JANUARY 2004

# Notices to Members

## Notices


| | | |
|---|---|---|
| 04-01 | NASD Provides Additional Information Regarding Options Exemption for the Trading Activity Fee | 1 |
| 04-02 | 2004 Renewal Reports and Final Renewal Statements | 11 |
| 04-03 | SEC Approves NASD Rule Proposal Requiring Members to Make Affirmative Determinations for Short Sale Orders Received from Non-Member Broker/Dealers; **Effective Date: February 20, 2004** | 15 |
| 04-04 | SEC Announces Immediate Effectiveness of Amendments to Section 5 of Schedule A to the NASD By-Laws | 19 |
| 04-05 | NASD Announces Election Results for District Committees and District Nominating Committees | 23 |
| 04-06 | SEC Approves Permanent TRACE Fee Structure and Nine-Month Pilot Program for BTDS Professional Delayed-Time Data Display Fee | 35 |


## Disciplinary and Other NASD Actions


| | |
|---|---|
| Reported for January | D1 |


NASD

© 2004. NASD. All rights reserved.

*NASD Notices to Members* is published monthly by NASD Corporate Communications, Susan Lewis, Editor, NASD Communication Services, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-8991. No portion of this publication may be copied, photocopied, or duplicated in any form or by any means, except as described below, without prior written consent of NASD. Members of NASD are authorized to photocopy or otherwise duplicate any part of this publication without charge only for internal use by the member and its associated persons. Nonmembers of NASD may obtain permission to photocopy for internal use through the Copyright Clearance Center (CCC) for a $3-per-page fee to be paid directly to CCC, 222 Rosewood Drive, Danvers, MA 01923.

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 NASD) to NASD MediaSource, P.O. Box 9403, Gaithersburg, MD 20898-9403; to order with a credit card (American Express, MasterCard, or Visa), call (240) 386-4200, Monday to Friday, 9 a.m. to 5 p.m., Eastern Time. Back issues may be ordered by calling MediaSource at (240) 386-4200. Subscribers with subscription problems or address changes may contact NASD Corporate Communications at (202) 728-8885. To make an address change you may also send in writing your correct address with your publication mailing label showing current name, address, and label code. Send information to: Gina Cherry, NASD Corporate Communications, 1735 K Street, NW, Washington DC 20006-1500.

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

# Notice to Members

JANUARY 2004

SUGGESTED ROUTING

Legal and Compliance
Operations Managers
Senior Management

KEY TOPICS

Options Exemption
Trading Activity Fee

INFORMATIONAL

# Options Exemption

## NASD Provides Additional Information Regarding Options Exemption for the Trading Activity Fee

### Executive Summary

On May 30, 2003, the Securities and Exchange Commission (SEC or Commission) permanently approved revisions to NASD By-Laws, eliminating the current Regulatory Fee assessed upon NASD members and instituting a new transaction-based Trading Activity Fee (TAF).[1] As part of the permanent fee structure, listed options transactions executed by broker/dealers for which NASD is not the primary regulator were exempted from the TAF, effective January 1, 2004. A listing of those broker/dealers exempt from the fee is attached.

### Questions/Further Information

Questions regarding this *Notice* should be directed to NASD Finance at (240) 386-5397, or the Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071.

### Discussion

The SEC approved the TAF on a permanent basis on May 30, 2003, whereby listed options transactions executed by broker/dealers for which NASD is not the primary regulator were exempted from the fee, effective January 1, 2004. Listed option transactions will be subject to the TAF only if NASD is that member firm's Designated Options Examining Authority (DOEA). A listing of those firms who are not designated to NASD who are exempt from the fee appear in Attachment A. As changes are required, a revised listing will be published through further *Notices to Members*.

## Endnote

1 Securities Exchange Act Rel. No. 47946 (May 30, 2003).

©2004. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

## ATTACHMENT A

### 2004 DOEA Allocations - Firms not Designated to NASD

| Firm ID | SEC 8-Number | MPID | Firm Name | City | State |
|---|---|---|---|---|---|
| 1101 | 8-00719 | ABLE | NATEXIS BLEICHROEDER INC. | NEW YORK | NY |
| 10 | 8-21409 | ADVS | ADVEST, INC. | HARTFORD | CT |
| 38702 | 8-48368 | AKJI | AKJ | NASSAU | |
| 42410 | 8-49831 | ALDO | ALLEN DOUGLAS SECURITIES, INC. | WINTER PARK | FL |
| 7809 | 8-23204 | ALEX | J. ALEXANDER SECURITIES, INC. | LOS ANGELES | CA |
| 48 | 8-18206 | ANSR | ANDERSON & STRUDWICK, INCORPORATED | RICHMOND | VA |
| 44656 | 8-50764 | ARCD | ARCADIA SECURITIES, LLC | NEW YORK | NY |
| 7381 | 8-21459 | ASCO | EDELMAN SECURITIES COMPANY, L.P. | NEW YORK | NY |
| 12969 | 8-28568 | ASED | ASSOCIATED SECURITIES CORP. | LOS ANGELES | CA |
| 28269 | 8-43559 | ASEL | TRADITION ASIEL SECURITIES INC. | NEW YORK | NY |
| 108887 | 8-53088 | ATGP | AGENCY TRADING GROUP, INC. | WAYZATA | MN |
| 103768 | 8-52261 | AUTO | AUTOMATED TRADING DESK FINANCIAL SERVICES, LLC | MT. PLEASANT | SC |
| 38913 | 8-48462 | BANF | BANIF SECURITIES, INC. | NEW YORK | NY |
| 104487 | | BBHC | BROWN BROTHERS HARIMAN | NEW YORK | NY |
| 6255 | 8-01361 | BBNT | SCOTT & STRINGFELLOW, INC. | RICHMOND | VA |
| 5835 | 8-16555 | BCOM | BAKER & CO., INCORPORATED | CLEVELAND | OH |
| 104474 | 8-52942 | BERN | SANFORD C. BERNSTEIN & CO., LLC | NEW YORK | NY |
| 79 | 8-35008 | BEST | BEAR, STEARNS & CO. INC. | NEW YORK | NY |
| 14285 | 8-30453 | BHCS | FISERV SECURITIES, INC. | PHILADELPHIA | PA |
| 10215 | 8-26656 | BIDW | BIDWELL & COMPANY | PORTLAND | OR |
| 1248 | 8-12140 | BISH | BISHOP, ROSEN & CO., INC. | NEW YORK | NY |
| 13071 | 8-23522 | BKBS | FLEET SECURITIES, INC. | NEW YORK | NY |
| 23407 | 8-40413 | BKRT | BUCKMAN, BUCKMAN & REID, INC. | RED BANK | NJ |
| 14667 | 8-31032 | BKST | BROOKSTREET SECURITIES CORPORATION | IRVINE | CA |
| 31394 | 8-44765 | BNPS | BNP PARIBAS BROKERAGE SERVICES, INC. | KING OF PRUSSIA | PA |
| 15879 | 8-32874 | BNYC | BNY CLEARING SERVICES LLC | MILWAUKEE | WI |
| 23065 | 8-40208 | BOCM | BANC ONE CAPITAL MARKETS, INC. | CHICAGO | IL |
| 26091 | 8-42263 | BOFA | BANC OF AMERICA SECURITIES LLC | CHARLOTTE | NC |
| 6822 | 8-38286 | BRDG | BRIDGE TRADING COMPANY | ST. LOUIS | MO |
| 104065 | 8-52538 | BRGE | NEWBRIDGE SECURITIES CORPORATION | FT. LAUDERDALE | FL |
| 22062 | 8-39382 | BRUS | HD BROUS & CO., INC. | GREAT NECK | NY |

| Firm ID | SEC 8-Number | MPID | Firm Name | City | State |
|---|---|---|---|---|---|
| 28432 | 8-43724 | BSSC | BEAR, STEARNS SECURITIES CORP. | BROOKLYN | NY |
| 41262 | 8-49343 | BTRD | B-TRADE SERVICES LLC | NEW YORK | NY |
| 28042 | 8-43400 | BULA | BULLARO SECURITIES CORP. | ASTORIA | NY |
| 118812 | 8-53687 | BWNC | STC SECURITIES CORPORATION | FT. LAUDERDALE | FL |
| 134 | 8-00201 | CANT | CANTOR FITZGERALD & CO. | NEW YORK | NY |
| 5393 | 8-16514 | CHAS | CHARLES SCHWAB & CO., INC. | SAN FRANCISCO | CA |
| 15776 | 8-32746 | CHGO | ABN AMRO INCORPORATED | CHICAGO | IL |
| 27829 | 8-42750 | CHIL | CHILIAN PARTNERS, L.P. | WEST PALM BEACH | FL |
| 630 | 8-18333 | CIBC | CIBC WORLD MARKETS CORP. | NEW YORK | NY |
| 10141 | 8-27045 | CLGL | C. L. GLAZER & COMPANY, INC. | GREENWICH | CT |
| 31295 | 8-40963 | CLYN | CARLIN EQUITIES CORP. | NEW YORK | NY |
| 7616 | 8-22522 | COWN | SG COWEN SECURITIES CORPORATION | NEW YORK | NY |
| 41400 | 8-49400 | CPST | CAPSTONE INVESTMENTS | SAN DIEGO | CA |
| 120767 | 8-65343 | CRTW | CURTISWOOD CAPITAL, LLC | NASHVILLE | TN |
| 24771 | 8-41389 | CWEI | CANTOR, WEISS & FRIEDNER, INC. | NEW YORK | NY |
| 44523 | 8-50739 | CYBR | CYBERTRADER, INC. | AUSTIN | TX |
| 113591 | 8-53331 | DANN | KEVIN DANN & PARTNERS, LLC | NEW YORK | NY |
| 1588 | 8-17103 | DAVA | DAVENPORT & COMPANY LLC | RICHMOND | VA |
| 1576 | 8-12242 | DAWA | DAIWA SECURITIES AMERICA INC. | NEW YORK | NY |
| 2525 | 8-17822 | DBKS | DEUTSCHE BANK SECURITIES INC. | NEW YORK | NY |
| 118212 | 8-53650 | DIVA | DIVINE CAPITAL MARKETS LLC | NEW YORK | NY |
| 222 | 8-12676 | DIVP | DIVERSIFIED SECURITIES, INCORPORATED | LONG BEACH | CA |
| 42159 | 8-49730 | DLJD | HARRIS INVESTOR SERVICES LLC | JERSEY CITY | NJ |
| 7560 | 8-17574 | DLJP | PERSHING LLC | JERSEY CITY | NJ |
| 1660 | 8-10048 | DOFT | DOFT & CO., INC. | NEW YORK | NY |
| 41957 | 8-49647 | DRKW | DRESDNER KLEINWORT WASSERSTEIN SECURITIES LLC | NEW YORK | NY |
| 35693 | 8-46838 | ECUT | BNY BROKERAGE INC. | NEW YORK | NY |
| 6731 | 8-18104 | EDFM | MAN SECURITIES INC | CHICAGO | IL |
| 42071 | 8-49684 | EDGE | EDGETRADE.COM, INC. | NEW YORK | NY |
| 47584 | 8-51820 | EGSB | ELECTRONIC GLOBAL SECURITIES, INC. | NEW YORK | NY |
| 3429 | 8-36808 | EHSJ | E. H. SMITH JACOBS & CO., INC. | NEW YORK | NY |
| 37453 | 8-47754 | ELEC | ELECTRONIC TRADING GROUP, LLC | NEW YORK | NY |
| 104038 | 8-52502 | EQTY | EQUITY TRADING ONLINE, LLC | NEW YORK | NY |
| 25025 | 8-41354 | ETRS | E*TRADE CLEARING LLC | NEW YORK | NY |
| 298 | 8-02018 | FACT | FIRST ALBANY CAPITAL INC. | ALBANY | NY |
| 1781 | 8-09952 | FAGI | FAGENSON & CO., INC. | NEW YORK | NY |

| Firm ID | SEC 8-Number | MPID | Firm Name | City | State |
|---|---|---|---|---|---|
| 816 | 8-00422 | FBCO | CREDIT SUISSE FIRST BOSTON LLC | NEW YORK | NY |
| 17344 | 8-35158 | FCCP | FIRST CLEARING, LLC | GLEN ALLEN | VA |
| 7784 | 8-23292 | FIBS | FIDELITY BROKERAGE SERVICES LLC | BOSTON | MA |
| 39473 | 8-48711 | FILL | TRADESTATION SECURITIES, INC. | PLANTATION | FL |
| 3023 | 8-17615 | FLGR | PFLUEGER & BAERWALD INC. | SAN FRANCISCO | CA |
| 41392 | 8-49398 | FLNK | FINANCIAL LINKS, INC. | RALEIGH | NC |
| 36118 | 8-47023 | FMAT | FIMAT USA, INC. | NEW YORK | NY |
| 16362 | 8-33753 | FNYS | FIRST NEW YORK SECURITIES L.L.C. | NEW YORK | NY |
| 13822 | 8-23787 | FOCC | FIRST OPTIONS OF CHICAGO INC. | CHICAGO | IL |
| 5633 | 8-16335 | FOMA | AMERITRADE, INC. | OMAHA | NE |
| 20375 | 8-38287 | FONE | F1 TRADING.COM, INC. | MINEOLA | NY |
| 6703 | 8-18028 | FOUR | THE FOURTEEN RESEARCH CORPORATION | NEW YORK | NY |
| 316 | 8-01523 | FSWC | FIRST SOUTHWEST COMPANY | DALLAS | TX |
| 6681 | 8-17974 | FWCO | FIRST WASHINGTON CORPORATION | SEATTLE | WA |
| 48029 | 8-52010 | GBSC | GOLDEN BENEFICIAL SECURITIES | HOUSTON | TX |
| 16686 | 8-34344 | GKMC | HARRIS NESBITT GERARD, INC. | NEW YORK | NY |
| 104281 | 8-52780 | GLBZ | ONLINE BROKERAGE SERVICES | WATERVILLE | OH |
| 361 | 8-00129 | GSCO | GOLDMAN, SACHS & CO. | NEW YORK | NY |
| 396 | 8-17737 | HAZL | HAZLETT, BURT & WATSON, INC. | WHEELING | WV |
| 453 | 8-33133 | HDLY | J.J.B. HILLIARD, W.L. LYONS, INC. | LOUISVILLE | KY |
| 6193 | 8-17005 | HERO | BERNARD HEROLD & CO., INC. | NEW YORK | NY |
| 33725 | 8-34415 | IAEC | ISRAEL ENGLANDER | NEW YORK | NY |
| 36418 | 8-47257 | IBKR | INTERACTIVE BROKERS LLC | GREENWICH | CT |
| 7897 | 8-23669 | ICLS | INSTINET CLEARING SERVICES, INC. | NEW YORK | NY |
| 37401 | 8-47724 | ICTI | INTERNATIONAL CORRESPONDENT TRADING, INC. | JERSEY CITY | NJ |
| 124245 | 8-65649 | INDX | INDEX SECURITIES, LLC | SAN CLEMENTE | CA |
| 2288 | 8-01865 | INGS | INGALLS & SNYDER, LLC | NEW YORK | NY |
| 104236 | 8-52704 | INTG | INTEGRITY TRADING, INC. | KIRKLAND | WA |
| 39295 | 8-48614 | INVST | INVESTIN SECURITIES CORP. | DALLAS | TX |
| 20746 | 8-38430 | ISLD | THE ISLAND ECN | NEW YORK | NY |
| 14343 | 8-30593 | JBOC | NATIONAL CLEARING CORP. | BEVERLY HILLS | CA |
| 2347 | 8-15074 | JEFF | JEFFERIES & COMPANY, INC. | LOS ANGELES | CA |
| 43571 | 8-50317 | JIMK | SUNSTATE EQUITY TRADING | TAMPA | FL |
| 473 | 8-17530 | JOLE | JOHNSTON, LEMON & CO. INCORPORATED | WASHINGTON | DC |
| 6888 | 8-26089 | JONE | JONES & ASSOCIATES, INC. | WESTLAKE VILLAGE | CA |
| 24907 | 8-41225 | JRPS | DIRECT BROKERAGE, INC. | NEW YORK | NY |

