



# Notices to Members

## Notices

<b>02-80</b>	Development Regarding Treasury Information Requests Under Section 314 of the PATRIOT Act	873
<b>02-81</b>	NASD Reduces Certain TRACE Fees for the 4th Quarter of 2002. The fee changes are effective as of October 1, 2002	877
<b>02-82</b>	Frequently Asked Questions Relating to Trading Halts	883
<b>02-83</b>	NASD to Deduct Unpaid Mediation Filing Fees from CRD Accounts	889
<b>02-84</b>	2003 Trade Date—Settlement Date Schedule	891
	<b>Disciplinary Actions</b>	
	Reported for December	899
	<b>For Your Information</b>	915
	<b>Special Notice to Members</b>	
<b>02-85</b>	NASD Requires Immediate Member Firm Action Regarding Mutual Fund Purchases and Breakpoint Schedules	927

© 2002. NASD. All rights reserved.

*NASD Notices to Members* is published monthly by NASD Corporate Communications, Rosa A. Maymi, Editor, NASD Communication Services, 1735 K Street, NW, Washington, DC 20006-1500, (202) 728-8981. 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](http://www.nasd.com).

# Notice to Members

DECEMBER 2002

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Senior Management

## KEY TOPICS

Money Laundering  
Compliance Programs

## INFORMATIONAL

### USA PATRIOT Act

Development Regarding Treasury Information Requests Under Section 314 of the PATRIOT Act

#### Executive Summary

On November 19, 2002, the Department of the Treasury and its bureau the Financial Crimes Enforcement Network (FinCEN) advised associations representing major financial institutions of a brief moratorium on both new information requests and compliance with current information requests that have been recently issued under Section 314 of the USA PATRIOT Act of 2001. On November 26, 2002, the federal bank regulatory agencies issued a Joint Agency Notice (Notice) that addresses Section 314.<sup>1</sup>

#### Questions/Further Information

Questions regarding this *Notice to Members* may be directed to Emily Gordy, Department of Member Regulation, NASD Regulatory Policy and Oversight, at (202) 728-8070; or Nancy Libin, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8835.

#### Discussion

##### Background

The USA PATRIOT Act of 2001, which was signed into law on October 26, 2001, recognizes that law enforcement must be able to communicate quickly with financial institutions when requesting information regarding those suspected of engaging in money laundering or terrorist financing activities.

---

Section 314 of the PATRIOT Act authorizes law enforcement to establish a mechanism to communicate with financial institutions to request information about suspected money laundering and terrorist financing. Section 314 also allows financial institutions to share information among themselves regarding these activities. On September 26, 2002, the final rule implementing Section 314 became effective and is now part of the Treasury Department's Bank Secrecy Act regulations.<sup>2</sup> Among other things, the final rule established a process through which law enforcement can communicate with financial institutions, including broker/dealers, in order to request information regarding those suspected of engaging in money laundering or terrorist activities so that any accounts and transactions involving these individuals or entities can be promptly located. On November 4, 2002, FinCEN began issuing information requests pursuant to this new authority.

### Temporary Moratorium on Information Requests<sup>3</sup>

Since FinCEN began issuing these information requests (as described more fully in the bank regulators' Notice), some financial institutions have advised their regulators and FinCEN of a number of logistical issues and questions regarding compliance with the requests. In an effort to respond to and resolve these issues and concerns and to ensure that the most effective communication systems are in place between the government and the financial institutions, FinCEN has issued a brief moratorium on new information requests and on responding to prior

requests. NASD understands that during the moratorium, FinCEN, in consultation with the federal financial regulators, will develop new guidance concerning future requests. Firms will be advised of both the lifting of the brief moratorium and the new guidance regarding the Section 314 information request process. Firms should monitor the Treasury and FinCEN Web Sites for this guidance.

FinCEN has advised the federal financial regulators that, in the event of a threat to national security or other emergency, it reserves the right to take necessary steps, including immediate reinstatement of the Section 314 information request process.

### Anti-Money Laundering Compliance Officer Contact Information

Up-to-date contact information is important to ensure that the information requests made on behalf of law enforcement agencies by FinCEN reach relevant financial institutions.

In *Notice to Members 02-78*, NASD notified its members that, in order to facilitate Treasury's efforts to collect the anti-money laundering (AML) contact information that Section 314 requires, NASD had adopted an amendment to Rule 3011, requiring each member firm to provide to NASD contact information for the individual or individuals responsible for implementing the day-to-day operations and internal controls of the member's anti-money laundering program.<sup>4</sup> The rule was effective immediately upon filing with the Securities and Exchange Commission on

---

October 26, 2002, and will become operative on December 31, 2002. Accordingly, by December 31, 2002, firms are required to provide NASD with the following information: name, title, mailing address, e-mail address, telephone number, and facsimile number of the contact person.<sup>5</sup> Members are also required to notify NASD promptly of any changes to the contact information.

It is important that members firms meet their obligations under Rule 3011, as amended, and provide accurate and complete contact information for their AML compliance officer. It is also important that when that information changes and becomes inaccurate or incomplete, the firm provides updated information to NASD. Compliance with Rule 3011, as amended, will ensure that FinCEN has accurate and complete contact information to effectively communicate with broker/dealers in the future.

## Endnotes

- 1 Joint Agency Notice: Treasury Issues Moratorium on Section 314(a) Information Requests (November 26, 2002).
- 2 31 C.F.R. Part 103.
- 3 After the September 11, 2001 terrorist attacks, the Federal Bureau of Investigation (FBI) and other law enforcement agencies established a list of individuals and entities about whom information was sought from financial institutions regarding transactions or relationships with the named entities or individuals. The list was designated as the "Control List." SEC Release 2001-115. Information requests thus far have been disseminated to financial institutions that have been designated to receive the "Control List." FinCEN has also advised the federal financial regulators that the FBI will discontinue use of the "Control List" as a means of communicating information requests and will instead rely on the Section 314(a) process in the future.
- 4 *Notice to Members 02-78* (November 2002).
- 5 While the AML compliance officer is not required to be a registered person as a result of serving that function, NASD anticipates that most AML compliance officers will be registered persons. Whether or not an AML compliance officer is registered with, or an employee of, the firm, an AML compliance officer is an associated person of the firm.

