NASD Regulation's New York District Office.

The alleged violative conduct occurred principally in three securities that the firm had underwritten: U.S. Bridge of N.Y., Inc.; Cable & Co. Worldwide, Inc.; and Fun Tyme Concepts, Inc. NASD Regulation does not allege any wrongdoing on the part of the issuers.

### **NASD Fines Prudential Securities \$100,000 For Seeking To Undermine Competition For IPO Underwriting Services**

NASD Regulation announced that it has censured and fined Prudential Securities, Inc. \$100,000 for improper conduct in connection with its potentially anti-competitive efforts to become lead manager in the underwriting of an IPO. The violative conduct took place while

Prudential was competing with another firm for the lead manager position. In settling this matter, Prudential neither admitted nor denied NASD Regulation's findings.

In 1996, Prudential was competing with other firms to lead manage a \$59 million IPO. After the issuer selected Prudential and a smaller regional investment firm as co-managers, it offered the lead position to Prudential on condition that the offering be priced with a six percent underwriting spread. The underwriting spread is the fee that a firm charges a company to bring its stock to market.

Prudential refused to participate in the offering at a spread of less than seven percent, while the smaller regional firm made a lower competitive bid of six percent. Because the issuer repeatedly rejected Prudential's higher fee, Prudential's investment bankers called their counterparts at the competing firm and asked if they would join with them to persuade the issuer to accept the higher seven percent spread with Prudential as lead manager. Prudential did this to dissuade the issuer from accepting the competitor firm's lower-priced bid for lead manager services. Ultimately, however, the competing firm refused to do what Prudential had asked, and it eventually was chosen as the lead manager with a six percent spread.

In the underwriting business, the lead manager generally earns the largest portion of the underwriting spread and its position, as lead, is prominently displayed on the prospectus as the investment banking firm responsible for the transaction. In this instance, the total fees paid by the issuer at a seven percent underwriting spread would have been over \$4 million dollars, \$600,000 more than the

fees that were actually generated from the six percent spread.

While Prudential's efforts were unsuccessful, its conduct, with its potentially anti-competitive effect, violated the NASD's rule requiring all members to adhere to high standards of commercial honor and just and equitable principles of trade.

This case was brought by NASD Regulation's Enforcement Department with assistance from the Corporate Financing Department in Washington, D.C.

### **NASD Regulation Charges Global Equities Group, Inc. And Five Employees With Fraud And Stock Manipulation**

NASD Regulation announced that it has filed a complaint against Global Equities Group, Inc. and five of its brokers, charging stock fraud and manipulation and for using abusive, high-pressure sales tactics to sell investors low-priced, speculative securities that were part of an IPO. After the investigation began, Global, located in New York, New York, closed in January 1998.

Named in the complaint, and charged with a variety of sales practice and supervisory violations, are the firm's majority owner, Aleksandr Shvarts; President, Michael Christ; Vice-President, Thomas McDermott; and two registered persons, Damiano Coraci; and Eric "Igor" Kuvykin.

Shvarts, Coraci, and Kuvykin are charged with fraud in connection with the July 1996 underwriting of CluckCorp International, Inc. NASD Regulation's investigation uncovered the use of illegal boiler room sales tactics, including high pressure sales tactics. NASD Regulation charged that Global's

brokers, several of whom were not registered with the NASD, sold securities offered in the IPO, made material misrepresentations including making baseless price predictions; omitted material information; and guaranteed future stock performance.

In addition, NASD Regulation charged that before the effective date of the CluckCorp IPO, Shvarts, Coraci, and Kuvykin offered, to prospective employees, undisclosed compensation in the form of CluckCorp warrants that were offered in the IPO. The complaint alleges that the compensation was offered as an incentive to join Global and solicit indications of interest in the IPO. The complaint alleges that Shvarts, Coraci, and Kuvykin told the prospective employees to place the warrants in accounts that the employees controlled or that could be a source of client referrals.

NASD Regulation's investigation also uncovered instances in which Shvarts, Coraci, and Kuvykin funneled portions of the IPO allocation to accounts restricted under NASD's free-riding and withholding rule. Shvarts generated windfall profits for himself by directing shares to restricted accounts and for others, through accounts he controlled.

Finally, the complaint charges Christ and McDermott inadequately supervised the firm and its employees. In addition, Coraci and Kuvykin acted as principals while not registered in that capacity and that Coraci allowed unregistered individuals to act as brokers.

Separately, Shvarts and Kuvykin have both plead guilty to conspiracy to commit securities fraud, wire fraud, and mail fraud in a case brought by the United States Attorney's Office for the Eastern

District of New York involving the CluckCorp IPO, among other matters. The prosecutors handling that case requested and were provided with information obtained in the pre-existing NASD Regulation investigation. The federal prosecution includes allegations of money-laundering which are outside the jurisdiction of NASD Regulation.

The complaint does not allege any wrongdoing on the part of CluckCorp International, Inc.

The investigation leading up to the filing of this complaint was conducted by NASD Regulation's District Office, in New York City.

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# NASD

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