| Firm ID | SEC 8-Number | MPID | Firm Name | City | State |
|---|---|---|---|---|---|
| 104041 | 8-52509 | KBAD | ADIRONDACK ELECTRONIC MARKETS LLC | NEW YORK | NY |
| 7720 | 8-23135 | KBCO | KAHN BROTHERS & CO. INC. | NEW YORK | NY |
| 2440 | 8-13028 | KIML | KIMELMAN & BAIRD, LLC | NEW YORK | NY |
| 113326 | 8-53312 | KKSS | HEDGE FUND CAPITAL PARTNERS, LLC | NEW YORK | NY |
| 42093 | 8-49698 | KVXS | KV EXECUTION SERVICES LLC | NEW YORK | NY |
| 2498 | 8-25581 | LAFF | R. F. LAFFERTY & CO., INC. | NEW YORK | NY |
| 7506 | 8-12324 | LEHM | LEHMAN BROTHERS INC. | NEW YORK | NY |
| 104021 | 8-52511 | LETS | CHOICETRADE | EAST BRUNSWICK | NJ |
| 34048 | 8-46201 | LEXT | LEXIT CAPITAL, LLC | HOBOKEN | NJ |
| 117176 | 8-53595 | LGNT | LEGENT CLEARING CORP. | OMAHA | NE |
| 104369 | 8-52843 | LIME | LIME BROKERAGE LLC | NEW YORK | NY |
| 29500 | 8-44351 | LMAN | B. LATERMAN & CO., INC. | NEW YORK | NY |
| 10929 | 8-28004 | LOEB | LOEB PARTNERS CORPORATION | NEW YORK | NY |
| 33135 | 8-42152 | LSCI | LEK SECURITIES CORPORATION | NEW YORK | NY |
| 505 | 8-17230 | LTCO | LADENBURG, THALMANN & CO., INC. | NEW YORK | NY |
| 2625 | 8-08132 | MADF | BERNARD L. MADOFF INVESTMENT SECURITIES LLC | NEW YORK | NY |
| 103680 | 8-52194 | MDAS | MIDAS SECURITIES, LLC | BUENA PARK | CA |
| 42677 | 8-49951 | MDBC | MDB CAPITAL GROUP LLC | SANTA MONICA | CA |
| 566 | 8-30177 | MDLD | MCDONALD INVESTMENTS INC. | CLEVELAND | OH |
| 30080 | 8-44733 | MDON | MCDONNELL, INC. | CHICAGO | IL |
| 21520 | 8-41415 | MDWD | MIDWOOD SECURITIES, INC. | NEW YORK | NY |
| 18296 | 8-36420 | MERI | MERRIMAN CURHAN FORD & CO. | SAN FRANCISCO | CA |
| 117476 | 8-53596 | MFML | MAKO FINANCIAL MARKETS, LLC | NEW YORK | NY |
| 40096 | 8-48960 | MFXG | MAXIMUM FINANCIAL INVESTMENT GROUP, INC. | TROY | MI |
| 7691 | 8-07221 | MLCO | MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED | NEW YORK | NY |
| 47815 | 8-51911 | MNRC | MONARCH CAPITAL GROUP, LLC | NEW YORK | NY |
| 4161 | 8-15001 | MOKE | MORGAN KEEGAN & COMPANY, INC. | MEMPHIS | TN |
| 36000 | 8-46998 | MPBS | AUTOMATED TRADING DESK BROKERAGE SERVICES, LLC | MT. PLEASANT | SC |
| 2764 | 8-28816 | MSRO | MESIROW FINANCIAL, INC. | CHICAGO | IL |
| 47293 | 8-51750 | MTCO | MILLER TABAK | NEW YORK | NY |
| 47485 | 8-51825 | MTRN | MULTITRADE SECURITIES LLC | NEW YORK | NY |
| 119625 | 8-65216 | MWRE | FTN MIDWEST RESEARCH SECURITIES CORP | CLEVELAND | OH |
| 7299 | 8-13978 | NBSI | HARRIS NESBITT CORP. | CHICAGO | IL |
| 39940 | 8-48905 | NDXT | NDX TRADING, INC. | MINNEAPOLIS | MN |

| Firm ID | SEC 8-Number | MPID | Firm Name | City | State |
|---|---|---|---|---|---|
| 25843 | 8-42352 | NEAL | KING FINANCIAL SERVICES, INC. | OLD BRIDGE | NJ |
| 16360 | 8-33772 | NEED | NEEDHAM & COMPANY, INC. | NEW YORK | NY |
| 2908 | 8-01068 | NEUB | NEUBERGER BERMAN, LLC | NEW YORK | NY |
| 13041 | 8-26740 | NFSC | NATIONAL FINANCIAL SERVICES LLC | BOSTON | MA |
| 39410 | 8-48696 | NISC | NATIONAL INVESTOR SERVICES CORP. | NEW YORK | NY |
| 4297 | 8-15255 | NMRA | NOMURA SECURITIES INTERNATIONAL, INC. | NEW YORK | NY |
| 18975 | 8-37105 | NTMG | NUTMEG SECURITIES, LTD. | FAIRFIELD | CT |
| 104012 | 8-52473 | NWMK | NEWMARK SECURITIES LTD. | TYLER | TX |
| 103843 | 8-52326 | NYFX | NYFIX MILLENNIUM, L.L.C. | NEW YORK | NY |
| 2091 | 8-22371 | OGRU | OSCAR GRUSS & SON, INCORPORATED | NEW YORK | NY |
| 5979 | 8-16752 | OLDE | H&R BLOCK FINANCIAL ADVISORS, INC. | DETROIT | MI |
| 36816 | 8-47474 | ONLI | HOLD BROTHERS ON-LINE INVESTMENT SERVICES L.L.C. | JERSEY CITY | NJ |
| 25816 | 8-43168 | OTAA | OTA LLC | PURCHASE | NY |
| 103849 | 8-52354 | OXPS | OPTIONSXPRESS | CHICAGO | IL |
| 117783 | 8-53605 | PALC | PALI CAPITAL, INC. | NEW YORK | NY |
| 25866 | 8-42095 | PFSI | PENSON FINANCIAL SERVICES, INC. | DALLAS | TX |
| 10993 | 8-27945 | PFTC | PREFERREDTRADE, INC. | SAN FRANCISCO | CA |
| 665 | 8-15204 | PIPR | U.S. BANCORP PIPER JAFFRAY INC. | MINNEAPOLIS | MN |
| 16139 | 8-33359 | PRST | MERRILL LYNCH PROFESSIONAL CLEARING CORP. | NEW YORK | NY |
| 7471 | 8-27154 | PRUS | PRUDENTIAL EQUITY GROUP, INC. | NEW YORK | NY |
| 103719 | 8-52216 | PTAR | PENSTAR TRADING, LLC | SARASOTA | FL |
| 8174 | 8-16267 | PWJC | UBS FINANCIAL SERVICES INC. | NEW YORK | NY |
| 119955 | 8-65239 | QLAB | QUANTLAB SECURITIES LP | HOUSTON | TX |
| 705 | 8-10999 | RAJA | RAYMOND JAMES & ASSOCIATES, INC. | ST. PETERSBURG | FL |
| 31194 | 8-45411 | RBCM | RBC DAIN RAUSCHER INC. | MINNEAPOLIS | MN |
| 18377 | 8-24255 | RBLT | ROSENBLATT SECURITIES INC. | NEW YORK | NY |
| 14094 | 8-26718 | REFC | REFCO SECURITIES, LLC | NEW YORK | NY |
| 7671 | 8-22871 | REND | REYNDERS, GRAY & CO., INCORPORATED | NEW YORK | NY |
| 7432 | 8-19060 | ROBB | LABRANCHE FINANCIAL SERVICES, INC. | NEW YORK | NY |
| 38455 | 8-48255 | RSKY | REDSKY SECURITIES, LLC | CHICAGO | IL |
| 728 | 8-16429 | RTHS | ROTHSCHILD INVESTMENT CORPORATION | CHICAGO | IL |
| 791 | 8-11754 | SALI | STERNE, AGEE & LEACH, INC. | BIRMINGHAM | AL |
| 3911 | 8-14662 | SASI | THE SEIDLER COMPANIES INCORPORATED | LOS ANGELES | CA |
| 7059 | 8-08177 | SBSH | CITIGROUP GLOBAL MARKETS INC. | NEW YORK | NY |
| 2692 | 8-13535 | SCHB | SCHWAB CAPITAL MARKETS L.P. | JERSEY CITY | NJ |
| 755 | 8-44373 | SEAB | SEABOARD SECURITIES, INC. | FLORHAM PARK | NJ |

| Firm ID | SEC 8-Number | MPID | Firm Name | City | State |
|---|---|---|---|---|---|
| 8330 | 8-24971 | SEAP | SEAPORT SECURITIES CORP. | NEW YORK | NY |
| 14020 | 8-34354 | SHMR | O'CONNOR & COMPANY | CHICAGO | IL |
| 3403 | 8-04024 | SHRE | SHUFRO, ROSE & CO., LLC | NEW YORK | NY |
| 3466 | 8-00526 | SILK | SPEAR, LEEDS & KELLOGG, L.P. | NEW YORK | NY |
| 114657 | 8-53430 | SKYC | SKY CAPITAL LLC | NEW YORK | NY |
| 123421 | 8-65585 | SMEX | SMART EXECUTION SECURITIES, LLC | SAN CLEMENTE | CA |
| 20580 | 8-38325 | SMHI | SANDERS MORRIS HARRIS INC. | HOUSTON | TX |
| 15425 | 8-32227 | SNDV | SOUNDVIEW TECHNOLOGY CORPORATION | OLD GREENWICH | CT |
| 17972 | 8-36005 | SOLO | SOLOWEY & CO. | MIAMI | FL |
| 3496 | 8-01927 | SPHN | STEPHENS INC. | LITTLE ROCK | AR |
| 6271 | 8-17212 | STCM | SUNTRUST CAPITAL MARKETS, INC. | ATLANTA | GA |
| 6670 | 8-17758 | STOX | STOCKCROSS FINANCIAL SERVICES, INC. | BOSTON | MA |
| 45141 | 8-51004 | SWFT | SWIFT TRADE SECURITIES USA INC | TORONTO ONTARIO | |
| 7973 | 8-17582 | SWIS | SWISS AMERICAN SECURITIES INC. | NEW YORK | NY |
| 6220 | 8-45123 | SWST | SOUTHWEST SECURITIES, INC. | DALLAS | TX |
| 41353 | 8-49386 | TDCO | THOMPSON DAVIS & CO., INC. | RICHMOND | VA |
| 103802 | 8-52290 | TDSC | TRACK DATA SECURITIES CORPORATION | BROOKLYN | NY |
| 120116 | 8-65260 | THEM | THEMIS TRADING LLC | CHATHAM | NJ |
| 45716 | 8-51141 | THRC | THOR CAPITAL LLC | NEW YORK | NY |
| 37761 | 8-47943 | TNTO | TERRA NOVA TRADING, L.L.C. | CHICAGO | IL |
| 3600 | 8-13621 | TRFR | TRANSAMERICA FINANCIAL ADVISORS, INC. | LOS ANGELES | CA |
| 103360 | 8-52181 | TRNX | TRINIX SECURITIES LLC | ENCINITAS | CA |
| 7654 | 8-22651 | UBSW | UBS SECURITIES LLC | STAMFORD | CT |
| 46145 | 8-51314 | UNEX | UNX, INC. | BURBANK | CA |
| 20804 | 8-38485 | UPLN | UNITED PLANNERS' FINANCIAL SERVICES OF AMERICA A LIMITED PAR | SCOTTSDALE | AZ |
| 11238 | 8-18118 | USIC | U.S. SECURITIES INTERNATIONAL | NEW YORK | NY |
| 26258 | 8-42448 | VNDM | VANDHAM SECURITIES CORP. | NEW YORK | NY |
| 39798 | 8-48838 | VOLM | NEOVEST TRADING | ATLANTA | GA |
| 104226 | 8-52688 | VWPT | VIEWPOINT SECURITIES, LLC | BEND | OR |
| 10012 | 8-25936 | WABR | WALL STREET ACCESS | NEW YORK | NY |
| 17912 | 8-35930 | WANG | WANG INVESTMENT ASSOCIATES, INC. | NEW YORK | NY |
| 7870 | 8-23395 | WATH | TD WATERHOUSE INVESTOR SERVICES, INC. | NEW YORK | NY |
| 797 | 8-07080 | WATL | A.B. WATLEY, INC. | NEW YORK | NY |
| 875 | 8-00484 | WAYN | WAYNE HUMMER INVESTMENTS L.L.C. | CHICAGO | IL |
| 1252 | 8-02698 | WBLR | WILLIAM BLAIR & COMPANY L.L.C. | CHICAGO | IL |
| 126292 | 8-65876 | WCHV | WACHOVIA CAPITAL MARKETS, LLC | CHARLOTTE | NC |

| Firm ID | SEC 8-Number | MPID | Firm Name | City | State |
|---|---|---|---|---|---|
| 3777 | 8-14299 | WDCO | WILSON-DAVIS & CO., INC. | SALT LAKE CITY | UT |
| 867 | 8-02671 | WDSB | HELFANT GROUP, INC. | NEW YORK | NY |
| 877 | 8-12987 | WEDB | WEDBUSH MORGAN SECURITIES INC. | LOS ANGELES | CA |
| 7536 | 8-32215 | WELC | H. G. WELLINGTON & CO., INC. | NEW YORK | NY |
| 39310 | 8-48636 | WEXS | WEXFORD CLEARING SERVICES, LLC | NEW YORK | NY |
| 120719 | 8-65336 | WEXX | WOLVERINE EXECUTION SERVICES, LLC | CHICAGO | IL |
| 27308 | 8-43009 | WGTC | WG TRADING COMPANY LIMITED PARTNERSHIP | GREENWICH | CT |
| 10467 | 8-30639 | WIEN | WIEN SECURITIES CORP. | JERSEY CITY | NJ |
| 46237 | 8-51354 | WISL | THOMAS WEISEL PARTNERS LLC | SAN FRANCISCO | CA |
| 24673 | 8-41285 | WLDC | WORLDCO, L.L.C. | NEW YORK | NY |
| 42505 | 8-49936 | WPAC | WHITE PACIFIC SECURITIES, INC. | SAN FRANCISCO | CA |
| 2998 | 8-15648 | WPGC | ROBECO USA BROKERAGE SERVICES | NEW YORK | NY |
| 120435 | 8-65301 | WRTH | WORTHINGTON SECURITIES, L.L.C. | DALLAS | TX |
| 19616 | 8-37180 | WSPD | WACHOVIA SECURITIES, LLC | RICHMOND | VA |
| 8056 | 8-24126 | YOSE | YORK SECURITIES, INC. | NEW YORK | NY |
| 123000 | 8-65555 | | LINKBROKERS DERIVATIVES CORPORATION | NEW YORK | NY |

JANUARY 2004

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Operations
Registered Representative
Registration
Senior Management

KEY TOPICS

Maintenance Fees
Registration
Renewals
Web CRD
Web IARD

ACTION REQUIRED

# Broker/Dealer, Investment Adviser, and Individual (AG/RA) Renewals

## 2004 Renewal Reports and Final Renewal Statements

### Executive Summary

The 2004 NASD Broker/Dealer and Investment Adviser Registration Renewal Program began its second phase this month. NASD is issuing this *Notice* to help firms review, reconcile, and respond to the Final Renewal Statements and Reports that are available on Web CRD/IARD.

### Final Renewal Statements And Reports

On January 2, 2004, Final Renewal Statements and Reports became available for viewing and printing on Web CRD/IARD. The 2004 Final Renewal Statement reflects the final status of agent, investment adviser representative, and firm registrations and/or Notice Filings as of December 31, 2003. Any adjustments in fees owed as a result of registration terminations, approvals, firm IA registrations, or Notice Filings subsequent to the Preliminary Renewal Statement have been made in this final reconciled statement.