© 2002. 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

DECEMBER 2002

## SUGGESTED ROUTING

Compliance  
Legal  
Operations  
Senior Management

## KEY TOPICS

Rule 7010(k)  
TRACE Fees  
Rule 6200 Series

## INFORMATIONAL

### TRACE Fees

NASD Reduces Certain TRACE Fees for the 4th Quarter of 2002. The fee changes are effective as of October 1, 2002.<sup>1</sup>

### Executive Summary

On November 15, 2002, NASD submitted a rule filing (SR-NASD-2002-167) to the Securities and Exchange Commission (SEC) for immediate effectiveness to amend Rule 7010(k), reducing the Web Browser Access Fee, Cancel or Correct Fee, and "As of" Trade Late Fee for the TRACE system during the 4th quarter of 2002. The fee changes are effective as of October 1, 2002.

### Questions/Further Information

Questions concerning this *Notice* may be directed to Kosha K. Dalal, Assistant General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-6903; or Justin Tubiolo, Vice President, Regulatory Services and Operations, at (212) 858-4419.

### Discussion

On July 1, 2002, the Trade Reporting and Compliance Engine (TRACE) became effective. On June 28, 2002, the Commission approved proposed NASD fees relating to the operation of the TRACE system (Rule 7010(k)) on a pilot basis for a six-month period expiring on December 28, 2002.<sup>2</sup> As part of that rule filing (Amendment No. 3 to SR-NASD-2002-63), NASD committed to review and reassess the proposed TRACE fees as soon as practicable and within six months after the effective date of TRACE, based on such factors as actual volume, usage, costs, and revenues.

---

Based on an initial review of the TRACE fees, and input from member firms, on November 15, 2002, NASD submitted to the SEC for immediate effectiveness a rule change to reduce certain TRACE fees for the 4th quarter of 2002. The SEC published the rule filing in the *Federal Register* on December 3, 2002. The fee reductions are effective as of October 1, 2002.

The adjustments to the TRACE fee structure are:

**Web Browser Access Fee.** The current Web Browser Access Fee is \$85 per month for the first user ID; \$75 per month for the second through ninth user ID; and \$70 per month for the second through ten or more user ID, if the member registers for ten or more user IDs. For the period commencing October 1, 2002 and ending December 31, 2002, for those firms that report less than 25 transactions per month, the Web Browser Access Fee has been reduced to \$25 per month, per user ID.

**Cancel or Correct Fee.** The current Cancel or Correct Fee is \$3.00 for each canceled or corrected transaction reported. For the month of October 2002, the Cancel or Correct Fee has been reduced to \$1.50 for each canceled or corrected transaction reported. For the month of November 2002, the Cancel or Correct Fee has been reduced to \$2.25 for each canceled or corrected transaction reported. For the month of December 2002, the Cancel or Correct Fee will return to \$3.00 for each cancelled or corrected transaction reported.

**"As of" Trade Late Fee.** The current "As of" Trade Late Fee is \$3.00 for each trade that is not timely reported. For the month of October 2002, the "As of" Trade Late Fee has been reduced to \$1.50 for each such transaction reported. For the month of November 2002, the "As of" Trade Late Fee has been reduced to \$2.25 for each such transaction reported.

NASD believes that these fee adjustments will alleviate some of the immediate burden on small firms resulting from TRACE reporting requirements and grant all firms additional time to adjust to the Cancel or Correct Fee and the "As of" Trade Late Fee.

NASD is in the process of reviewing the entire TRACE fee structure and expects to submit additional proposed amendments to TRACE fees to the SEC prior to the December 28, 2002 expiration of the pilot program. Future fee adjustments will be announced in *Notices to Members*.

## Endnotes

- 1 See SR-NASD-2002-167 (November 15, 2002), Exchange Act Release No. 46893, 67 FR 232 (December 3, 2002).
- 2 The Commission approved Rule 7010(k) relating to TRACE fees on June 28, 2002 on a six-month pilot basis. See SEC Approval Order File No. SR-NASD-2002-63, Securities Exchange Act Release No. 46145.

© 2002. 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.

### Proposed New Text of Rule 7010(k) – Trade Reporting and Compliance Engine (TRACE)

#### Rule 7010(k) Trade Reporting and Compliance Engine (TRACE)

(Rule 7010(k) shall expire on December 28, 2002, unless amended, extended, or permanently adopted by NASD pursuant to SEC approval at or before such date).

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
Web Browser Access: \$85/month for 1 user ID; \$75/month for 2-9 user IDs; \$70/month for 2-10+ user IDs  <u>If less than 25 trades per month, in October, November, or December 2002 – \$25/month per user ID</u>	Trades up to and including \$200,000 par value – \$0.50/trade;  Trades between \$201,000 and \$999,999 par value – \$0.0025 times the number of bonds traded/trade;  Trades of \$1,000,000 par value or more – \$2.50/trade	BTDS Professional Display – \$60/month per terminal
CTCI – \$25/month/line	Cancel/Correct – \$3/trade <u>For October 2002 – \$1.50/trade</u> <u>For November 2002 – \$2.25/trade</u>	BTDS Internal Usage Authorization – \$500/month per organization
Third Party – \$25/month	“As of” Trade Late – \$3/trade <u>For October 2002 – \$1.50/trade</u> <u>For November 2002 – \$2.25/trade</u>	BTDS External Usage Authorization – \$1,000/month per organization
PDN Administrative – \$100/month/line	Browse & Query – \$0.05 after first page	BTDS Non-Professional Display – \$1/month per terminal
		Daily List Fax – \$15/month per fax number/addressee

---

**(1) System Related Fees.** There are three methods by which a member may report corporate bond transactions that are reportable to NASD [the Association] pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to NASD [the Association]: (a) a TRACE web browser (either over the Internet or a secure private data network (“PDN”)); (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 [the Association] via a TRACE web browser shall be as follows: for the first user ID registered, a charge of \$85 per month; for the next two through nine user IDs registered, a charge of \$75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of \$70 per month, per user ID from two to ten or more. If a member reports less than 25 trades per month to the TRACE system in October, November, or December 2002, the charge to be paid by a member for the TRACE web browser shall be \$25, per such month, per user ID. In addition, a member that elects to report TRACE data to the Association via a web browser over a secure PDN rather than over the Internet shall pay an additional administrative charge of \$100 per month, per line.<sup>1</sup>

**(B) Computer-to-Computer Interface Access**

No change.

**(C) Third Party Access – Indirect Reporting**

No change.

**(2) Transaction Reporting Fees**

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

---

<sup>1</sup> Charges that may be imposed by third parties, such as network providers, are not included in these fees.

---

**(A) Trade Reporting Fee**

No change.