If a firm had more agents, investment adviser representatives, branch offices, or additional registrations or Notice Filings on Web CRD/IARD at year's end than it did in on November 1, 2003, when the Preliminary Renewal Statement was generated, additional fees were assessed. If a firm had fewer agents, investment adviser representatives, or branch offices, registrations and/or Notice Filings at year's end than it did when the Preliminary Renewal Statement was generated, a credit was applied to the firm's Daily Account.

The 2004 Final Renewal Statements reflect the year-end 2003 total fees (where applicable) for:

- Web CRD/IARD System Processing Fees
- NASD Branch Office Fees
- American Stock Exchange (AMEX), Chicago Board Options Exchange (CBOE), International Securities Exchange (ISE), New York Stock Exchange (NYSE), Pacific Exchange (PCX), and Philadelphia Stock Exchange (PHLX) Maintenance Fees
- Jurisdiction Agent Renewal Fees
- Jurisdiction Broker/Dealer Renewal Fees
- Jurisdiction Investment Adviser Representative Renewal Fees
- Jurisdiction Investment Adviser Firm Renewal Fees

**Final Renewal Statements that reflect zero balances require no further action by the firm.**

On January 2, 2004, all Renewal overpayments were systematically transferred to firms' Daily Accounts. All refund requests should be made from that account. If you believe your firm is due a Renewal refund, please check your firm's Daily Account to verify that funds are available. To request a refund check, have an appropriate signatory send a request on firm letterhead to:

NASD
Decoverly
User Support–CRD Accounting
9509 Key West Avenue
Rockville, MD 20850

(301) 869-6699

If the Final Renewal Statement reflects an **amount due**, NASD should receive Renewal payment no later than February 6, 2004. Firms may submit their payments by:

- **Electronic Payment via Web CRD/IARD E-Pay**
  You can access Web CRD/IARD E-Pay at *www.nasdr.com/3400.asp*, or at *https://tradelinks2.mellon.com/cgi-bin/tsmenu.pl/nasd*. There is also a hyperlink to Web CRD/IARD E-Pay on your online Renewal Statement.

- **Wire Transfer**
  Firms may wire full payment of the Final Renewal Statement by requesting their bank to initiate a wire transfer to "The Riggs National Bank in Washington, DC."

  You will need to provide your bank with the following information:
  - Transfer funds to: Riggs National Bank in Washington, DC
  - ABA Number: 054-000030
  - Beneficiary: NASD
  - Account Number: 086-761-52
  - Reference Number: Firm CRD Number and the word "Renewals"

- **To ensure prompt processing of your Renewal Payment by wire transfer:**
  - Remember to inform your bank the funds are to be credited to the NASD Bank Account.
  - Provide your firm's CRD Number and the word "Renewals" as reference only.
  - Record the Confirmation Number of the wire transfer given by your bank.

- **Transfer Available Funds from Daily Account to Renewal Account**
  If a firm has sufficient funds in its Daily Account to cover full payment of its Renewal Fees, the firm can contact the Gateway Call Center at (301) 869-6699, or send an e-mail to *webcrd@nasd.com*, to request a transfer of funds.

- **Check**
  Make checks payable to NASD and be sure to indicate your firm's CRD Number and the word "Renewals" on the memo line of the check. Print your Statement and mail the first page with your firm's check to:

- **US Mail:**
  NASD, CRD-IARD
  P.O. Box 7777-W8705
  Philadelphia, PA 19175-8705

  (The P.O. Box will **not** accept courier or overnight deliveries.)

- **EXPRESS DELIVERY:**
  NASD, CRD-IARD
  W8705 c/o Mellon Bank, Rm 3490
  701 Market Street
  Philadelphia, PA 19106

  Phone Number: (301) 869-6699

Please note that the Renewal Payment addresses noted above are different than the payment addresses for your firm's Daily (Registration) Account.

## Reviewing the Final Renewal Reports

Renewal Reports include all individual registrations renewed for 2004. Registrations that were pending approval or were deficient at year-end 2003 were not assessed Renewal fees; therefore, they will not be reported on the **Firm (Agent) Renewal Report**. Firms should examine their report(s) carefully to ensure that all registration approvals and terminations are properly listed. It is also suggested that these reports be made a permanent part of your records. For detailed instructions, please refer to "A Guide to Renewal Reports/Requesting Renewal Reports" in the CRD Fall *Bulletin*. *The Bulletin* can be viewed at *www.nasdr.com/2004_renewal_bulletin.asp*.

**Firm (Agent) Renewal Report—**applicable to Broker/Dealer and Investment Adviser firms. This report will list all renewed personnel with NASD, AMEX, CBOE, ISE, NYSE, PCX, PHLX, and/or each jurisdiction. Individuals whose registrations are "approved" with any of these regulators during November and December of 2003 will be included in this report, while registrations that are still pending approval or are deficient at year's end will not be included in the 2004 Renewal Program nor will they be listed on the report. If the firm has supplied billing codes, they will be included in this report.

**Branches Renewal Report—**applicable to NASD members. This report lists each branch registered with NASD and lists branch offices for which the firm was assessed a fee. Firms should use this report to reconcile their records for Renewal purposes. If a firm finds any discrepancies between its records and those maintained on Web CRD/IARD, the discrepancy must be reported to NASD at the same address used for refund requests.

**Discrepancies—**NASD, AMEX/CBOE/ISE/NYSE/PCX/PHLX/Jurisdictions: All discrepancies should be reported by February 6, 2004. Firms should contact the Gateway Call Center at (301) 869-6699, to report discrepancies. Copies of appropriate documentation, such as Web CRD-generated notice of termination, notification of deficient condition, or notice of approval from its Firm Queues, should be readily available.

*The Bulletin* contains detailed instructions to help firms complete the Renewal Process. This publication can also be found at *www.nasdr.com/2004_renewal_bulletin.asp*.

## Questions/Further Information

Questions regarding this *Notice* may also be directed to the Gateway Call Center at (301) 869-6699.

©2004. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

# Notice to Members

JANUARY 2004

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Operations

KEY TOPICS

NASD Rule 3370
Short Sale Orders

INFORMATIONAL

## Amendments to NASD Rule 3370, Affirmative Determination Requirements

SEC Approves NASD Rule Proposal Requiring Members to Make Affirmative Determinations for Short Sale Orders Received from Non-Member Broker/Dealers; **Effective Date: February 20, 2004**

### Executive Summary

The Securities and Exchange Commission (SEC) approved amendments to Rule 3370 (Prompt Receipt and Delivery of Securities—the "Affirmative Determination" Rule) that expand the scope of the affirmative determination requirement to include orders received from non-member broker/dealers.[1] As revised, Rule 3370 applies to orders received by member firms from both customers and non-member broker/dealers, as well as most firm proprietary orders. The revisions also add an exception for "proprietary" short sales of non-member broker/dealers provided the member can establish that the order meets certain conditions.

The text of the amendments as provided in Attachment A become effective on February 20, 2004.

### Questions/Further Information

Questions concerning this *Notice* may be directed to Gary L. Goldsholle, Associate General Counsel, Office of General Counsel, NASD Regulatory Policy & Oversight, at (202) 728-8104.

## Discussion

NASD Rule 3370 requires, among other things, that no member or person associated with a member shall effect a "short" sale order for any customer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or that the member can borrow the security on behalf of the customer by settlement date. Because NASD's definition of "customer" excludes a "broker" or "dealer," the affirmative determination requirements did not apply to orders from "non-member broker/dealers."[2] The failure to subject short sales by such persons to the affirmative determination requirement affects the integrity of the marketplace by increasing the possibility of failures to deliver and also creates regulatory disparity by allowing certain firms to effect short sales outside the purview of NASD's affirmative determination requirements. To address these concerns, NASD has amended Rule 3370 to apply to short sale orders for any customer or "non-member broker/dealer."

The amendments also provide an exemption for certain proprietary orders of non-member broker/dealers. Specifically, Rule 3370(b)(2)(B) provides exemptions for, among others, proprietary orders of member firms that are bona fide market making transactions, or transactions that result in bona fide fully hedged or arbitraged positions. Proprietary orders of a non-member broker/dealer likewise are exempt from the affirmative determination requirements if they meet the same conditions for the exemptions applicable to proprietary orders of member firms, and the following two conditions are satisfied: (1) the non-member broker/dealer must be registered with the SEC; and (2) if using the market maker exemption, the non-member broker/dealer is registered or qualified as a market maker in the securities and is selling such securities in connection with bona fide market making.

## Endnotes

1 File No. SR-NASD-2001-85 (Nov. 27, 2001), SEC Release No. 34-48788 (Nov. 14, 2003), 68 *Fed. Reg.* 65978 (Nov. 24, 2003).

2 While NASD member broker/dealers are excluded from the definition of "customer" under NASD Rule 0120(g), such firms have an independent obligation to comply with NASD's Affirmative Determination Rule.

©2004. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

**ATTACHMENT A**

New text is underlined; deletions are in brackets.

3370. Prompt Receipt and Delivery of Securities

(a) No Change

(b) Sales

(1) No Change.

(2) "Short Sales"

(A) Customer and non-member broker/dealer short sales

No member or person associated with a member shall accept a "short" sale order for any customer or non-member broker/dealer in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer or non-member broker/dealer or that the member can borrow the security on behalf of the customer or non-member broker/dealer for delivery by settlement date. This requirement shall not apply, however, to transactions in corporate debt securities or transactions in security futures, as defined in Section 3(a)(55) of the Act, or proprietary orders of a non-member broker/dealer that meet one of the exceptions in subparagraph (B) below, provided, however, that (i) the non-member broker/dealer is registered with the Securities and Exchange Commission, and (ii) if using the market maker exception, the non-member broker/dealer is registered or qualified as a market maker in the securities and is selling such securities in connection with bona fide market making.

(B) No Change

(3) No change

**(4) "Affirmative Determinations"**

(A) No change

(B) To satisfy the requirement for an "affirmative determination" contained in paragraph (b)(2) above for customer, non-member broker/dealer, and proprietary short sales, the member or person associated with a member must keep a written record [which] that includes:

(i) if a customer or non-member broker/dealer assures delivery, the present location of the securities in question, whether they are in good deliverable form and the customer's or non-member broker/dealer's ability to deliver them to the member within three (3) business days; or

(ii) No change

JANUARY 2004

SUGGESTED ROUTING

Legal & Compliance
Operations
Senior Management

KEY TOPICS

Fees
NASD By-Laws
Simultaneous Filing Group (SFG)

ACTION REQUIRED

# Amendments to Section 5 of Schedule A to the NASD By-Laws

## SEC Announces Immediate Effectiveness of Amendments to Section 5 of Schedule A to the NASD By-Laws

### Executive Summary

The Securities and Exchange Commission (SEC) has announced the immediate effectiveness of amendments to Section 5 of Schedule A to the NASD By-Laws (Section 5) to (1) clarify that two or more members that are under substantially the same ownership or control, commonly referred to as a "simultaneous filing group" or "SFG," may eliminate certain duplicate fees and assessments; and (2) remind members that they must provide NASD with information as requested by NASD and in the format specified by NASD to become eligible for such reduced fees.[1]

The text of Section 5, as amended, is set forth in Attachment A.

### Questions/Further Information

Questions concerning this *Notice* may be directed to Stefanie M. Watkins, Staff Attorney, Registration and Disclosure, NASD, at (240) 386-4824.

### Background And Discussion

Section 5 addresses the elimination of certain duplicate assessments and fees applicable to persons registered with two or more members under substantially the same ownership or control (commonly referred to as a "simultaneous filing group" or "SFG"). The amendments to Section 5 codify NASD's stated policies and practices with respect to the availability of these reduced fees to simultaneous filing groups.

The amendments to Section 5 clarify that, in addition to paying only one system processing fee,[2] a simultaneous filing group, as described in Section 5, may pay only one fingerprint processing fee and one termination fee. The amendments also add language reminding members that, as a procedural matter, they must provide NASD with certain information as requested by NASD and in the format specified by NASD to receive the reduced fees.

The amendments codify existing long-standing practice, which requires members to follow certain procedures to obtain the benefits of NASD's simultaneous filing group program and the reduced registration fees associated therewith, including establishing a simultaneous filing group, notifying NASD staff of the affiliated firms included in the simultaneous filing group, and requesting and completing an SFG Participation Agreement.[3]

## Endnotes

1 *See* Release No. 34-49030 (File No. SR-NASD-2003-194 (Jan. 6, 2004), 69 *Federal Register* 2032 (Jan. 13, 2004).

2 The previous reference to a "registration renewal fee" also has been changed to "system processing fee" to conform the terminology to an amendment to Section 5 made in 1999. *See* Exchange Act Release No. 41937 (Sept. 28, 1999).

3 NASD is in the process of posting a description of the Simultaneous Filing Group Program, including the SFG Agreement, on its Web Site. In the interim, and thereafter, members may call the Gateway Call Center (301-590-6500) for information about the Program.

©2004. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

## ATTACHMENT A

New text is underlined; deletions are in brackets.

* * * * *

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Sections 1 through 4. No change.

Section 5 - Elimination of Duplicate Assessments and Fees

Two or more members under substantially the same ownership or control shall be required to pay (1) only one personnel assessment and one [registration renewal] system processing fee annually for those individuals employed by more than one of the members; [and] (2) only one fee annually for each branch office registered at the same location by more than one of the members[.]; and (3) [There shall be] only one registration fee, one fingerprint processing fee, and one termination fee applicable to each applicant registered or terminated simultaneously with two or more members under substantially the same ownership or control. To establish their eligibility to receive the reduction in fees described herein, members must provide NASD with information as requested by NASD and in the format specified by NASD prior to NASD's assessment of such fees.

JANUARY 2004

SUGGESTED ROUTING

Legal and Compliance
Operations
Registration
Senior Management

KEY TOPICS

District Elections

INFORMATIONAL

# District Elections

## NASD Announces Election Results for District Committees and District Nominating Committees

### Executive Summary

Through this *Notice*, NASD announces the election results for the District Committees and the District Nominating Committees. The newly elected District Committee members will serve until January 2007.[1]

District 10 (New York) had an additional candidate come forward for consideration for that District Committee. Ballots were submitted and counted on January 9, 2004. The originally proposed slate of candidates for District 10 (New York) received the largest number of votes and is declared elected.

The members of the incoming District Committees and the District Nominating Committees are identified in Attachment A.

### Questions/Further Information

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

### Endnote

1 Some newly elected District Committee members are filling existing vacancies and, therefore, will serve less than a three-year term, as indicated in Attachment A.