**(B) Cancel or Correct Trade Fee**

A member shall be charged a Cancel or Correct Trade Fee of \$3.00 per canceled or corrected transaction. To provide firms with time to adjust to the new reporting system, the Cancel or Correct Trade Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. For the month of October 2002, the Cancel or Correct Trade Fee shall be \$1.50 per canceled or corrected transaction. For the month of November 2002, the Cancel or Correct Trade Fee shall be \$2.25 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. To provide firms with time to adjust to the new reporting system, the "As of" Trade Late Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. For the month of October 2002, the "As of" Trade Late Fee shall be \$1.50 per such transaction. For the month of November 2002, the "As of" Trade Late Fee shall be \$2.25 per such transaction.

**(D) Browse and Query Fee**

No change.

**(3) Market Data Fees**

No change.

**(4) Daily List Fax Service**

No change.

# Notice to Members

DECEMBER 2002

## SUGGESTED ROUTING

Legal & Compliance  
Operations  
Registered Representatives  
Senior Management  
Trading

## KEY TOPICS

Quotations  
Trading Halts

## INFORMATIONAL

### Trading Halts

Frequently Asked Questions Relating to Trading Halts

#### Executive Summary

This *NASD Notice to Members* addresses frequently asked questions arising under NASD Rule 3340 (Rule 3340 or the Rule) regarding trading halts. Rule 3340 prohibits members or associated persons from effecting, directly or indirectly, any transaction in a security in which a trading halt is in effect. Rule 3340 was amended in 2001 also to prohibit NASD members from publishing quotations or indications of interest in a security during a trading halt. The trading and quoting conduct prohibited by Rule 3340 is only triggered when a trading halt is in effect. To facilitate compliance with the Rule, this *Notice* addresses questions that have been raised with respect to the application of the Rule to particular circumstances.

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Kathleen O'Mara, Assistant General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8071; or Afshin Atabaki, Attorney, NASD Regulatory Policy and Oversight, at (202) 728-8902.

#### Background

On June 5, 2001, the Securities and Exchange Commission (SEC) approved amendments to Rule 3340 to prohibit publication of quotations or indications of interest in a security during a trading halt. Previously, Rule 3340 expressly prohibited members from directly or indirectly effecting a transaction in a security during

---

a trading halt, but did not expressly prohibit members from publishing quotations or indications of interest during a halt. The rule change was originally scheduled to become effective on August 13, 2001.<sup>1</sup> At the request of member firms, NASD delayed the effective date until October 9, 2001, to allow members additional time to make any necessary systems changes.

Rule 3340, as amended, specifically prohibits members or associated persons from, directly or indirectly, effecting any transaction or publishing a quotation, a priced bid and/or offer, an unpriced indication of interest (including “bid wanted” and “offer wanted” and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security for which a trading halt is in effect. NASD believes that prohibiting the publication of quotations or indications of interest during a trading halt will prevent members from seeking to trade at a time when they cannot execute a trade. Further, the amended rule is designed to protect investors and to ensure the integrity of quotations by preventing fictitious or misleading quotations.

Following the SEC’s approval of the amendments to the Rule, some members requested guidance from NASD on the application of the Rule to particular scenarios. The following questions and answers are published to address some of these scenarios and to provide additional guidance. However, the guidance contained herein is not intended to provide an exhaustive analysis of all circumstances that could possibly arise under the Rule. Members should contact the NASD staff listed above in the event they have further questions.

## Frequently Asked Questions

### Trading Halts

**Question 1:** May an electronic communications network (ECN) continue to disseminate quotations or indications of interest to subscribers in a security when trading in that security has been halted?

No. Rule 3340 prohibits NASD members, including ECNs, from “publishing” quotations or indications of interest in a security during a trading halt. For purposes of the Rule, publication involves the dissemination of information to sources outside the member. Distribution of quotations to external subscribers would constitute publication. Some ECNs have asserted that this would require them to delete their book of orders in the subject security. Rule 3340 does not require ECNs to delete their book when there is a trading halt; they are, however, required to stop distributing quotations or indications of interest in a security during a trading halt. In this regard, an ECN can comply with the Rule by blanking out quotations and indications of interest in a security during a trading halt.

**Question 2:** What are NASD member firms’ responsibilities with respect to pulling back orders for a security sent immediately preceding a trading halt for that security?

If an order is entered into a facility/system that publishes quotations and such quotations are not distributed during a trading halt, then the member

---

firm is not required to pull back the order. However, if an order is sent to a facility/system that continues to publish quotations or indications of interest in a security during a trading halt, the firm that entered the order prior to the trading halt would be responsible for pulling back the order.

**Question 3: Are NASD members required to stop distributing quotations and indications of interest on internal proprietary systems for a particular security during a trading halt?**

In general, internal display of quotations or indications of interest within a broker/dealer's proprietary system does not constitute "publication" and, as such, is not prohibited by the Rule. However, dissemination of quotations or indications of interest outside of the member broker/dealer, including to an affiliate or a customer, is prohibited.

**Question 4: Are NASD members allowed to enter quotations into NASDAQ in anticipation of the end of a trading halt during what is commonly known as the "quote-only" or "grace period"?**

Yes. After official notification by NASD or the primary market, quotations may be entered in conformity with the resumption process. When the primary market permits the entry of quotes, clearly identified as closed, a member, including an ECN, may resume disseminating quotes during that period provided that they are identified clearly as closed quotes.

**Question 5: If an NASD member sends quotation information or indications of interest to third parties, such as an Internet search engine or Web site, what are the member's responsibilities under the Rule?**

As stated above, an NASD member is prohibited from publishing quotations or indications of interest during a trading halt. If quotations or indications of interest are disseminated prior to the announcement of a trading halt, the NASD member is required to promptly notify the third party of the trading halt and request that the member's information be removed during the trading halt. Firms must be able to demonstrate compliance with Rule 3340, including maintaining records of requests made to third parties to stop displaying quotations in a particular security during a trading halt and compliance by third parties with such requests. Best practices suggest that NASD members that provide quotations or indications of interest to third parties do so pursuant to written agreements and that, as part of such agreements, the third parties agree immediately to cease the publication of quotations or indications of interest upon notice from the member firm of a trading halt. The written agreement should set forth an acceptable service level standard upon which the third party will act and failure of the third party to act, upon notice in accordance with such service level, should constitute a material breach of the written agreement. NASD member firms should proactively monitor third parties to ensure that publication of quotations and indications of interest during a trading halt does not occur. Furthermore,

---

member firms should require documentation of third party compliance with the established service level that should be retained in conformity with standard recordkeeping practices. NASD member firms should notify third parties in the event that compliance with the service level is not achieved and receive assurances that can be reasonably relied upon that the matter will be remedied in the immediate future or, if appropriate, terminate the agreement. Absent extraordinary circumstances, the assurances of a third party should not be relied upon when such third party has either: (1) not immediately acted to rectify its failure to cease publication of quotations or indications of interest upon notification; or (2) repeatedly failed to achieve the service level standard for ceasing publication during a trading halt.