## ATTACHMENT A

### District Committee and District Nominating Committee
### 2004 Incoming Members

### District 1

**Elisabeth P. Owens, District Director**

525 Market Street, Suite 300, San Francisco, CA 94105-2711
(415) 882-1200

Northern California (the counties of Monterey, San Benito, Fresno, and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties), and Hawaii

**2004 District 1 Incoming Members**

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

**2004 District 1 Nominating Committee Incoming Members**

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

## District Committee and District Nominating Committee
## 2004 Incoming Members

### District 2

**Lani M. Sen Woltmann, District Director**

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071
(213) 627-2122

Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust Territories

**2004 District 2 Incoming Members**

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

**2004 District 2 Nominating Committee Incoming Members**

| | | |
|---|---|---|
| James E. Biddle | The Securities Center Incorporated | Chula Vista, CA |
| Margaret M. Black | Morgan Stanley Dean Witter, Inc. | Los Angeles, CA |
| Diane P. Blakeslee | Blakeslee & Blakeslee, Inc. | San Luis Obispo, CA |
| Miles Z. Gordon | Financial Network Investment Corporation | Indian Wells, CA |
| Steven K. McGinnis | Keystone Capital Corporation | San Diego, CA |

## District Committee and District Nominating Committee
## 2004 Incoming Members

### District 3

**Joseph M. McCarthy, District Director**

370 17th Street, Suite 2900
Denver, CO 80202-5629
(303) 446-3100

Arizona, Colorado, New Mexico, Utah, and Wyoming

**James G. Dawson, District Director**

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

Alaska, Idaho, Montana, Oregon, and Washington

**2004 District 3 Incoming Members**

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

**2004 District 3 Nominating Committee Incoming Members**

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

## District Committee and District Nominating Committee
## 2004 Incoming Members

### District 4

**Thomas D. Clough, District Director**

120 West 12th Street, Suite 900, Kansas City, MO 64105
(816) 421-5700

Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

**2004 District 4 Incoming Members**

| | | |
|---|---|---|
| Michael D. Burns (2-Year Term) | USAllianz Securities, Inc. | Minneapolis, MN |
| Joseph D. Fleming | Piper Jaffray & Co. | Minneapolis, MN |
| Richard M. Hurwitz | Benefit Finance Securities, LLC | St. Louis, MO |
| Mark T. Lasswell | Wells Fargo Brokerage Services, L.L.C. | Minneapolis, MN |
| Kevin P. Maas (2-Year Term) | PrimeVest Financial Services, Inc. | St. Cloud, MN |

**2004 District 4 Nominating Committee Incoming Members**

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

## District Committee and District Nominating Committee
## 2004 Incoming Members

### District 5

**Warren A. Butler, Jr., District Director**

1100 Poydras Street, Energy Centre, Suite 850, New Orleans, LA 70163-0802
(504) 522-6527

Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, and Tennessee

**2004 District 5 Incoming Members**

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

**2004 District 5 Nominating Committee Incoming Members**

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

## District Committee and District Nominating Committee
## 2004 Incoming Members

### District 6

**Virginia F.M. Jans, District Director**

12801 N. Central Expressway, Suite 1050, Dallas, TX 75243
(972) 701-8554

Texas

**2004 District 6 Incoming Members**

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

**2004 District 6 Nominating Committee Incoming Members**

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

## District Committee and District Nominating Committee
## 2004 Incoming Members

### District 7

**Alan M. Wolper, District Director**

One Securities Centre, Suite 500, 3490 Piedmont Road, NE, Atlanta, GA 30305
(404) 239-6100

Florida, Georgia, North Carolina, South Carolina, Puerto Rico, the Canal Zone, and the Virgin Islands

**2004 District 7 Incoming Members**

| | | |
|---|---|---|
| Susan J. Hechtlinger | Banc of America Investment Services, Inc. | Charlotte, NC |
| Landrum H. Henderson, Jr. | Legg Mason Wood Walker, Inc. | Charlotte, NC |
| Alan L. Maxwell, Jr. | Wachovia Capital Markets, LLC | Charlotte, NC |
| Roark A. Young (One-Year Term) | Young, Stovall and Company | Miami, FL |

**2004 District 7 Nominating Committee Incoming Members**

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

## District Committee and District Nominating Committee
## 2004 Incoming Members

### District 8

**Carlotta A. Romano, District Director**

55 West Monroe Street, Suite 2700
Chicago, IL 60603-5051
(312) 899-4400

Illinois, Indiana, Kentucky, Michigan, and Wisconsin

**William H. Jackson, Jr., District Director**

Renaissance on Playhouse Square
1350 Euclid Avenue, Suite 650
Cleveland, OH 44115
(216) 592-2950

Ohio

**2004 District 8 Incoming Members**

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

**2004 District 8 Nominating Committee Incoming Members**

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

## District Committee and District Nominating Committee
## 2004 Incoming Members

### District 9

**Gary K. Liebowitz, District Director**

581 Main Street, 7th Floor
Woodbridge, NJ 07905
(732) 596-2000

New Jersey and New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City)

**John P. Nocella, District Director**

Eleven Penn Center, 1835 Market Street
Suite 1900, Philadelphia, PA 19103
(215) 665-1180

Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia

**2004 District 9 Incoming Members**

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

**2004 District 9 Nominating Committee Incoming Members**

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

## District Committee and District Nominating Committee
## 2004 Incoming Members

### District 10

**Robert B. Kaplan, Acting District Director**

One Liberty Plaza, 49th Floor, New York, NY 10006
(212) 858-4000

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

**2004 District 10 Incoming Members**

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

**2004 District 10 Nominating Committee Incoming Members**

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

## District Committee and District Nominating Committee
## 2004 Incoming Members

### District 11

**Frederick F. McDonald, District Director**

260 Franklin Street, 16th Floor, Boston, MA 02110
(617) 261-0800

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

**2004 District 11 Incoming Members**

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

**2004 District 11 Nominating Committee Incoming Members**

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

# Notice to Members

JANUARY 2004

SUGGESTED ROUTING

Legal & Compliance

Operations

Senior Management

IT Management

KEY TOPICS

Debt Securities

Trade Reporting and Compliance Engine (TRACE)

Rule 7010(k)

INFORMATIONAL

## Trade Reporting and Compliance Engine (TRACE)

### SEC Approves Permanent TRACE Fee Structure and Nine-Month Pilot Program for BTDS Professional Delayed-Time Data Display Fee

### Executive Summary

The TRACE system became effective on July 1, 2002. Since that time the TRACE fee structure has been operating under a pilot program approved by the SEC that was due to expire on January 31, 2004. On January 15, 2004, the SEC approved a rule change amending Rule 7010(k) to establish a permanent fee structure for TRACE and a nine-month pilot program for the BTDS Professional Delayed-Time Data Display Fee.[1]

Rule 7010(k), as amended, is set forth in Attachment A. The fee structure is effective as of February 1, 2004.

### Questions/Further Information

Questions concerning this *Notice* may be directed to NASD Market Operations at 866-776-0800, or Kosha K. Dalal, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-6903.

## Background and Discussion

Since the TRACE system became effective on July 1, 2002, the TRACE fee structure has been operating under a pilot program approved by the SEC. On October 14, 2003, NASD proposed a rule change to establish a permanent fee structure for TRACE. The fee structure was approved by the SEC on January 15, 2004, and the fee structure will become effective on February 1, 2004. The BTDS Professional Delayed-Time Data Display Fee was approved by the SEC as a nine-month pilot program due to expire on October 31, 2004. The TRACE fee structure is outlined below.

**Below is a chart outlining the approved TRACE fee structure.**

| System Fees | Transaction Reporting Fees | Market Data Fees |
|---|---|---|
| Level I Trade Report Only Web Browser Access - $20/month per user ID | Trades up to and including $200,000 par value - $0.475/trade; | BTDS Professional Real-Time Data Display - $60/month per terminal |
| Level II Full Service Web Browser Access - $80/month per user ID | Trades between $201,000 and $999,999 par value - $0.002375 times the number of bonds traded/trade; | BTDS Professional Delayed-Time Data Display - $15/month per terminal (For a nine-month pilot period beginning February 1, 2004 and ending October 31, 2004) |
| CTCI/Third Party - $25/month per firm | Trades of $1,000,000 par value or more - $2.375/trade | BTDS Internal Usage Authorization - $500/ month per application/ service for Real-Time and Delayed-Time Data |
| | Cancel/Correct - $1.50/trade | BTDS External Usage Authorization - $1,000/ month per application/ service for Real-Time and Delayed-Time Data |
| | "As of" Trade Late - $3/trade | BTDS Non-Professional Real-Time Data Display - $1/month per terminal |

## System Fees

### Web Browser Access Fees

Level I Trade Report Only Web Browser access permits a member to report TRACE transaction data to NASD over the Internet, but does not allow access to real-time TRACE data. Level II Full Service Web Browser access permits reporting of TRACE transaction data to NASD over the Internet and allows access to real-time transaction data through a query function. The Level I charge has been reduced from $25 per month, per user ID, to $20 per month, per user ID; and the Level II charge has been reduced from $85 per month, per user ID, to $80 per month, per user ID.

### CTCI Fees and Third-Party Access Fees

The charge for CTCI service and for reporting data through third-party intermediaries will remain at $25 per month, per firm.

## Transaction Reporting Fees

### Trade Reporting Fees

Trade Reporting Fees will remain at their current levels. The range for trade reporting fees will be from $0.475 to $2.375 per transaction based on the size of the reported transaction. Trades up to and including $200,000 par value will be charged a $0.475 fee per trade; trades between $201,000 par value and $999,999 par value will be charged a fee of $0.002375 multiplied by the number of bonds traded, and trades of $1,000,000 par value or more will be charged a fee of $2.375 per trade.

### Corrective Transaction Fees

The Cancel or Correct Fee will remain at $1.50 per corrected trade and the "As of" Trade Late reporting fee will remain at $3.00 per late trade for those transactions that are not reported "As of" as required under the Rule 6200 Series.

**Market Data Fees**

The market data services and fees are as follows: (1) BTDS Professional Real-Time Data Display Fee of $60 per month, per terminal; (2) BTDS Professional Delayed-Time Data Display Fee of $15 per month, per terminal; (3) BTDS Internal Usage Authorization Fee of $500 per month, per application/service; (4) BTDS External Usage Authorization Fee of $1,000 per month, per application/service; and (5) BTDS Non-Professional Real-Time Data Display Fee of $1 per month, per terminal.

The term "Real-Time" as used in Rule 7010(k)(3) will mean that period of time starting from the time of dissemination by NASD of transaction data on a TRACE-eligible security, and ending four hours thereafter. "Delayed-Time" as used in Rule 7010(k)(3) will mean that period of time starting four hours after the time of dissemination by NASD of transaction data on a TRACE-eligible security, and ending at 11:59:59 p.m., Eastern Time, that calendar day.

**BTDS Professional Delayed-Time Data Display Fee**

The SEC has approved the BTDS Professional Delayed-Time Data Display on a pilot basis for a period of nine months beginning February 1, 2004, and ending October 31, 2004. The fee for the BTDS Professional Delayed-Time Data Display is $15 per month, per terminal, for each device receiving Delayed-Time TRACE transaction data. Transaction data for TRACE-eligible securities disseminated by NASD after this time frame will be provided free of charge. Professionals subscribing for the BTDS Professional Real-Time Data Display Fee of $60 per month, per terminal, to receive Real-Time TRACE transaction data will not pay this charge for Delayed-Time data in addition to the $60 fee for Real-Time data. NASD has also clarified that charges for BTDS Internal Usage and BTDS External Usage apply to Real-Time and/or Delayed-Time TRACE transaction data.

In addition, NASD has clarified the definition of "non-professional." NASD has added language to the definition to state that a natural person can qualify as a "non-professional" only if he or she receives TRACE market data primarily for personal, non-commercial use.

## Effective Date

The rule amendments become effective on February 1, 2004.

## Endnote

1 *See* Securities Exchange Act Release No. 34-49086 (January 15, 2004), 69 *Fed. Reg.* 3416 (January 23, 2004), File No. SR-NASD-2003-157.

©2004. NASD. All rights reserved. *Notices to Members* attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.

## ATTACHMENT A

* * * * *

### 7010. System Services

(a) through (j) No Change.

(k) Trade Reporting and Compliance Engine (TRACE)

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine ("TRACE"):

| System Fees | Transaction Reporting Fees | Market Data Fees |
|---|---|---|
| Level I Trade Report Only Web Browser Access - $20/month per user ID | Trades up to and including $200,000 par value - $0.475/trade; | BTDS Professional Real-Time Data Display - $60/month per terminal |
| Level II Full Service Web Browser Access - $80/month per user ID | Trades between $201,000 and $999,999 par value - $0.002375 times the number of bonds traded/trade; | BTDS Professional Delayed-Time Data Display - $15/month per terminal (For a nine-month pilot period beginning February 1, 2004 and ending October 31, 2004) |
| CTCI/Third Party - $25/month per firm | Trades of $1,000,000 par value or more - $2.375/trade | BTDS Internal Usage Authorization - $500/ month per application/ service for Real-Time and Delayed-Time Data |
| | Cancel/Correct - $1.50/trade | BTDS External Usage Authorization - $1,000/ month per application/ service for Real-Time and Delayed-Time Data |
| | "As of" Trade Late - $3/trade | BTDS Non-Professional Real-Time Data Display - $1/month per terminal |

(1) System Related Fees.

There are three methods by which a member may report corporate bond transactions that are reportable to NASD pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to NASD: (a) a TRACE web browser; (b) a Computer-to-Computer Interface ("CTCI") (either one dedicated solely to TRACE or a multi-purpose line); or (c) a third-party reporting intermediary. Fees will be charged based on the reporting methodology selected by the member.

(A) Web Browser Access

The charge to be paid by a member that elects to report TRACE data to NASD via a TRACE web browser shall be as follows: $20 per month, per user ID for Level I Web Trade Report Only Browser Access and $80 per month, per user ID for Level II Full Service Web Browser Access.

(B) Computer-to-Computer Interface Access

The charge to be paid by a member that elects to report TRACE data to NASD via a CTCI line shall be $25 per month, per firm, regardless of whether the line is or is not dedicated exclusively for TRACE.[1]

(C) Third Party Access – Indirect Reporting

A member may elect to report TRACE data indirectly to NASD via third-party reporting intermediaries, such as vendors, service bureaus, or the National Securities Clearing Corporation ("NSCC"). The charge to be paid by a member shall be $25 per month, per firm. Nothing in this Rule shall prevent such third-party intermediaries from charging additional fees for their services.

(2) Transaction Reporting Fees.

For each transaction in corporate bonds that is reportable to NASD pursuant to the Rule 6200 Series, the following charges shall be assessed against the member responsible for reporting the transaction:

(A) Trade Reporting Fee

A member shall be charged a Trade Reporting Fee based upon a sliding scale ranging from $0.475 to $2.375 per transaction based on the size of the reported transaction. Trades up to and including $200,000 par value will be charged a $0.475 fee per trade; trades between $201,000 par value and $999,999 par value will be charged a fee of $0.002375 multiplied by the number of bonds traded per trade; and trades of $1,000,000 par value or more will be charged a fee of $2.375 per trade.

(B) Cancel or Correct Trade Fee

A member shall be charged a Cancel or Correct Trade Fee of $1.50 per canceled or corrected transaction.

(C) "As of" Trade Late Fee

A member shall be charged an "As of" Trade Late Fee of $3.00 per transaction for those transactions that are not timely reported "As of" as required by these rules.

(3) Market Data Fees.

Professionals and non-professionals may subscribe to receive Real-Time and Delayed-Time TRACE data disseminated by NASD in one or more of the following ways for the charges specified. Members, vendors and other redistributors shall be required to execute appropriate agreements with NASD.

(A) Professional Fees. Professionals may subscribe for the following:

(i) Bond Trade Dissemination Service ("BTDS") Professional Real-Time Data Display Fee of $60 per month, per terminal charge for each interrogation or display device receiving Real-Time TRACE transaction data.

(ii) For a pilot period commencing February 1, 2004, and lasting until October 31, 2004. BTDS Professional Delayed-Time Data Display Fee of $15 per month, per terminal charge for each interrogation or display device receiving Delayed-Time TRACE transaction data; provided, that subscribers to the BTDS Professional Real-Time Data Display Fee described above shall not be charged this additional fee. Subject to the execution of appropriate agreements with NASD, certain summary market information of Delayed-Time TRACE transaction data may be published or distributed by newspapers, press associations, newsletters, or similar media sources without charge.

(iii) BTDS Internal Usage Authorization Fee of $500 per month, per application/service [charge] for internal dissemination of Real-Time and/or Delayed-Time TRACE transaction data used in one or more of the following ways in a single application/service: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities.[2]

(iv) BTDS External Usage Authorization Fee of $1,000 per month, per application/service for dissemination of Real-Time and/or Delayed-Time TRACE transaction data used in one or more of the following ways in a single application/service: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.[3]

(B) Non-Professional Fees

The charge to be paid by a non-professional for each terminal receiving all or any portion of Real-Time TRACE transaction data disseminated through TRACE shall be $1.00 per month, per terminal.