**Question 6:** If an NASD member borrows stock to fulfill certain regulatory requirements and a trading halt is subsequently imposed, is the member prohibited under Rule 3340 from returning the stock while the trading halt is in effect?

Rule 3340 prohibits NASD members from effecting any transaction, directly or indirectly, during a trading halt. The Rule does not extend to the return of stock pursuant to a stock lending arrangement, assuming no other activities occur that would constitute "effecting" a securities transaction. Accordingly, Rule 3340 generally should not be relied upon as a basis for failing to either return or accept delivery of securities pursuant to a stock lending arrangement.

**Question 7:** If an NASD member receives a "not held" order for 100,000 shares, works the order throughout the day, and accumulates 60,000 shares, but then a trading halt is imposed, can the NASD member complete the transaction during the trading halt without violating Rule 3340?

A firm cannot execute any part of the order once a trading halt is declared, including the 60,000 shares accumulated prior to the trading halt. Once the trading halt is lifted, the firm may resume its efforts to work the order or decline to fill the balance of the order, in the wake of the trading halt, in the best interests of the customer.

**Question 8:** If an issue that is listed on a foreign market is subject to a trading halt on a U.S. market, but not halted on the foreign market, may an NASD member trade the security on the foreign market consistent with Rule 3340?

No. NASD members may not directly effect trades on international markets for their own accounts and may not solicit customer orders in these securities. If a member firm receives an unsolicited customer order in a security subject to the NASDAQ trading halt, it may route the order to a non-member entity or non-member affiliate not covered by the halt for execution in a foreign market. Customer transactions effected outside the United States through the non-member may involve an NASD member firm to the extent required by SEC Rule 15a-6.

---

## Endnote

1 See *Notice to Members 01-47* (July 2001).

© 2002. 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

DECEMBER 2002

## SUGGESTED ROUTING

Legal & Compliance  
Registration  
Senior Management

## KEY TOPICS

Central Registration Depository  
Mediation Fees

## INFORMATIONAL

### Mediation Filing Fees

NASD to Deduct Unpaid Mediation Filing Fees from CRD Accounts

#### Executive Summary

Effective February 14, 2003, NASD will begin to deduct unpaid mediation filing fees owed by member firms from members' Central Registration Depository (CRD) accounts. NASD will use the same procedures as are now used to collect delinquent arbitration fees owed by members. These procedures include sending a written invoice informing the member that the fees are due, and deducting delinquent mediation filing fees from funds maintained in a member's CRD account if the mediation filing fees are not paid within 60 calendar days after the date of the notice. If a member was represented by outside counsel in the underlying mediation, the single invoice will be sent only to the outside counsel.

This policy becomes effective on February 14, 2003.

#### Questions/Further Information

Questions regarding this *Notice* may be directed to Elizabeth McCoy, Assistant Director of Mediation, at (212) 858-4341 or [elizabeth.mccoy@nasd.com](mailto:elizabeth.mccoy@nasd.com).

#### Discussion

Under Rule 10407(a) of the NASD Code of Arbitration Procedure (Code), each party to a matter submitted directly to mediation administered by NASD must pay a mediation filing fee according to the schedule provided in the Code, unless the Director of Mediation waives the fee. In addition, Rule 10407(b) provides that when a matter is initially filed in arbitration and is subsequently submitted

02-83

---

to mediation, each party in cases involving more than \$25,000 in dispute must pay a mediation filing fee, unless the Director of Mediation waives the fee.

Effective February 14, 2003, NASD will begin using the same procedures to collect unpaid mediation filing fees owed by member firms as are currently used to collect arbitration fees owed by member firms, including deducting delinquent fees from members' CRD accounts.

At the conclusion of a mediation, parties will receive a final written invoice for outstanding mediation filing fees. If the member is represented by outside counsel that is the counsel of record, the member's invoice will be sent only to the member's counsel of record. If a member does not pay the fees it owes within 60 days after the date of the invoice, NASD will deduct the fees owed by the member from the member's CRD account. Written confirmation of each deduction will be provided to the member's compliance officer. If there are insufficient funds on deposit in the member's CRD account to cover the outstanding mediation filing fees owed by the member, and the member has not made other arrangements for payment, NASD will pursue cancellation or suspension of the member's membership pursuant to

Article VI, Section 3 of NASD's By-Laws. Members are responsible for replenishing the funds on deposit to ensure that there are no delays in processing registration applications or any other CRD-related obligation.

Beginning February 14, 2003, this policy will apply to all delinquent mediation filing fees for which an invoice has been sent, the 60-day period has passed, and full payment has not been received.

© 2002. 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

DECEMBER 2002

## SUGGESTED ROUTING

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

## KEY TOPICS

Holiday Trade Date–Settlement  
Date Schedule

## Trade Date–Settlement Date

### 2003 Trade Date—Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Monday, January 20, 2003, in observance of Martin Luther King, Jr., Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Jan. 14	Jan. 17	Jan. 22
15	21	23
16	22	24
17	23	27
20	Markets Closed	—
21	24	28

02-84

---

### Presidents' Day: Trade Date—Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Monday, February 17, 2003, in observance of Presidents' Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Feb. 11	Feb. 14	Feb. 19
12	18	20
13	19	21
14	20	24
17	Markets Closed	—
18	21	25

### Good Friday: Trade Date—Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Good Friday, April 18, 2003. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
April 14	April 17	April 22
15	21	23
16	22	24
17	23	25
18	Markets Closed	—
21	24	28

---

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

The NASDAQ Stock Market and the securities exchanges will be closed on Monday, May 26, 2003, in observance of Memorial Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
May 20	May 23	May 28
21	27	29
22	28	30
23	29	June 2
26	Markets Closed	—
27	30	3

### Independence Day: Trade Date—Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Friday, July 4, 2003, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
June 30	July 3	July 8
July 1	7	9
2	8	10
3	9	11
4	Markets Closed	—
7	10	14

---

### Labor Day: Trade Date—Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Monday, September 1, 2003, in observance of Labor Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Aug. 26	Aug. 29	Sept. 3
27	Sept. 2	4
28	3	5
29	4	8
Sept. 1	Markets Closed	—
2	5	9

---

## Columbus Day: Trade Date—Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance by the financial community of Columbus Day, Monday, October 13, 2003. On this day, The NASDAQ Stock Market and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

Trade Date	Settlement Date	Reg. T Date*
Oct. 7	Oct. 10	Oct. 14
8	14	15
9	15	16
10	16	17
13	16	20
14	17	21

Note: October 13, 2003, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on Monday, October 13, will be combined with transactions made on the previous business day, October 10, for settlement on October 16. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on October 13.

---

## Veterans' Day and Thanksgiving Day: Trade Date— Settlement Date Schedule

The schedule of trade dates-settlement dates below reflects the observance of the financial community of Veterans' Day, Tuesday, November 11, 2003, and Thanksgiving Day, Thursday, November 27, 2003. On Tuesday, November 11, The NASDAQ Stock Market and the securities exchanges will be open for trading. However, it will not be a settlement date because many of the nation's banking institutions will be closed in observance of Veterans' Day. All securities markets will be closed on Thursday, November 27, 2003, in observance of Thanksgiving Day.

<b>Trade Date</b>	<b>Settlement Date</b>	<b>Reg. T Date*</b>
Nov. 5	Nov. 10	Nov. 12
6	12	13
7	13	14
10	14	17
11	14	18
12	17	19
21	26	Dec. 1
24	28	2
25	Dec. 1	3
26	2	4
27	Markets Closed	—
28	3	5

Note: November 11, 2003, is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board.

Transactions made on November 11 will be combined with transactions made on the previous business day, November 10, for settlement on November 14. Securities will not be quoted ex-dividend, and settlements, marks to the market, reclamations, and buy-ins and sell-outs, as provided in the Uniform Practice Code, will not be made and/or exercised on November 11.

---

## Christmas Day and New Year's Day: Trade Date— Settlement Date Schedule

The NASDAQ Stock Market and the securities exchanges will be closed on Thursday, December 25, 2003, in observance of Christmas Day, and Thursday, January 1, 2004, in observance of New Year's Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Dec. 19	Dec. 24	Dec. 29
22	26	30
23	29	31
24	30	Jan. 2, 2004
25	Markets Closed	—
26	31	5
29	Jan. 2, 2004	6
30	5	7
31	6	8
Jan. 1, 2004	Markets Closed	—
2	7	9

Brokers, dealers, and municipal securities dealers should use the foregoing settlement dates for purposes of clearing and settling transactions pursuant to the NASD Uniform Practice Code and the Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of those settlement dates to a particular situation may be directed to the Market Integrity Department at (203) 375-9609.

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

© 2002, NASD. All rights reserved.

# Disciplinary Actions

## REPORTED FOR DECEMBER

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 November 2002.

### Firms Fined, Individuals Sanctioned

Ameriprop, Inc. (CRD #24305, Melville, New York) and Steven Douglas Klein (CRD #1940511, Registered Principal, North Babylon, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Klein was also prohibited from acting as an investment company and variable contracts products principal until he becomes duly licensed as an investment company and variable contracts products principal or as a general securities principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Klein, allowed an individual associated with the firm to engage in the sale of Direct Participation Programs while he was not properly registered with NASD. The findings also stated that the firm allowed Klein to act as a principal in investment company and variable contracts products while not registered with NASD in that capacity. (NASD Case #CLI020009)

Seaboard Securities, Inc. (CRD #755, Florham Park, New Jersey) and Joseph Thomas Zappala (CRD #475869, Registered Principal, Pilesgrove, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Zappala was fined \$5,000, suspended from association with any NASD member in any principal capacity for 90 days, and required to requalify as a general securities principal (Series 24). Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Zappala, failed to enforce its written supervisory procedures regarding the review of incoming correspondence. Specifically, the firm's supervisory procedures required all incoming correspondence to be opened and reviewed by a principal or designee immediately upon receipt. However, a registered representative of the firm received customer redemption checks issued by a mutual fund worth approximately \$282,000, made payable to the mutual fund customers "in care of" the registered representative, who never gave the checks to the customers and, instead, converted the funds for personal use.

Zappala's suspension began December 2, 2002, and will conclude March 1, 2003. (NASD Case #C9B020075)

## Firms Fined

**E\*Trade Securities, Inc. (CRD #29106, Rancho Cordova, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$155,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report e-mail and written customer complaints in its quarterly statistical report to NASD. The findings also stated that the firm failed to establish written supervisory procedures that were reasonably designed to ensure that customer complaints received via e-mail were properly reported, and thereby failed to supervise adequately the reporting of such complaints. In addition, NASD found that the firm filed reports of arbitration awards or settlement agreements late, failed to maintain books and records in connection with an initial public offering, failed to maintain e-mail and customer profiles, and failed to maintain evidence of reconfirmations of interest from public customers. Furthermore, the findings stated that the firm failed to provide accurate and complete information to NASD. NASD also found that the firm failed to register as an authorized Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>SM</sup>) participant, and failed to report FIPS high-yield and mandatory bond transactions within five minutes. (NASD Case #C01020016)

**Forge Financial Group, Inc. (CRD #100020, Boca Raton, Florida)** 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, within 90 seconds after execution, to transmit through Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) last-sale reports of transactions in OTC Equity, NASDAQ National Market<sup>®</sup> (NNM<sup>®</sup>), NASDAQ SmallCap<sup>SM</sup> (SC<sup>SM</sup>), and Consolidated Quotation Service (CQS) securities. The findings also stated that the firm failed to designate through ACT such last-sale reports as late and incorrectly designated as ".T," through ACT, last-sale reports of transactions in OTC Equity, NNM, and SC securities executed during normal market hours. In addition, NASD found that the firm failed to report the time of execution through ACT in late, last-sale reports of transactions in NNM, SC, and eligible securities. (NASD Case #CMS020196)

**Nova Fund L.P. (CRD #35302, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to revise its written supervisory procedures concerning the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>). Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit to OATS required information during the review period. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations, and the Rules of NASD concerning OATS. (NASD Case #CMS020183)

**Prudential Securities, Inc. (CRD #7471, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$20,000, and required to undertake to withdraw any New York choice-of-law defense asserted in any pending arbitration, not to assert a New York choice-of-law defense in any future arbitration proceeding, and to instruct all in-house and outside attorneys representing the firm in arbitration proceedings not to assert a New York choice-of-law defense. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that in arbitration proceedings filed with NASD, it had public customers sign a customer agreement stating that the terms of the agreement would be governed by the laws of the State of New York. The findings also stated that the firm asserted that New York law applied to the proceedings by virtue of the governing law clause in the customer agreement, and that New York law precluded an award of punitive damages or attorney fees. (NASD Case #CAF020052)