(C) Definitions

(i) "Delayed-Time" as used in Rule 7010(k)(3) shall mean that period of time starting four hours after the time of dissemination by NASD of transaction data on a TRACE-eligible security, and ending at 11:59:59 p.m. Eastern Time that calendar day.

(ii) "Non-Professional"- A non-professional subscriber must provide certain information to NASD and shall receive TRACE market data primarily for his or her personal, non-commercial use. As used in Rule 7010(k)(3) a "non-professional" is a natural person who is neither:

a. registered nor qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association, or an employee of the above who uses such information primarily for business-related activities;

b. engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act), or an employee of the above who uses such information primarily for business-related activities;

c. employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or

d. engaged in, or has the intention to engage in, any redistribution of all or any portion of the information disseminated through TRACE.

(iii) "Real-Time" as used in Rule 7010(k)(3) shall mean that period of time starting from the time of dissemination by NASD of transaction data on a TRACE-eligible security, and ending no more than four hours thereafter.

(D) Other Requests for Data

NASD may impose and collect charges for data NASD supplied upon request, where there is no provision elsewhere in this Rule 7010(k) for charges for such service or sale.

1 The charges that may be imposed by third parties, such as CTCI line providers, are not included in these fees.

2 Under this service, Real-Time and/or Delayed-Time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing, or disseminated to any external source.

3 Under this service, Real-Time and/or Delayed-Time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing.

# Disciplinary and Other NASD Actions

**REPORTED FOR JANUARY**

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of December 2003.

## Firm Expelled, Individual Sanctioned

**Kesco Securities Corp. (CRD #104243, Ft. Myers, Florida) and Scott Fine (CRD #2303062, Registered Principal, Ft. Myers, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was expelled from NASD membership and Fine was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Fine sent limited partnership partners e-mails and caused Schedule K-1 partnership tax documents that were inaccurate to be issued to partners. The findings also stated that the firm, acting through Fine, provided inaccurate information to NASD during an examination regarding the schedule of transactions assigned to an investor in the limited partnership. NASD also found that the firm and Fine failed to respond to NASD requests for documents and testimony. **(NASD Case #C07030080)**

## Firms Fined, Individuals Sanctioned

**Balfour Investors, Inc. (CRD #7382, New York, New York) and Carl Goldfarb (CRD #4263003, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, an Consent in which the firm was censured and fined $37,000, $15,000 of which was jointly and severally with Goldfarb. Goldfarb was suspended from association with any NASD member in any capacity for nine months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Goldfarb, prepared substitute new account forms to replace missing account forms requested by NASD and provided them to NASD without affirmatively indicating that the forms were not original, that the names on the "preparer" signature lines had been added to some of the forms without authorization or consent of those whose names were added, and the firm and its personnel lacked documentary confirmation that the substitute forms contained the same customer information, investment objectives, and risk exposure information as contained on the missing forms. The findings also stated that the firm permitted individuals to act as limited representative-equity traders and to execute transactions without being so registered. NASD also found that the firm failed to preserve for a period of not less than three years, the first two in an accessible place, brokerage order memoranda and confirmations of those orders. In addition, NASD found that the firm failed to report to NASD's Fixed Income Pricing System℠ (FIPS℠) the firm's sell transactions in high-yield securities to public customers.

Goldfarb's suspension began January 5, 2004, and will conclude at the close of business October 4, 2004. **(NASD Case #C10030103)**

**World Financial Capital Markets, Inc. (CRD #47747, New York, New York) and Frank Richard Bell (CRD #1425780, Registered Principal, Bradenton, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $100,000—$40,000 of which was jointly and severally with Bell—required not to post any research reports on its Web site for two years, and required to provide NASD with its revised Anti-Money Laundering (AML) Compliance Procedures within 30 days of the effective date of the AWC. The firm is also required to hire an outside consultant within 60 days of the effective date of the AWC to conduct independent testing to determine if the firm's AML procedures are in compliance with NASD Rule 3011, and to implement the consultant's recommendations not later than 30 days from the issuance of the consultant's findings and recommendations. Bell was barred from association with any NASD member in a principal capacity and suspended from association with any NASD member in any capacity for eight months.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm sold shares of a security to foreign customers through persons not registered with the firm. The findings also stated that none of the firm's registered representatives had contact with the customers prior to the transactions and failed to receive written authorization from the customers to accept the orders from unregistered persons. NASD also found that the firm, acting through Bell, knowingly accepted customer orders and recorded transactions in this manner, improperly exercising discretion in the customers' accounts, and created and maintained inaccurate books and records. In addition, the findings stated that the firm, at the direction of Bell, posted research reports on issuers that contained exaggerated, unwarranted, or misleading statements and failed to disclose material facts. Moreover, the findings stated that the firm's supervisory systems and procedures failed to adequately set forth procedures and systems reasonably designed to achieve compliance with federal securities laws and NASD rules regarding publishing and distributing research reports and the handling of customer orders placed by third persons or discretionary trading. Furthermore, the findings stated that the firm and Bell failed to establish and implement policies and procedures reasonably designed to detect and cause the reporting of suspicious transactions; failed to establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and implementing regulations thereunder; failed to provide for independent testing for compliance by member personnel or a qualified outside party; and failed to provide for ongoing training for appropriate personnel.

Bell's bar became effective November 24, 2003. Bell's suspension began January 5, 2004, and will conclude September 4, 2004. **(NASD Case #CAF030057)**

## Firms and Individuals Fined

**Financial West Group (CRD #16668, Westlake Village, California) and Jeffrey Keith Rose (CRD #1008563, Registered Principal, Las Vegas, Nevada)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined $10,000, jointly and severally. Without admitting or denying the allegations, the firm and Rose consented to the described sanctions and to the entry of findings that the firm, acting through Rose, failed to report, and to timely report, reportable events including customer complaints. The findings also stated that the firm, acting through Rose, failed to amend Uniform Applications for Securities Industry Registration or Transfer (Forms U4) and a Uniform Termination Notice for Securities Industry Registration (Form U5) to reflect certain reportable events within 30 days after learning of the facts or circumstances regarding these events. The findings further stated that the firm, acting through Rose, failed to establish, maintain, and enforce written procedures identifying the individual(s) responsible for ensuring the timely filing of Rule 3070 reports and amendments to Forms U4 and U5. **(NASD Case #C02030070)**

**Greystone Securities Corporation (CRD #37792, Springfield, Missouri) and Alan Kent Suiter (CRD #1217290, Registered Principal, Nixa, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined $13,000, jointly and severally. Without admitting or denying the allegations, the firm and Suiter consented to the described sanctions and to the entry of findings that the firm, acting through Suiter, permitted registered representatives to perform duties as registered persons for compensation, while their registration status was inactive due to their failure to timely complete the Regulatory Element of NASD's Continuing Education Requirements. The findings also stated that the firm, acting through Suiter, failed to establish, maintain, and enforce written supervisory procedures designed to fulfill its obligation to comply with the Regulatory Element of NASD's Continuing Education Requirements. The findings further stated that the firm, acting through Suiter, participated in a private placement contingency offering, failed to deposit investor funds in an appropriate escrow account before the minimum contingency was met, and released funds to the issuer before the minimum contingency was met, rendering false and misleading the representations in the placement memorandum that investor funds would be released only if the minimum contingency was met and would be returned if it was not reached. **(NASD Case #C04030063)**

**Hanmi Securities, Inc. (CRD #25518, Los Angeles, California) and Eul Hyung Choi (CRD #1592055, Registered Principal, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined $10,000, jointly and severally. Without admitting or denying the allegations, the firm and Choi consented to the described sanctions and to the entry of findings that the firm, acting through Choi, utilized the instrumentalities of interstate commerce to engage in the securities business while failing to have and maintain sufficient net capital. **(NASD Case #C02030066)**

**Pacific On-Line Trading & Securities, Inc. (CRD #45737, San Jose, California) and Timothy Alan McAdams (CRD #2877024, Registered Principal, San Jose, California)** were censured and fined $22,500, jointly and severally, and McAdams was required to requalify as a general securities principal. The Securities and Exchange Commission (SEC) affirmed the sanctions following an appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that the firm, acting through McAdams, maintained a Web site advertisement without filing the Web site with NASD. The findings also stated that the firm, acting through McAdams, used a Web site that was false and misleading because it omitted material information concerning the risks of day trading, and contained exaggerated, unwarranted, and false statements. **(NASD Case #C01000037)**

## Firms Fined

**Barclays Capital, Inc. (CRD #19714, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $30,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report, or timely report, its short interest positions to NASD. In addition, NASD found that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the timely reporting of short interest positions. **(NASD Case #CMS030262)**

**Birchtree Financial Services, Inc. (CRD #15014, Bloomington, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $10,000, $5,000 of which was jointly and severally. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, acting through an individual, failed to disclose reportable events within 10 business days of becoming aware of these reportable events. The findings also stated that the firm, acting through an individual, failed to file statistical and summary information disclosing the receipt of customer complaints against registered representatives of the firm on a timely basis. In addition, the findings stated that the firm failed to file amended Forms U5 for individuals within 30 days of becoming aware of the facts or circumstances requiring the amended Forms U5. **(NASD Case #C04030059)**

**B. Riley & Company, Inc. (CRD #40355, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $13,500, and required to revise its written supervisory procedure concerning trade reporting. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct time of execution through the Automated Confirmation Transaction Service℠ (ACT℠) in last-sale reports of transactions in NASDAQ National Market® (NNM®) securities, failed to designate as ".T" through ACT last-sale reports of transactions in NNM securities executed outside normal market hours, and incorrectly designated as ".SLD" through ACT last-sale reports of transactions in NNM securities reported to ACT within 90 seconds of execution. The findings also stated that the firm failed to show the time of entry and execution on the memorandum of brokerage orders. In addition, NASD found that the firm failed to preserve, for a period of not less than three years, the first two in an accessible place, the memoranda of brokerage orders. Furthermore, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning trade reporting. Moreover, the findings stated that the firm failed to reasonably and properly supervise the firm's trade reporting activities. **(NASD Case #CMS030279)**

**Continental Broker-Dealer Corp. (CRD #14048, Carle Place, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $12,500, and required to revise its written supervisory procedures with respect to the routing of non-directed orders in covered securities and timely reporting of Reportable Order Events (ROEs) to NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to make publicly available for the first calendar quarter of 2002 a report on its routing of non-directed orders in covered securities during that quarter. The findings also stated that the firm failed to timely report to the Order Audit Trail System℠ (OATS℠). In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning timely OATS reporting. **(NASD Case #CMS030273)**

**Empire Securities Corporation of Southern California (CRD #2826, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to

the entry of findings that it permitted registered persons to act in capacities requiring registration while their NASD registrations were inactive due to a failure to complete in a timely manner the Regulatory Element of the Continuing Education Requirement. **(NASD Case #C02030069)**

**Essex National Securities, Inc. (CRD #25454, Napa, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $25,000, including disgorgement of $7,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it allowed individuals to engage in a securities business, for compensation, while not properly registered with NASD. **(NASD Case #C10030112)**

**EWT, LLC f/k/a Pioneer Capital Corp. (CRD #45986, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $10,000, and required to revise its written supervisory procedures with respect to OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to timely report ROEs to OATS. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning OATS. **(NASD Case #CMS030274)**

**Fifth Third Securities, Inc. (CRD #628, Cincinnati, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $20,000, and required to revise the firm's written supervisory procedures regarding compliance with Municipal Securities Rulemaking Board (MSRB) Rule G-14. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report the correct time of execution to the MSRB in transactions for which the firm had recording and reporting obligations. The findings also stated that, during the review period, the firm had no written supervisory procedures to ensure compliance with MSRB Rule G-14, and relied entirely on the procedures and representations regarding trade reporting provided by the firm's clearing broker. In addition, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and MSRB rules concerning transaction reporting. **(NASD Case #CMS030258)**

**Hanover Capital Securities, Inc. (CRD #24706, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to respond timely to NASD requests for information. **(NASD Case #CMR030001)**

**Jefferies & Company, Inc. (CRD #2347, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, while it was a market maker in securities, an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size, and it failed to execute the orders upon presentment and thereby failed to honor its published quotation. The findings also stated that the firm, a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered a bid or asked quotation in The Nasdaq Stock Market that caused a locked or crossed market condition to occur in each instance. The findings also stated that the firm failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in Consolidated Quotation Service (CQS) and Over-the-Counter (OTC) Equity securities. In addition, NASD found that the firm, within 90 seconds after execution, failed to transmit through ACT last-sale reports of transactions in CQS and OTC equity securities, and failed to designate through ACT some last-sale reports as late. **(NASD Case #CMS030277)**

**M. H. Meyerson & Co., Inc. f/k/a Crown Financial Group, Inc. (CRD #540, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $16,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to document quotations from each dealer contacted on the brokerage order. The findings also stated that the firm incorrectly reported riskless principal transactions to ACT for public dissemination. In addition, NASD found that the firm executed short-sale transactions and failed to report each of these transactions to ACT with a short-sale modifier. Furthermore, NASD found that the firm was a registered market maker in securities, and an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size and failed to execute the orders upon presentment, thereby failing to honor its published quotation. **(NASD Case #CMS030267)**

**M. H. Meyerson & Co., Inc. f/k/a Crown Financial Group, Inc. (CRD #540, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $62,500, and required to revise its written supervisory procedures with respect to SEC Rule 15c2-11, NASD Marketplace Rule 6740, Best Execution (Inter-positioning, Three Quote Rule, and Frontrunning), Firm Quote Compliance, and Short Sales (Bid Test, Affirmative Determination, and ACT reporting). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it published quotations for an OTC Equity Security,

or, directly or indirectly, submitted such quotations for publication, in a quotation medium, and did not have in its records the documentation required by SEC Rule 15c2-11(a) (Paragraph (a) information); did not have a reasonable basis under the circumstances for believing that the Paragraph (a) information was accurate in all material respects; or did not have a reasonable basis under the circumstances for believing that the sources of the Paragraph (a) information were reliable. The quotations did not represent a customer's indication of unsolicited interest.

The findings also stated that the firm failed to file a Form 211 for each quotation with NASD at least three business days before the firm's quotations were published or displayed in a quotation medium. In addition, the findings stated that the firm incorrectly designated as ".PRP" through ACT last-sale reports of transactions in an NNM security, a NASDAQ SmallCap℠ security, and OTC Equity securities. In addition, the findings stated that the firm executed short-sale transactions and failed to report each of these transactions to ACT with a short-sale modifier, executed long-sale transactions and incorrectly reported each of these transactions to ACT with a short-sale modifier, and failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity. Furthermore, the findings stated that the firm failed to display immediately customer limit orders in NASDAQ securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis amount in relation to the size associated with its bid or offer in each such security. Moreover, the findings stated that the firm was a market maker in securities, and an order was presented to the firm at the firm's published bid or published offer in an amount up to its published quotation size, and failed to execute the orders upon presentment thereby failing to honor its published quotation.

In addition, NASD found that the firm was a party to a locked or crossed market condition prior to the market opening and received a Trade-or-Move Message in each instance through SelectNet, and, within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move Message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. Furthermore, NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning SEC Rule 15c2-11, NASD Marketplace Rule 6740, Best Execution (Inter-positioning, Three Quote Rule, and Frontrunning), Firm Quote Compliance, and Short Sales (Bid Test, Affirmative Determination, and ACT reporting). **(NASD Case #CMS030268)**

**Morgan Stanley DW, Inc. (CRD #7556, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $25,000, and required to prepare and implement, by June 1, 2004, written procedures and computer exception reports reasonably designed to detect and prevent the mis-marking of order tickets regarding the solicitation of securities transactions with public customers where the firm did not provide research for the securities. In the interim, the firm shall undertake to reiterate to its registered representatives the importance of its policies regarding solicited and unsolicited trades. The firm shall also provide NASD with a copy of its written supervisory procedures within 30 days after they are implemented, together with a certification that the procedures have been implemented.

Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that registered representatives in a branch office of the firm solicited public customers to purchase shares in a start-up technology company for which the firm did not provide research, and falsely recorded the solicited trades as "unsolicited" in the books and records of the firm. The findings also stated that the registered representatives' false reporting of the trades caused the firm to fail to keep accurate books and records related to its business. **(NASD Case #CAF030066)**

**Redsky Securities, LLC (CRD #38455, Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS. The findings also stated that the firm failed to enforce its written supervisory procedures with respect to applicable securities laws, regulations, and NASD rules concerning OATS. **(NASD Case #CMS030265)**

**Ryan Beck & Co. (CRD #3248, Livingston, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted individuals to perform duties as registered persons while their registration status with NASD was inactive due to their failure to timely complete the Regulatory Element of NASD's Continuing Education Rule. The findings also stated that the firm failed to promptly display customer limit orders and failed to disclose the markup/markdown charged to the customer in principal transactions. NASD also found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure compliance with SEC Rule 10b-10 (review of confirmations). In addition, NASD determined that the firm's order tickets for equity trades reflected the incorrect time of execution, or failed to record any execution time. **(NASD Case #C9B030083)**

**Shields & Co. (CRD #11053, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to respond timely to NASD requests for information. **(NASD Case #CMR030002)**

**Stone & Youngberg LLC (CRD #795, San Francisco, California)** submitted an Offer of Settlement in which the firm was censured and fined $15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to engage in municipal securities transactions totaling $33,389,407.05, for compensation, during a period in which the individual was deemed inactive for failing to satisfy the Regulatory Element of Continuing Education. **(NASD Case #C01030024)**

**Timber Hill LLC (CRD #33319, Greenwich, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it was a party to a locked or crossed market condition prior to the market opening and received a Trade-or-Move Message in each instance through SelectNet, and, within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move Message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. **(NASD Case #CMS030259)**

## Individuals Barred or Suspended

**Michael Nelson Barnett (CRD #1127188, Registered Supervisor, St. Albans, West Virginia)** submitted an Offer of Settlement in which he was fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Barnett consented to the described sanctions and to the entry of findings that he failed to reasonably and properly supervise an individual so as to detect and prevent violations of NASD rules regarding discretionary power.

Barnett's suspension began December 22, 2003, and concluded at the close of business January 6, 2004. **(NASD Case #C9A030029)**

**Michael Stewart Berardi (CRD #838565, Registered Representative, Lebanon, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Berardi consented to the described sanctions and to the entry of findings that he paid $526,250 to unregistered entities in connection with securities business referrals that he received.

Berardi's suspension began January 5, 2004, and concluded at the close of business January 26, 2004. **(NASD Case #C9B030079)**

**Jay Stuart Berkman (CRD #2308190, Registered Principal, Weston, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Berkman consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C10030108)**

**Larry Joseph Bolden (CRD #2073064, Registered Representative, Austin, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bolden forged the signature of a public customer on letters of authorization to transfer funds to an account he controlled without the customer's authorization, knowledge, or consent. The findings also stated that Bolden transferred at least $23,466 from the customer's account to his own account and used the converted funds to his own use and benefit. NASD also found that Bolden failed to respond to NASD requests for information and documents. **(NASD Case #C06030010)**

**John Paul Borbi (CRD #2574784, Registered Principal, Northville, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Borbi consented to the described sanction and to the entry of findings that he prepared and submitted documents bearing the forged signatures of public customers to effect the transfer of funds in excess of $607,000 from the customers' managed money accounts without their knowledge and consent. The findings also stated that Borbi converted public customer funds by using forged documents to transfer $487,750 from a public customer's managed money account into the credit union account of his family members from which Borbi obtained the funds for his own use or benefit. In addition, NASD found that Borbi misused public customer funds by using forged documents to transfer $99,000 from the managed money accounts of different customers to disguise trading losses in those accounts without their knowledge and consent. Furthermore, NASD found that Borbi failed to timely respond to NASD requests for information. **(NASD Case #C8A030085)**

**Robert Edward Bouch (CRD #2769718, Registered Representative, Factoryville, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Bouch converted $469,396.88 from public customers for his own use and benefit. The findings also stated that Bouch willfully failed to disclose material facts on his Form U4 and failed to respond to NASD requests for information. **(NASD Case #C10030056)**

**Paul Kendall Bouldin (CRD #843667, Registered Representative, Maitland, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $12,400, including disgorgement of $2,400 in commissions received, and suspended from association with any NASD member in any capacity for 120 days. The fine must be paid before Bouldin reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bouldin consented to the described sanctions and to the entry of findings that he purchased $150,000 in mutual funds for a public customer without his authorization, and then entered into an agreement with the customer wherein he agreed to reimburse the customer for any damages resulting from the transactions. The findings also stated that Bouldin failed to disclose to his member firm that he had entered into an agreement until the customer demanded that Bouldin fulfill his obligations.

Bouldin's suspension began December 1, 2003, and will conclude at the close of business March 29, 2004. **(NASD Case #C07030077)**

**Kenneth Arthur Burns (CRD #1609793, Registered Representative, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Burns consented to the described sanction and to the entry of findings that he converted $50,295.03 from a public customer for his own use and benefit. NASD also found that Burns failed to respond to NASD requests for documents and information. **(NASD Case #C10030111)**

**Shellie G. Cohen (CRD #2751854, Registered Representative, Highland Park, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Cohen consented to the described sanctions and to the entry of findings that she affixed the signature of a public customer on a letter addressed to a fund without the customer's knowledge or consent. The findings also stated that the letter instructed the fund to change the broker/dealer for the customer's mutual fund account to Cohen's member firm with Cohen as the registered representative for the account.

Cohen's suspension began January 5, 2004, and will conclude April 4, 2004. **(NASD Case #C8A030083)**

**Calvin Livingston Coolidge, II (CRD #1029033, Registered Supervisor, Milford, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $2,500, suspended from association with any NASD member in any capacity for six months, and ordered to pay $20,384, plus interest, in restitution to a public customer. The fine and restitution must be paid before Coolidge reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Coolidge consented to the described sanctions and to the entry of findings that he recommended and effected securities transactions in the account of a public customer that were unsuitable. The findings also stated that Coolidge recommended and effected various transactions in Class B mutual funds for the customer that were unsuitable because Class A shares should have been recommended, as the customer would have received breakpoints reducing the cost of the Class A front-end sales charges, paid lower ongoing expenses, and avoided contingent deferred sales charges if Class A shares had been recommended and purchased.

Coolidge's suspension began January 5, 2004, and will conclude July 4, 2004. **(NASD Case #C9B030080)**

**Peter N. Dechowitz (CRD #1706074, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Dechowitz reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dechowitz consented to the described sanctions and to the entry of findings that he forged the signatures of public customers on documents in connection with the customers' purchase of insurance policies without the customers' knowledge, authorization, or consent.

Dechowitz' suspension began January 5, 2004, and will conclude April 3, 2004. **(NASD Case #C10030109)**

**Paul Samuel Ehrenstein (CRD #76229, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Ehrenstein consented to the described sanctions and to the entry of findings that he advised his member firm to prepare substitute new account forms for missing account forms requested by NASD during an examination. The findings also stated that the new forms were furnished to NASD without Ehrenstein's participation and without affirmatively indicating

that the forms were not original, the names on the "preparer" signature lines had been added without authorization or consent of those whose names were added, the forms were backdated, and that the firm and its personnel lacked documentary confirmation that the substitute forms contained the same information. NASD also found that Ehrenstein failed to ensure that the firm would advise NASD that the forms were not originals and of the manner in which the forms had been prepared prior to the production of the substitute forms.

Ehrenstein's suspension began January 5, 2004, and will conclude at the close of business January 16, 2004. **(NASD Case #C10030104)**

**Maria Luisa Ellis (CRD #1188525, Registered Representative, Chatham, New Jersey)** submitted an Offer of Settlement in which she was fined $7,500 and suspended from association with any NASD member in any capacity for 45 business days. Without admitting or denying the allegations, Ellis consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information in a timely manner.

Ellis' suspension began January 5, 2004, and will conclude at the close of business March 9, 2004. **(NASD Case #C10030034)**

**Thomas Jayson Feight (CRD #3169520, Registered Representative, Howard Beach, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Feight consented to the described sanction and to the entry of findings that he aggressively solicited his member firm's customers to purchase shares of stock in a company with questionable business operations, virtually no assets, and little or no revenue. The findings also stated that Feight failed to research the company's financial condition and knew virtually nothing about the company. In addition, the findings stated that Feight used high-pressure sales practices; made repeated telephone calls; knowingly and recklessly employed fraudulent misrepresentations, including baseless price predictions and guarantees; and omitted to state material facts about the precarious financial condition of the company to induce customers to purchase shares of the company. NASD also found that Feight's knowing and reckless false claims to customers he solicited included the flatly untrue assertion that respected institutions were investing in the company, that he had attended meetings with bankers who would obtain financing for the company and, that its per-share value would rise to $5.00 in six months and double in a year. Furthermore, NASD found that Feight failed to inform his customers that he knew almost nothing about the company and had no basis for making his strong and repeated recommendations to customers to purchase shares of the company. The findings also stated that Feight admitted in on-the-record testimony that he failed to inform himself, and thus his customers, of the precarious financial condition of the company, including the fact that its most recent SEC filing showed its total cash-on-hand was only $356 and contained a "going concern" clause. **(NASD Case #CMS030261)**

**Dale Evans Frett (CRD #2623236, Registered Representative, Bronx, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $7,500 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Frett reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Frett consented to the described sanctions and to the entry of findings that he effected an unauthorized transaction in the account of a public customer without the customer's prior knowledge, authorization, or consent. The findings also stated that Frett reimbursed the customer approximately $274 to settle the customer's complaint without informing and obtaining authorization from his member firm.

Frett's suspension began December 15, 2003, and will conclude at the close of business January 28, 2004. **(NASD Case #C10030097)**

**Corey Lshon Fuller (CRD #3103436, Registered Representative, Atlanta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fuller consented to the described sanction and to the entry of findings that he converted customer funds given to him for investment purposes to his own use. The findings also stated that Fuller failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #C07030079)**

**John Carroll Gallo (CRD #1892609, Registered Representative, Indialantic, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $10,000, suspended from association with any NASD member in any capacity for 15 days, and ordered to pay disgorgement of $25,122 in commissions in partial restitution to a public customer. Without admitting or denying the allegations, Gallo consented to the described sanctions and to the entry of findings that he recommended to a public customer that it purchase over $2 million in Class B mutual fund shares on the basis that the customer would not pay any up-front sales charges. The findings stated that Gallo's recommendations were unsuitable based on the dollar amount being invested by the customer, as the customer could have invested in Class A shares without paying any up-front sales charges and the Class A shares have lower on-going expenses than Class B shares and no contingent deferred sales charge.

Gallo's suspension began January 5, 2004, and will conclude at the close of business January 19, 2004. **(NASD Case #C07030081)**

**Dean Daniell Giasi (CRD #2573690, Registered Principal, Staten Island, New York) and Emanuele Anthony Scarso (CRD #2080536, Registered Representative, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which Giasi was fined $7,000 and suspended from association with any NASD member in any capacity for 14 business days. Scarso was fined $10,000 and suspended from association with any NASD member in any capacity for two months. Giasi and Scarso were also ordered to pay $3,384, plus interest, in restitution to a public customer and to disgorge $500 in commissions received to NASD, jointly and severally. Without admitting or denying the allegations, Giasi and Scarso consented to the described sanctions and to the entry of findings that they caused to be effected a transaction in the account of a public customer without the customer's prior knowledge, authorization, or consent.

Giasi's suspension began January 5, 2004, and will conclude at the close of business January 23, 2004. Scarso's suspension will begin March 25, 2004, and will conclude at the close of business May 24, 2004. **(NASD Case #C10030100)**

**Orville Eugene Hill (CRD #1046273, Registered Representative, Middleburg, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $7,500 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Hill reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hill consented to the described sanctions and to the entry of findings that he engaged in business activities outside the scope of his employment with his member firm and failed to provide prompt written notice to his member firm.

Hill's suspension began December 1, 2003, and will conclude at the close of business November 30, 2004. **(NASD Case #C07030078)**

**Tommy Lee Huff, Jr. (CRD #1323465, Registered Principal, West Monroe, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for two years and ordered to pay $51,235 in deferred restitution. Satisfactory proof of payment of restitution must be made before Huff reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Huff consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Huff participated in outside business activity, for compensation, without providing prior written notice to his member firm.

Huff's suspension will begin January 20, 2004, and will conclude at the close of business January 19, 2006. **(NASD Case #C05030058)**

**Jeffrey Alan Jones (CRD #2853736, Registered Representative, Lafayette, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $10,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Jones reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Jones participated in outside business activity, for compensation, without providing prior written notice to his member firm.

Jones' suspension will begin January 20, 2004, and will conclude at the close of business July 19, 2004. **(NASD Case #C05030060)**

**Mark Warren Lamb (CRD #1437554, Registered Representative, Woodside, California) and David Scott Cacchione (CRD #1941729, Registered Representative, Woodside, California)** submitted an Offer of Settlement in which Lamb was fined $50,000 and suspended from association with any NASD member in any capacity for 30 days. Cacchione was fined $35,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Lamb and Cacchione consented to the described sanctions and to the entry of findings that they, as agents of their member firm, effected the sale of unregistered securities to public customers while the firm acted as an underwriter. The findings also stated that Lamb received order tickets for the purchase of securities and failed to promptly inform his firm's trading department so that the trades could be reported within 90 seconds of execution as required by NASDAQ Marketplace Rules. NASD also found that Lamb and Cacchione failed to disclose material facts during the offer and sale of stock to public customers, including that the shares were neither registered nor exempt from registration and that an unauthorized third party was involved in the sale and pricing of the stock. In addition, NASD found that Lamb failed to disclose that the prices given to certain customers who purchased the stock were materially different from prices given to other customers who purchased the stock at virtually the same time, and that his firm delayed the inputting and trade reporting of the sales of stock for several hours after customers agreed to purchase the stock.

Lamb's suspension began January 5, 2004, and will conclude at the close of business February 3, 2004. Cacchione's suspension began January 5, 2004, and will conclude at the close of business February 3, 2004. **(NASD Case #CAF020053)**

**Eric Joseph Laucius (CRD #2898681, Registered Principal, Huntington Valley, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Laucius failed to respond to questions during an NASD on-the-record interview. **(NASD Case #C9A030017)**

**Olu T. Lawal (CRD #3143202, Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity with the right to apply for reinstatement after two years. Without admitting or denying the allegations, Lawal consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U4. **(NASD Case #C07030046)**

**Gary Allen Levari, Jr. (CRD #2814326, Registered Representative, Vineland, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Levari consented to the described sanction and to the entry of findings that he effected purchases of securities in his personal bank account and either made the requisite payment by depositing a check drawn on a bank account that did not hold sufficient funds, or made the requisite payment with proceeds from the sale of the securities he purchased. The findings also stated that Levari failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C9A030038)**

**Patrick Michael McGowan (CRD #1196998, Registered Representative, Minnetrista, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before McGowan reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McGowan consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the account of a public customer without the customer's knowledge, authorization, or consent.

McGowan's suspension began January 5, 2004, and will conclude at the close of business February 3, 2004. **(NASD Case #C04030061)**

**Carmen George Paris, Sr. (CRD #2671001, Associated Person, Apopka, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Paris caused his member firm to fail to maintain the minimum required net capital and to notify the SEC and NASD of its net capital deficiencies. In addition, Paris caused his firm to fail to prepare and maintain accurate books and records, including general ledgers and FOCUS reports. The findings also stated that Paris caused his member firm to file FOCUS reports that inaccurately stated the firm's net capital. NASD also found that Paris failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C07030032)**

**Pietro Joseph Passalacqua (CRD #2299676, Registered Principal, Hillsborough, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Passalacqua consented to the described sanctions and to entry of findings that, without authorization from his member firm, he paid a total of $215,000 in commissions to a registered representative based on referred variable annuity transactions.