**Schneider Securities, Inc. (CRD #16434, Denver, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$27,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to update or amend Forms U-4 and U-5 for registered representatives after becoming aware of information that triggered an obligation to update or amend the forms. The findings also stated that the firm's written supervisory procedures were not reasonably designed to ensure that Forms U-4 and U-5 were promptly updated or amended upon the receipt of information triggering an obligation to update or amend the forms. In addition, NASD found that the firm's written supervisory procedures failed to identify the individual responsible for compliance in this area. (NASD Case #C3A020048)

**Stifel, Nicolaus & Company, Incorporated (CRD #793, St. Louis, Missouri)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in NASDAQ securities in its public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with the firm's bid or offer in each such security. (NASD Case #CMS020185)

**Wachovia Securities, Inc. (CRD #19616, Richmond, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display immediately customer limit orders in NASDAQ securities in its

public quotation when each such order was at a price that would have improved the firm's bid or offer in each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. (NASD Case #CMS020202)

**WIEN Securities Corporation (CRD #10467, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$22,500. 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 but, 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. The findings also stated that the firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. NASD also found 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 change in relation to the size associated with its bid or offer in each such security. (NASD Case #CMS020192)

**Wilson-Davis & Co., Inc. (CRD #3777, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$36,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short-sale orders and transactions in certain securities and failed to maintain a written record of the affirmative determination made for such orders; failed to make an affirmative determination prior to executing such transactions; and failed to report these transactions to ACT with a short-sale modifier. NASD also found that the firm failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or original capacity, and transmitted through ACT last-sale reports of transactions in OTC Equity Securities and failed to designate through ACT such last-sale reports as reflecting a price different from the current market when the execution was based on a prior reference point in time.

The findings also 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 change in relation to the size associated with its bid or offer in each such security. In addition, NASD found that the firm failed to contemporaneously or partially execute customer limit orders in NASDAQ securities after it traded each subject security for its own market-making account at a price that would have satisfied each customer's limit order. Furthermore, 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 and thereby failed to honor its published quotation. NASD determined that the firm, within 90 seconds after execution, failed to transmit through ACT last-sale reports of transactions in OTC Equity securities, and failed to designate through ACT such last-sale reports as late. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS (accuracy and date submitted), best execution (three-quote rule), Section 21(a) Issues (anti-coordination and anti-intimidation), and Trade Reporting. (NASD Case #CMS020187)

**Win Capital Corp. (CRD #36172, Bayville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$21,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it served as placement agent for a "minimum-maximum" "best-efforts" private placement offering of securities and, during the contingency period of the offering, failed to ensure that the money or other consideration it received was promptly transmitted to a bank that had agreed in writing to hold such funds in escrow for the persons who had the beneficial interests therein, and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency had occurred. The findings also stated that the firm executed short-sale transactions on an agency basis as the order entry firm and the contra party to the transaction, and failed to accept the transaction in ACT with the ".S" short-sale indicator.

NASD also found that the firm executed short-sale transactions on a principal basis as market maker, and failed to designate the transactions using the ".X" short-sale exempt modifier. In addition, NASD found that the firm failed to report principal transactions to ACT within 90 seconds in NNM securities, a NASDAQ SC security; and Over-the-Counter Bulletin Board (OTCBB) securities; and, in some of the transactions reported late, the firm failed to report the transactions using the ".SLD" late transaction modifier. NASD found that the firm failed to report to ACT the correct volume of principal transactions in OTCBB and NNM securities. Furthermore, NASD found that the firm failed to execute sell limit orders within 60 seconds of the time the limit orders became marketable, thereby

failing to use reasonable diligence to ascertain the best inter-dealer market for the subject security, and to sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. (NASD Case #CLI020010)

## Individuals Barred or Suspended

**Dennis O. Ayers (CRD #2197712, Registered Representative, Mountainside, 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, Ayers consented to the described sanction and to the entry of findings that he improperly obtained \$20,138 from his member firm by submitting expense reports that overstated his actual expenses. (NASD Case #C9B020074)

**Arthur George Baker, Jr. (CRD #851291, Registered Principal, Colts Neck, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any principal capacity for 15 business days. Without admitting or denying the allegations, Baker consented to the described sanctions and to the entry of findings that he failed to adequately and properly supervise a representative's unauthorized trading activity in public customers' accounts. The findings also stated that Baker failed to file with NASD information on behalf of a former member firm relating to a claim for damages by a public customer that Baker agreed to settle on behalf of the firm.

Baker's suspension began December 2, 2002, and will conclude at the close of business December 20, 2002. (NASD Case #C9B020077)

**Michael Aaron Bodack (CRD #2903421, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for nine months. Without admitting or denying the allegations, Bodack consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, and failed to provide written notification to, or receive written approval from, his member firm.

Bodack's suspension began November 18, 2002, and will conclude August 17, 2003. (NASD Case #C10020104)

**Edward Eyden Breeden (CRD #2954280, Registered Representative, Santa Cruz, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Breeden

reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Breeden consented to the described sanctions and to the entry of findings that he signed the names of public customers on "Alternate Mail Instructions" forms corresponding to the customers' accounts with his member firm without the customers' knowledge or authorization.

Breeden's suspension began November 18, 2002, and will conclude May 17, 2003. (NASD Case #C01020017)

**Mark Dennis Capaz (CRD #2905520, Registered Representative, Tampa, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Capaz engaged in outside business activity, for compensation, and failed to provide prior written notice to his member firm. The findings also stated that Capaz failed to respond to NASD requests for information. (NASD Case #C07020030)

**Marcus Luis Carrasquillo (CRD #2954752, Registered Representative, Ozone Park, 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 45 days. The fine must be paid before Carrasquillo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carrasquillo consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U-4.