Passalacqua's suspension began December 18, 2003, and concluded at the close of business January 2, 2004. **(NASD Case #C9B030082)**

**Bryan Edward Pifer (CRD #1916858, Registered Principal, Loveland, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pifer consented to the described sanction and to the entry of findings that he affixed the signature of a public customer on an annuity application, annuity application supplements, and a client benefit summary and disclosure form. The findings also stated that Pifer affixed the signature of a public customer on a check made payable to the customer for $97,772.90 without the customer's knowledge or consent. **(NASD Case #C8B030028)**

**William Poinsette (CRD #2926889, Registered Representative, Pikesville, Maryland)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Poinsette consented to the described sanction and to the entry of findings that he received checks totaling $114,903.14 from a public customer for the purpose of making an investment in a variable life insurance policy. The findings also stated that Poinsette deposited the checks into his personal bank account, applied $104,999.99 of the funds for the investment, kept the remaining $9,903.15 in his personal account, and used the funds for his own purposes. **(NASD Case #C9A030039)**

**Daniel Timothy Pszanka (CRD #2499042, Registered Representative, Denver, Colorado)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Pszanka engaged in private securities

transactions and failed to provide prior written notice to, or receive written permission from, his member firm. The findings also stated that Pszanka engaged in outside business activities and failed to provide his member firm with prompt written notice. NASD also found that Pszanka used manipulative, deceptive, or other fraudulent devices in connection with the purchase of interests in a limited partnership by public customers. In addition, NASD found that Pszanka made material misrepresentations and omissions to public customers that he had invested his own money in the limited partnership when, in fact, he had not, and was skeptical of all claims regarding investment returns. Moreover, NASD found that Pszanka created and provided investment account statements to public customers that contained purported information regarding the amount of their principal investments, the performance of their investments, and their percentage of return on investment but instead negligently misrepresented the truth to the customers. **(NASD Case #C10020090)**

**Wayne Richardson (CRD #2074676, Registered Representative, Smithtown, New York)** submitted an Offer of Settlement in which he was fined $1,500 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Richardson consented to the described sanctions and to the entry of findings that he exercised discretion over the account of a public customer and effected, or caused to be effected, transactions without reasonable grounds for believing that the level of activity represented by such transactions was suitable for the customer based upon the customer's financial circumstances and needs.

Richardson's suspension began January 5, 2004, and will conclude at the close of business January 26, 2004. **(NASD Case #C10030021)**

**Brian James Rogers (CRD #402667, Registered Principal, Randolph, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $20,000 and suspended from association with any NASD member in any principal capacity for 30 days. Without admitting or denying the allegations, Rogers consented to the described sanctions and to the entry of findings that he failed to be aware of the solicitation to purchase shares of stock of a start-up technology company not covered by Rogers' member firm by registered representatives of a branch office of his firm, and failed to take reasonable action to assure that registered representatives had a reasonable basis for recommending the stock. The findings also stated that Rogers failed to enforce the firm's policies regarding the solicitation of securities and failed to take reasonable steps to prevent and detect the falsification of firm records by the registered representatives. NASD also found that Rogers orally delegated supervisory responsibilities over inexperienced registered representatives to one of the registered representatives engaged in the solicitation of the stock, but failed to act reasonably to ensure that the representative was carrying out those delegated responsibilities.

Rogers' suspension will begin January 20, 2004, and will conclude at the close of business February 18, 2004. **(NASD Case #CAF030065)**

**Melvin Rokeach (CRD #4124577, Registered Representative, Demarest, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $7,500 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Rokeach consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

Rokeach's suspension began January 5, 2004, and will conclude July 4, 2004. **(NASD Case #C10030106)**

**Rahman Rose (CRD #4466642, Registered Representative, Central Islip, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rose consented to the described sanction and to entry of findings that he effected, or caused to be effected, excessive transactions in the account of a public customer. NASD found that Rose, directly or indirectly, by the use of the means or instrumentalities of interstate commerce or of the mails, knowingly or recklessly used or employed manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities; and knowingly or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or other fraudulent devices or contrivances. The findings also stated that Rose, while exercising effective control over the account of a public customer, recommended numerous purchases and sales transactions in various securities without having reasonable grounds for believing that the transactions were suitable for the customer in view of the size and frequency of the transactions, the nature of the account, and the customer's financial situation and needs. NASD also found that Rose failed to respond to NASD requests to appear for an on-the-record interview. **(NASD Case #C9B030063)**

**David Keith Rust (CRD #3256546, Registered Representative, Seagoville, Texas)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Rust consented to the described sanction and to the entry of findings that he directed public customers to make withdrawals from their securities accounts in the form of checks totaling $436,000, and instructed the customers to endorse the

checks and give them to him to invest on the customers' behalf. The findings also stated that Rust endorsed the customers' checks, thereby converting the funds to his own use and benefit, without the customers' knowledge or consent. In addition, NASD found that Rust failed to respond to NASD requests for information and documentation. **(NASD Case #C06030023)**

**Stephen Vincent Samo (CRD #2905525, Registered Representative, Coarsegold, California)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Samo consented to the described sanction and to the entry of findings that he participated in private securities transactions for compensation without prior written notification to, and approval from, his member firm. The findings also stated that Samo engaged in outside business activities, for compensation, without providing prompt written notification to his member firm. **(NASD Case #C01030020)**

**John Herman Schmidt (CRD #1456723, Registered Representative, Lawrence, Kansas) and Patsy L. Schmidt (CRD #3223961, Registered Representative, Lawrence, Kansas)** submitted a Letter of Acceptance, Waiver, and Consent in which John Schmidt was barred from association with any NASD member in any capacity and Patsy Schmidt was suspended from association with any NASD member in any capacity for six months. In light of the financial status of the respondents, no monetary sanction has been imposed. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that John Schmidt engaged in private securities transactions without requesting and receiving prior written approval from his member firm. The findings also stated that John and Patsy Schmidt engaged in outside business activities without requesting and receiving prior written approval from their member firms, and that John Schmidt engaged in a securities business without being properly registered with NASD.

Patsy Schmidt's suspension began January 5, 2004, and will conclude July 4, 2004. **(NASD Case #C04030060)**

**Joseph Brian Shevlin, Jr. (CRD #2125060, Registered Representative, Glen Cove, New York)** was barred from association with any NASD member in any capacity and ordered to pay $12,890.62, plus interest, in restitution to public customers. The sanction was based on findings that Shevlin made material misrepresentations and omissions in connection with the purchase and sale of securities, and made baseless predictions about the prices of speculative securities. The findings also stated that Shevlin effected unauthorized transactions in the accounts of public customers. **(NASD Case #C10020075)**

**Ilan Shteinberg (CRD #3208021, Registered Representative, Marlboro, New Jersey)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Shteinberg consented to the described sanction and to the entry of findings that he failed to respond completely to NASD requests for information during an on-the-record interview. **(NASD Case #CMS030034)**

**Josana Siegel (CRD #1242343, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Siegel consented to the described sanction and to the entry of findings that she effected securities transactions for the account of a public customer without the prior authorization or consent of the customer. NASD also found that Siegel failed to respond to NASD requests to appear to testify. **(NASD Case #C9B030084)**

**Allen K. Sihatrai (CRD #4547044, Associated Person, Shreveport, Louisiana)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Sihatrai failed to respond to NASD requests for information. The findings also stated that Sihatrai failed to disclose a material fact on his Form U4. **(NASD Case #C05030030)**

**Hin Chun Tang (CRD #4613667, Registered Representative, Flushing, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Tang reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Tang consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

Tang's suspension began January 5, 2004, and will conclude at the close of business January 4, 2005. (**NASD Case #C10030105)**

**Robert Greggory Templeton (CRD #2630728, Registered Representative, Neeses, South Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for 120 days. Without admitting or denying the allegations, Templeton consented to the described sanctions and to the entry of findings that, in connection with the sale of a variable annuity, he assisted a client in the completion of an application for the annuity that greatly overstated the client's net worth, and, with full knowledge of the inaccurate information on the application, submitted it to his member firm for processing.

Templeton's suspension began January 5, 2004, and will conclude at the close of business May 3, 2004. **(NASD Case #C07030083)**

**Thomas Harris Thorp (CRD #2745965, Registered Representative, Peoria, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Thorp failed to respond to NASD requests for information. The findings also stated that Thorp intentionally and/or recklessly induced public customers to invest in a scheme that had no legitimate investment purpose. In addition, the findings stated that Thorp failed to apply a public customer's funds as directed. Furthermore, the findings stated that Thorp participated in private securities transactions and failed to provide prior notice to his member firm. **(NASD Case #C8A030043)**

**Rafael Villard (CRD #1929937, Associated Person, Roselle, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on allegations that Villard failed to respond to NASD requests for information. The findings also stated that Villard failed to disclose information on his Form U4. **(NASD Case #C9B030029)**

**Heather Jean West (CRD #4534939, Registered Representative, Newark, Delaware)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $5,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, West consented to the described sanctions and to the entry of findings that she willfully misrepresented a material fact on her Form U4.

West's suspension will begin January 20, 2004, and will conclude at the close of business January 19, 2005. **(NASD Case #C8A030088)**

**Monica Doyle Woolard (CRD #3092159, Registered Representative, Joliet, Illinois)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Woolard wrote checks payable to herself from the accounts of her employers and used the funds without their knowledge or consent. The findings also stated that Woolard failed to respond to NASD requests for information. **(NASD Case #C8A030044)**

**Victor O. Zevallos (CRD #4079033, Registered Representative, Maynard, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zevallos consented to the described sanction and to the entry of findings that, without the knowledge or consent of his member firm, Zevallos created fictitious documents using the firm's letterhead that he sent to a public customer that misrepresented that he had made a partial repayment of a personal loan from the customer by depositing funds in the customer's brokerage account at his member firm when, in fact, he had made no such payments. The findings also stated that the documents were undated and falsely represented that funds were transferred into or credited to the customer's account. **(NASD Case #C11030040)**

## Decision Issued

The following decision has been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of December 5, 2003. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notice to Members*.

**VMR Capital Markets US (CRD #38755, Beverly Hills, California) and Todd Michael Ficeto (CRD #1927084, Registered Principal, Malibu, California)** were fined $25,000, jointly and severally, and Ficeto was suspended from association with any NASD member in any supervisory capacity for 15 business days. The sanctions were based on findings that the firm, acting through Ficeto, failed to take appropriate action to supervise a new employee who engaged in excessive and unsuitable trading in the accounts of public customers.

Respondents have appealed this action to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C02020055)**

## Complaints Filed

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

**Richard Juan Adams (CRD #2896069, Registered Representative, Houston, Texas)** was named as a respondent in an NASD complaint alleging that he received $2,000 from a public customer for the purpose of opening an individual retirement account (IRA), but the account was never opened and the $2,000 was never invested in an IRA. The complaint also alleges that Adams failed to respond to NASD requests for information. **(NASD Case #C06030025)**

**Christopher John Borgo (CRD #2377439, Registered Principal, Boca Raton, Florida)** was named as a respondent in an NASD complaint alleging that he recommended to public customers the purchase of a common stock and, based on his recommendation, customers agreed to invest in the stock. The complaint also alleges that Borgo conducted no independent investigation into the merits of the stock prior to recommending the stock to his customers, and was unaware of the materially adverse information concerning the stock that Borgo either intentionally or recklessly failed to disclose to customers in connection with his recommendation that they purchase the stock. In addition, the complaint alleges that Borgo, by use of the means of instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, employed a device, scheme, or artifice to defraud; omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or a course of business which operated, or could operate, as a fraud or deceit upon persons in connection with the recommendations he made to customers to purchase a stock. **(NASD Case #C3A030048)**

**Michael Lewis Boyd (CRD #1504646, Registered Representative, Bayville, New York)** was named as a respondent in an NASD complaint alleging that he received $263,025 from public customers for investment purposes and converted the funds to his own use or benefit or for the benefit or use of a third party. The complaint also alleges that Boyd converted funds by submitting forms to his member firm on behalf of a public customer, without the customer's authorization, and by requesting that the firm wire $4,500 from one of the customer's accounts to a bank account owned or controlled by Boyd, causing his firm to wire the funds to Boyd's account without the customer's authority or knowledge. The complaint further alleges that Boyd failed to respond to NASD requests for information and documents. **(NASD Case #C10030098)**

**Xi Chen (CRD #2961748, Registered Representative, Williamsville, New York)** was named as a respondent in an NASD complaint alleging that, without the knowledge or consent of public customers, he signed the signatures of the customers to documents directing the transfer of funds or securities from their accounts into the accounts of Chen's relatives, and transferred funds or securities from the customers' accounts into the accounts of Chen's relatives. The complaint also alleges that Chen failed to respond to NASD requests for documents and information. **(NASD Case #C8B030027)**

**Eloy Gomez (CRD #4393584, Associated Person, Mission, Texas)** was named as a respondent in an NASD complaint alleging that he received $158 from a public customer for a premium payment for the customer's homeowner's insurance policy but failed to apply the funds in the manner intended by the customer, resulting in the cancellation of the policy for non-payment of the premium. The complaint also alleges that Gomez received checks totaling $1,414 from public customers made payable to his member firm for premium payments of customers' insurance, and, without their authorization, knowledge, or consent, he inserted his name as payee on the checks, endorsed them, and cashed the checks. The complaint further alleges that Gomez applied $600 to an insurance policy, thereby converting the remainder of the funds to his own use and benefit. The complaint also alleges that Gomez failed to respond to NASD requests for information. **(NASD Case #C06030028)**

**Kevin Richard Johnson (CRD #1369794, Registered Principal, Princeton, New Jersey) and Ryan Goolcharan (CRD #288404, Registered Representative, South Brunswick, New Jersey)** were named as respondents in an NASD complaint alleging that they failed to disclose material information regarding a security to public customers, and acted intentionally or, at a minimum, recklessly in making material misrepresentations and omitting material facts. The complaint also alleges that Johnson and Goolcharan recommended that public customers purchase shares in the security without having a reasonable basis for recommending the stock to any customers, thus recommending unsuitable securities to public customers. In addition, the complaint alleges that Johnson and Goolcharan solicited public customers to buy a stock not covered by their member firm's research analysts or otherwise excepted from the approval requirement requiring due diligence by research analysts. **(NASD Case #CAF030064)**

**Ram Kapara (CRD #2589146, Registered Representative, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that he effected private securities transactions without providing prior written notice to his member firm. The complaint also alleges that Kapara provided NASD with a copy of his purported resignation letter from his member firm that was false and misleading because it contained a false date of resignation. In addition, the complaint alleges that, in connection with investments in shares of a security, Kapara misrepresented the issuer's type of business and affiliation to public customers. The complaint further alleges that Kapara exercised discretion in the account of a public customer without the customer's prior written authorization and his firm's written acceptance of the account as discretionary. Moreover, the complaint alleges that Kapara failed to respond to NASD requests for information and documents and to appear for an on-the-record interview. **(NASD Case #C10030110)**

**Barry Alan Kaufman (CRD #2774898, Registered Representative, Boca Raton, Florida)** was named as a respondent in an NASD complaint alleging that he effected, or caused to be effected, purchases in the accounts of public customers without their knowledge or authorization. The complaint also alleges that Kaufman failed to execute customer

orders, thereby failing to uphold his obligation to public customers to ensure that trades were effected in accordance with customer instructions. **(NASD Case #CAF030061)**

**Phillip Mark McPhail (CRD #2789154, Registered Representative, Minneapolis, Minnesota)** was named as a respondent in an NASD complaint alleging that, in his capacity of treasurer of a non-profit organization, McPhail wrote checks, withdrew cash, and transacted debit charges from the organization's account without its authorization, and converted and/or misused $4,533.65 of the customer's funds intended for investment purposes, without the knowledge, authorization, or consent of the customer. The complaint also alleges that McPhail failed to respond to NASD requests for information. **(NASD Case #C04030058)**

**John Occhiogrosso (CRD #2192496, Registered Principal, Palm City, Florida)** was named as a respondent in an NASD complaint alleging that he received $48,500 from a public customer for investment purposes, failed to provide the customer with any account statements or confirmations relating to the purported investments, and converted the funds received from the public customer to his own use without authorization from the customer. In addition, the complaint alleges that Occhiogrosso failed to respond to NASD requests for information. **(NASD Case #C07030084)**

**Louis Enrigve Rivadeneira (CRD #2826609, Registered Representative, New York, New York)** was named as a respondent in an NASD complaint alleging that he converted at least $56,000 in funds from public customers. The complaint also alleges that Rivadeneira forged, or caused to be forged, the signatures of public customers on a firm individual retirement account distribution request form and a firm master flexible payment variable annuity surrender form. In addition, the complaint alleges that Rivadeneira failed to respond to NASD requests for information and documents and to appear for an on-the-record interview. **(NASD Case #C10030107)**

**Jeffrey Michael Sullivan (CRD #2338939, Registered Principal, Houston, Texas)** was named as a respondent in an NASD complaint alleging that he caused a public customer's annuity to be surrendered and another annuity to be purchased in its place, receiving $11,962.22 in commissions without the customer's prior knowledge or consent, failed to complete the required forms, and failed to obtain the approval from his supervisor in connection with the transactions. The complaint also alleges that Sullivan forged the signature of a public customer on several forms needed to process the transactions without the authorization of the customer. In addition, the complaint alleges that Sullivan failed to respond to NASD requests for information and documentation. **(NASD Case #C06030029)**

**Trautman Wasserman and Company, Inc. (CRD #33007, New York, New York) and Gregory Owen Trautman (CRD #1837389, Registered Principal, New York, New York)** were named as respondents in an NASD complaint alleging that Trautman, acting through the firm, bid for or purchased the common stock of a covered security during the applicable restricted period by inserting bid and offer quotations in The Nasdaq Stock Market. The complaint also alleges that Trautman, acting on behalf of the firm, either intentionally or recklessly, failed to disclose or failed to take any steps to cause to be disclosed to purchasing customers the special sales credit offered to the firm's registered representatives, depriving the firm's customers of the knowledge that the registered representative might be recommending the stock based upon the registered representative's own financial interest rather than the investment value of the stock.