Carrasquillo's suspension began November 4, 2002, and will conclude at the close of business December 18, 2002. (NASD Case #C10020101)

**Antonio Costanzo (CRD #2233347, Registered Representative, Wayne, 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, Costanzo consented to the described sanction and to the entry of findings that he effected transactions in public customers' accounts without the customers' prior knowledge, authorization, or consent. (NASD Case #C9B020078)

**Calvin Wayne Culbertson (CRD #2598645, Registered Representative, Ocala, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Culbertson failed to respond to NASD requests for information. The findings also stated that Culbertson engaged in a private securities transaction, for compensation, and failed to provide prior written notice to, or receive prior written approval from, his member firm. (NASD Case #C07020051)

**Charles Philip Damico (CRD #60413, Registered Principal, Bryn Mawr, Pennsylvania)** 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, Damico consented to the described sanction and to the entry of findings that he engaged in private securities transactions outside the normal course or scope of his association with a member firm, and failed to provide the firm with prior written notice of the transactions. The findings also stated that Damico failed to respond to NASD requests for information and documents. **(NASD Case #C9A020049)**

**William Hubert Davis (CRD #62734, Registered Representative, Claremont, California)** submitted an Offer of Settlement in which he was fined \$5,700, including \$700 in commissions received by Davis, and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Davis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he participated in a private securities transaction without providing prior written notification to his member firm.

Davis' suspension began November 18, 2002, and concluded at the close of business December 2, 2002. **(NASD Case #C01020013)**

**Michael Joseph Dinunzio (CRD #2180180, Registered Representative, Boston, Massachusetts)** 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 15 business days. The fine must be paid before Dinunzio reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dinunzio consented to the described sanctions and to the entry of findings that he settled a customer complaint without the consent or knowledge of his member firm, and failed to report promptly to his member firm the existence of any claim for damages by a public customer that is settled for an amount exceeding \$15,000.

Dinunzio's suspension began November 18, 2002, and concluded at the close of business December 9, 2002. **(NASD Case #CAF020051)**

**Frank Darnell Fisher, Jr. (CRD #2642052, Registered Representative, Vacaville, California)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 20 business days, suspended from recommending the purchase of any penny stock to public customers for one year, and required to requalify by passing the Series 7 general securities representative exam within 90 days from his reassociation following the 20-business-day suspension. In light of the financial status of Fisher, no

monetary sanctions have been imposed. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he recommended and sold shares of stock to public customers for which he received a bonus totaling \$96,000, and failed to disclose to customers that he was receiving a bonus and that it was in the form of a commission or sales credit amounting to 33 percent of the retail sales price. NASD also determined that Fisher knew, or should have known, based on a comparison of the amount of the bonus offered by this member firm to the retail sale prices charged to his customers, that such prices were excessive and unfair.

The findings also stated that Fisher was reckless in not knowing that these bonuses represented material financial self-interests in stock that was required to be disclosed to customers. In addition, NASD found that Fisher recommended the purchase of penny stocks to public customers, and failed to furnish customers, prior to effecting such transactions, a risk disclosure document containing information required by penny stock rules; failed to obtain from customers a manually signed and dated written statement acknowledging receipt of such risk disclosure document prior to effecting transactions; failed to disclose to customers, either orally or in writing, the inside bid and offer quotations prior to effecting transactions, and failed to provide the same in writing at or prior to the time of any written confirmation sent to the customer pursuant to Securities and Exchange Commission (SEC) Rule 10b-10; and, prior to effecting such transactions, failed to disclose the aggregate amount of cash compensation received or to be received from any source in connection with the transaction, including separate disclosure of the source and amount of such compensation not paid by the broker or dealer, and failed to provide the same in writing at or prior to the time of any written confirmation sent to the customer pursuant to SEC rule 10b-10. Furthermore, NASD found that Fisher failed to keep and preserve records of such disclosures as required by penny stock rules.

Fisher's suspensions began November 18, 2002, and the suspension from association with any NASD member in any capacity will conclude at the close of business December 16, 2002. The suspension from recommending the purchase of any penny stock to public customers will conclude at the close of business November 17, 2003. **(NASD Case #CMS020090)**

**Marc Anthony Flora (CRD #2524814, Registered Representative, Ocean City, 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, Flora consented to the described sanction and to the entry of findings that he obtained a \$36,011.74 check issued to a beneficiary from an insurance company affiliated with his member firm, negotiated it, and deposited it into his personal bank account without the knowledge or consent of the actual payee. The findings also stated that Flora caused the address of record for a variable

annuity contract owned by public customers to be changed to his own residential address without the knowledge or authorization of the customers; submitted a falsified document bearing the purported signatures of the customers that requested a \$70,000 partial withdrawal from their annuity contract; and negotiated a \$70,000 check issued to one of the customers and deposited it into his personal bank account without the customer's knowledge or consent. In addition, NASD found that Flora submitted a falsified document bearing the purported signatures of public customers that requested a \$25,000 partial withdrawal from their annuity contract without their knowledge or authorization, and negotiated a \$25,000 check issued to one of the customers and deposited it in his personal bank account without the customer's knowledge or consent. (NASD Case #C9A020044)

**Kyle Patrick Frankel (CRD #3034895, Registered Representative, Phoenix, Arizona)** was barred from association with any NASD member in any capacity. The sanction was based on findings that, without the prior knowledge or authorization of a public customer, Frankel filled out an application for life insurance for the customer, signed the customer's name to it, and submitted the application to his member firm's affiliated company. (NASD Case #C3A020034)

**William John Friess (CRD #814694, Registered Principal, San Diego, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 15 business days. Without admitting or denying the allegations, Friess consented to the described sanctions and to the entry of findings that he failed to supervise a registered representative in a manner that was reasonably designed to achieve compliance with certain NASD and SEC rules.

Friess' suspension began December 2, 2002, and will conclude at the close of business December 20, 2002. (NASD Case #C02020053)

**Coleen Marie Garay (CRD #2611350, Registered Principal, Staten Island, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in a registered principal capacity for 30 days. The fine must be paid before Garay reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Garay consented to the described sanctions and to the entry of findings that, as her member firm's compliance director, she failed to implement adequate written supervisory procedures to identify steps to achieve compliance with Section 10(b) of the Securities Exchange Act of 1934 and Regulation M, failed to designate a person responsible for taking those steps, and failed to identify how compliance with the procedures would be evidenced.

Garay's suspension began November 18, 2002, and will conclude at the close of business December 17, 2002. (NASD Case #CAF020050)

**Jack Charles Gerwin, Jr. (CRD #829845, Registered Representative, Bloomfield Hills, Michigan)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Gerwin reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gerwin consented to the described sanctions and to the entry of findings that he willfully failed to disclose, amend, or cause to have amended his Form U-4 to disclose material facts.