In addition, the complaint alleges that the firm, acting through Trautman, by use of the means or instrumentalities of interstate commerce, the mails, or of any facility of any national securities exchange, employed a device, scheme, or artifice to defraud; omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or a course of business that operated, or could operate, as a fraud or deceit upon persons in connection with the distribution of a security. Moreover, the complaint alleges that the firm failed to report the sale and purchase of a covered security and inaccurately reported a sale of shares of stock in aggregated transaction report. Furthermore, the complaint alleges that the firm reported the inaccurate execution of stock purchases to NASDAQ and effected transactions with customers in common stock that did not qualify for a transactional exemption from the SEC's Penny Stock Rules. The complaint also alleges that the firm's written supervisory procedures were not reasonably designed to achieve compliance with Regulation M of the Securities Exchange Act of 1934. **(NASD Case #C3A030049)**

**Robert Young (CRD #2702774, Registered Representative, Houston, Texas)** was named as a respondent in an NASD complaint alleging that he exercised discretionary authority in transactions in the accounts of public customers without having obtained prior written acceptance of the accounts as discretionary by his member firm and in disregard of the firm's denial of his request for acceptance of one of the accounts as discretionary. The complaint also alleges that Young failed to respond to NASD requests for information. **(NASD Case #C05030059)**

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

Blackwood Securities, LLC
New York, New York
(November 10, 2003)

Institutional Equity Corporation
(f/k/a Redstone Securities, Inc.)
Dallas, Texas
(November 10, 2003)

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

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

Hafen, Roy
Las Vegas, Nevada
(November 24, 2003)

Liao, Lewis
Rancho Palos Verdes, California
(November 13, 2003)

Lombardi, Ralph M.
Marmora, New Jersey
(November 10, 2003)

Lou, Albert
Monterey Park, California
(November 13, 2003)

Luetje, Kevin M.
Sarasota, Florida
(November 10, 2003)

Micciche, Anthony V.
Tampa, Florida
(November 17, 2003)

Wise, Stanley M.
Newport Beach, Florida
(November 17, 2003)

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

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

Hall, Frank D.
Houston, Texas
(November 10, 2003)

Lusk, Ron Alan
Bend, Oregon
(November 25, 2003)

Quattrochi, Joseph C.
Staten Island, New York
(November 12, 2003)

Williams, Trenea Y.
Bakersfield, California
(November 10, 2003)

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

Henriquez, Ian-Max
Los Angeles, California
(November 10, 2003)

Shuey, III, Robert A.
Dallas, Texas
(November 10, 2003)

Thompson, II, Dennis L.
Lafayette, Louisiana
(November 10, 2003)

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

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

Drohan, Vincent R.
Massapequa, New York
(November 14, 2003)

Figliozzi, Robert J.
Ridgewood, New Jersey
(November 14, 2003)

Heaphy, Jr., Thomas Joseph
Palm Beach, Florida
(November 21, 2003 – December 3, 2003)

## NASD Sanctions Metropolitan Investment Securities For Abusive Sales Practices and Supervisory Violations; Firm Ordered to Pay Fines and Restitution in Excess of $4 Million and to Fund Special Escrow Account to Pay Additional Investor Claims

NASD announced that it has sanctioned Metropolitan Investment Securities, Inc., of Spokane, WA, for engaging in abusive sales practices and having inadequate supervisory procedures. Metropolitan was censured, fined $500,000, ordered to make restitution totaling more than $2.8 million to investors, and ordered to maintain a special escrow account for Metropolitan investors' claims at a level of $1 million for a five-year period. Metropolitan was also required to revise its supervisory procedures to prevent recurrence of the sales practice abuses.

NASD found that, from January 2001 through March 2003, Metropolitan engaged in fraudulent and unethical sales practices in connection with the sale of debentures, investment certificates, and preferred stock issued by two affiliated companies, Metropolitan Mortgage & Securities Co., Inc., and Summit Securities, Inc. Metropolitan and the affiliated companies were controlled by a single individual and shared the same offices in Spokane. Metropolitan raised millions of dollars for these affiliated companies through representatives who made unfair and unbalanced sales presentations to investors. Its registered representatives downplayed important investment risk factors, including the risk of loss due to the companies' insufficient earnings, subordination of the securities to other obligations, and absence of an established market for the preferred stock. The failure to fully explain these risk factors to investors gave the false impression that the investments were safe.

Many Metropolitan customers with very conservative investment objectives or a low risk tolerance invested a significant percentage of their net worth in the securities of the affiliated companies. Metropolitan representatives dealt fraudulently and unfairly with these customers in that the representatives had no reasonable basis for recommending the securities to them. These and other investors were retired or approaching retirement. As to other investors who had a moderate risk tolerance, the representatives made unsuitable recommendations to them in light of these investors' financial situation, investment objectives, and needs.

To facilitate sales of the investments, Metropolitan representatives also employed misleading advertising and sales literature that misrepresented or omitted the risks associated with the investments.

Metropolitan also had an inadequate supervisory system that failed to prevent and detect this pattern of deceptive sales practices. The firm did not have sufficient resources to establish an effective compliance program and relied on various departments of the affiliated companies for many traditional broker/dealer operations. Metropolitan management was often unable or unwilling to take effective supervisory action in the face of red flags indicating abusive sales practices by the registered representatives. In settling this matter, Metropolitan neither admitted nor denied the allegations, but consented to the entry of findings. NASD's investigation is ongoing and may result in the filing of additional disciplinary actions.

Investors can obtain more information and the disciplinary record of any NASD-registered broker or brokerage firm by calling NASD's BrokerCheck. NASD makes available BrokerCheck at no charge to the public. In 2002, members of the public used this service to conduct more than 2.5 million searches for existing brokers or firms and requested almost 200,000 reports in cases where disclosable information existed on a broker or firm. Investors can link directly to the program by going online to *www.nasdbrokercheck.com*. Investors can also continue to access this service by calling 1-800-289-9999.

## NASD Fines and Suspends Banc of America Securities Analyst for Overstated Research Reports and Providing Advance Notice of Price Targets and Ratings; NASD Also Censures and Fines Three Other Brokerage Firms for Issuing Misleading Research Reports

NASD announced that it fined and suspended Andrew Hamerling, a former research analyst at Banc of America Securities LLC (BAS), for issuing research reports with ratings, target prices, and substantive discussions that were contrary to his personal opinions. NASD found that Hamerling issued six research reports regarding four issuers—SBC Communications, Inc., Williams Communications Group, TyCom, Ltd., and Qwest Communications International Inc.—that violated NASD rules.

Before issuing a September 2001 SBC report, Hamerling analyzed the company's earnings per share, concluded that the earnings did not adequately reflect the company's operating results, and prepared a draft report with that analysis. NASD found that Hamerling did not publish this negative research report because he was concerned that SBC would not attend an upcoming Banc of America Securities conference and that SBC would deny him access to information in the future. NASD found that the published September report failed to disclose negative facts about the company as well as Hamerling's actual views in violation of NASD rules.

NASD also found that Hamerling published buy ratings for SBC with a $51 target price, while he believed the stock price would decrease and, in e-mails, recommended that it be shorted. For example, Hamerling responded to a hedge fund manager's inquiry, by stating:

- …short SBC. May sound a bit crazy, but it [SBC] has nothing fundamentally sound going for it…"

NASD also determined that Hamerling gave advance notice of his stock ratings, price targets, and substantive research to representatives of issuers that he followed. This practice furnished potentially market-sensitive information prior to public release and violated NASD's just and equitable principles rule as well as BAS' own internal policies.

NASD imposed a 9-month suspension and a $125,000 fine payable upon his reassociation with any NASD-registered firm. Details of the violations found relating to research on Williams Communications Group, TyCom, Ltd., and Qwest Communications International Inc. can be found in the Hamerling settlement document. NASD's investigation of research and supervision issues at Banc of America Securities is continuing.

NASD also announced that it took action against several other firms and individuals for violations involving misleading research reports and press releases:

- NASD censured and fined Axiom Capital Management, Inc., of New York and three employees an aggregate of $85,000 for publishing misleading research reports in 2001 and 2002 on Sharp Technology, Inc., American Bio Medica, Corp., and MegaPro Tools, Inc. NASD found that these research reports contained misrepresentations and omissions of material fact, exaggerated and unwarranted statements, and opinions for which there was no reasonable basis. Axiom published research reports on Sharp and American Bio Medica and failed to disclose that independent auditors had issued "going concern" opinions about the companies. NASD censured and fined the firm $50,000. NASD also fined and suspended Jeffrey S. Goldberg and David L. Jordon for their roles in preparing the reports and fines and suspended Mark D. Martino from acting in a principal capacity for failing to reasonably supervise these activities.

- NASD censured and fined Banyan Capital Markets, LLC, of Boca Raton, Florida; its owner and President, Barry F. Goldberg; and a research analyst, Louis M. Fischler, an aggregate of $60,000 in connection with the publication of a research report on Neptune Society, Inc. NASD found that the Neptune research report, published by the firm in June 2001, was unbalanced and contained omissions of material fact. The research report projected that revenues would increase from $12 million in 2000 to more than $56 million in 2005. NASD found that the report failed to disclose the company was under a going concern qualification from its auditors and that the company had experienced a net loss in 2000 of over $8 million. The firm was censured and fined $10,000. Barry F. Goldberg was suspended and fined an additional $20,000, and Fischler, who authored the report, was suspended for 45 days and fined $30,000.

- Tejas Securities Group, Inc., of Austin, Texas, was censured and fined $35,000 for publishing misleading statements on its Web Site and posting press releases and summaries of research reports that did not disclose risks associated with the securities discussed. Tejas was also ordered to pre-file with NASD's Advertising Regulation Department, for a period of six months, all revisions to the Web Site. NASD also suspended and fined Arnold Durant, the firm's Compliance Director, for failing to reasonably supervise the firm's advertising practices.

All four cases were settled, and the respondents did not admit nor deny the allegations, but consented to the entry of findings by NASD.

"These enforcement actions are part of NASD's continuing efforts to police research analyst conflicts of interest in the wake of the global settlement reached with 10 firms in April of this year," said Mary L. Schapiro, Vice Chairman of NASD.

### NASD Charges Former U.S. Bancorp Piper Jaffray Representative with Sales Practice Violations and Failure to Cooperate in Investigation

NASD announced an enforcement action against Thomas J. O'Neill, a former U.S. Bancorp Piper Jaffray registered representative in its Butte, MT, office, charging various sales practice violations in connection with unsuitable and excessive trading in numerous customer accounts and the improper use of discretion in those accounts.

According to the complaint, O'Neill exercised improper discretion in connection with hundreds of transactions in customers' accounts over a four-year period. These transactions, NASD charged, were excessive in frequency and resulted in customers being put in overconcentrations of volatile high-risk stocks.

NASD rules require that a broker must have reasonable grounds for believing that his recommendations are suitable for a customer based upon his knowledge of the customer's financial situation and needs.

O'Neill refused to cooperate with the NASD investigation, which commenced in April 2001 at the time of his termination from Piper Jaffray. As a result, O'Neill was also charged with failing to appear for investigative testimony before NASD. The expected testimony was to cover a number of issues relating to his communications, recommendations, and interactions with specific Piper Jaffray customers. NASD's investigation of supervision issues is continuing.

Under NASD rules, an individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible sanctions include a fine, order to pay restitution, censure, suspension, or bar from the securities industry.

NASD

NASD Member Benefits -
Helping you save on everyday business needs.

# Can your network play well with others?

**AT&T MANAGED SERVICES.** Can your network keep up with your changing business requirements? Can it do as you say, when you say? AT&T helps NASD® members of all sizes stay on top of their game with a complete portfolio of managed solutions – from networking and security, to business continuity and beyond. Our team will design, deploy, manage and evolve your network, so your team can stay focused on winning new customers. And when your business needs change, we can help make sure your network adapts – while minimizing new technology investments. You can even choose to put selected AT&T services together into one easy bundle, with one point of contact and a single monthly bill. Can your network do this? **For one that can, just call 1 800 326-6720.**

AT&T
The world's networking company℠

att.com/nasd

Ask about our special benefits for NASD members. NASD is a registered trademark of the National Association of Securities Dealers, Inc. ©2004 AT&T.

2004 NASD

# Spring Securities Conference

Tuesday, May 11 – Thursday, May 13

## SAVE THE DATES!

Join us in Baltimore, Maryland, for the 2004 NASD Spring Securities Conference.

**MAY 11** **Two Pre-Conference Events:**
NASD Exam Process and Priorities
Avoiding Pitfalls in Registration and Licensing

**MAY 12-13** **Spring Securities Conference**

- Keynote Speakers: **SEC Chairman William Donaldson** and **U.S. Senator Paul Sarbanes**

Self-compliance is critical to the operation of fair markets and to rebuilding and maintaining investor confidence. NASD's annual securities conferences bring you together with your peers, regulators, and industry leaders to explore issues that will help your firm thrive and help the industry as a whole meet the needs of today's investors.

## Other conference highlights include:

- New Regulatory and Compliance Technology Track Sessions
- Mutual Funds General Session Panel on May 12
- Dozen Workshops on Other Timely Topics
- Three Days of Opportunities to Hear from and Speak with NASD Senior Staff and Other Industry Experts

**CLE and CPE Credits:** Both CLE and CPE credit are available for the 2004 NASD Spring Securities Conference. Please indicate on the registration form if you wish to receive CLE and/or CPE credit.

Watch your mail and our Web site for complete conference information and updates.

Go to *www.nasd.com*—**now** to register online.
Register by April 12 and take advantage of special early-bird discounted rates.

**APRIL 12**
Hotel Cut-Off
Early-Bird Registration Cut-Off

**HOTEL**
Baltimore Marriott Waterfront Hotel
Baltimore, Maryland