Gerwin's suspension began November 18, 2002, and will conclude at the close of business February 17, 2003. (NASD Case #C8A020038)

**David Lawrence Gillotti (CRD #1389275, Registered Representative, Baltimore, Maryland)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay disgorgement of \$1,000, plus interest, in commissions in partial restitution to a public customer. Gillotti must pay the restitution before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Gillotti consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, and failed to provide written notice to, and obtain approval from, his member firm. The findings also stated that Gillotti failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #C9A020029)

**Matthew Greenwald (CRD #229262, Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any principal capacity for 30 days. Without admitting or denying the allegations, Greenwald consented to the described sanctions and to the entry of findings that he failed to establish and maintain written supervisory procedures and systems reasonably designed to achieve compliance with federal securities laws and NASD rules relating to investment banking and trading on behalf of his member firm. The findings also stated that Greenwald's member firm's written supervisory procedures failed to specify the procedures that the firm's senior management was to follow to discharge supervisory responsibilities, and there were no systems or procedures in place to allow the Head Trader or anyone to become aware of potential red flags that the firm was engaged in a continuing distribution.

Greenwald's suspension began December 2, 2002, and will conclude at the close of business December 31, 2002. (NASD Case #CAF020007)

**Philip Dee Hart (CRD #2246252, Registered Representative, Ottawa, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Hart reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hart consented to the described sanctions and to the entry of findings that he participated, for compensation, in private securities transactions, and failed and neglected to give written notice to, and receive written approval from, his member firm prior to engaging in such activities. The findings also stated that Hart failed and neglected to provide prompt written notice to his member firm of his outside business activities. NASD also found that Hart participated in the public offering of securities prior to filing with NASD's Corporate Financing Department the documents and information required. In addition, the findings stated that Hart failed to file the offering with NASD to ensure that the terms and arrangements of the offering were in compliance with the Conflicts of Interest Rule when the proceeds of the offering were to be used to form a broker/dealer and become a member, and failed to conduct the offering as if the issuer had been a member prior to the commencement of the offering.

Hart's suspension began November 18, 2002, and will conclude May 17, 2003. (NASD Case #C8A020074)

**Marcus M. Honio (CRD #4142035, Registered Representative, Boca Raton, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Honio willfully failed to disclose material facts on his Form U-4. (NASD Case #C07020045)

**Arlie Ray Horn, Jr. (CRD #1471308, Registered Representative, Woodlands, Texas) and Lindsay Alan Byrum (CRD #1263551, Registered Representative, Houston, Texas)** were each fined \$10,000, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam in all capacities. The sanctions were based on findings that Horn and Byrum engaged in private securities transactions and failed to provide prior written notice to, and receive permission from, their member firm to engage in such transactions.

Horn and Byrum's suspensions began November 4, 2002, and will conclude May 4, 2003. (NASD Case #C06010025)

**Virginia Jenkins (CRD #2815794, Registered Representative, Waynesboro, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jenkins consented to the described sanction and to the entry of findings that she converted \$221,000 from bank customers. (NASD Case #C07020085)

**Michael Kim Kalmaer (CRD #2610334, Registered Representative, New York, New York)** was fined \$5,000, suspended from association with any NASD member in any capacity for 15 business days, and required to complete the Regulatory Element of Continuing Education annually for four years after he re-enters the securities industry. The sanctions were based on findings that Kalmaer willfully failed to disclose material facts on his Form U-4.

Kalmaer's suspension began November 18, 2002, and concluded at the close of business December 3, 2002. (NASD Case #C9B020016)

**David Bryan Kalt (CRD #2031370, Registered Representative, South Charleston, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kalt consented to the described sanction and to the entry of findings that he effected transactions in the Individual Retirement Account (IRA) of a public customer without the customer's prior knowledge or authorization. The findings also stated that Kalt engaged in excessive and unsuitable trading in the customer's account in that the transactions he effected were excessive in volume and frequency based on the customer's age, her employment status, her financial circumstances, the character and nature of the account, and other considerations. (NASD Case #C9A020047)

**Alan Shawn Kiedaisch (aka Alan West Kiedaisch, West Alan Kiedaisch, West Shawn Kiedaisch, Shawn A. Kiedaisch, and Shawn Barratt) (CRD #4282821, Associated Person, New York, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Kiedaisch willfully failed to disclose material information on his Form U-4. The findings also stated that Kiedaisch failed to respond to NASD requests for information. (NASD Case #C10020054)

**Vasily Kouznetsov (CRD #4163388, Registered Representative, Brooklyn, 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, Kouznetsov consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear and provide testimony. (NASD Case #CMS020190)

**Anthony Gerald Mannuzza, Jr. (CRD #2182639, Registered Representative, Fairton, 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, Mannuzza consented to the described sanction and to the entry of findings that he converted \$627,355 from his member firm's customers by falsely representing to them that he would use their funds to purchase mutual funds on their behalf. The findings stated that Mannuzza caused the customer funds to be deposited into his

personal bank accounts, and then withdrew the proceeds for his personal use without customer consent or authority. (NASD Case #C9B020070)

**Robert Miragliotta (CRD #2443610, Registered Representative, Clark, 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. The fine must be paid before Miragliotta reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Miragliotta consented to the described sanctions and to the entry of findings that he engaged in outside business activities without providing prompt written notification to his member firm. The findings also stated that Miragliotta willfully failed to amend his Form U-4 to disclose a material fact while associated with a member firm.

Miragliotta's suspension began November 18, 2002, and will conclude May 17, 2003. (NASD Case #C9B020079)

**Jeffrey Lavert Montgomery (CRD #2701770, Registered Representative, Milwaukee, Wisconsin)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Montgomery misused customer funds and failed to respond to NASD requests for information. (NASD Case #C8A020023)

**Scott Lowell Nattenberg (CRD #2444899, Registered Principal, Ewa Beach, Hawaii)** 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, Nattenberg consented to the described sanction and to the entry of findings that he obtained a cashiers check for \$100,000 for investment purposes from a public customer, deposited the check into a securities account under his control, and used the funds for his personal benefit to the exclusion of the customer. (NASD Case #C01020018)

**Anthony Oh (CRD #4460103, Associated Person, Avon, 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, Oh consented to the described sanction and to the entry of findings that he improperly obtained \$392.50 from his employer by submitting an expense report that overstated his actual expenses. (NASD Case #C11020041)

**Kevin Jay Palan (CRD #1734423, Registered Representative, Belle Mead, 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, Palan consented to the described sanction and to the entry of findings that he effected transactions in the accounts of a public customer without the

customer's prior authorization. The findings also stated that Palan engaged in unsuitable trading in the accounts of a public customer in that the transactions he effected were excessive in volume and frequency based on the customer's personal circumstances, his investment objectives, and the character and nature of the accounts. (NASD Case #C9A020050)

**Ameeta J. Patel (CRD #4375920, Associated Person, London, United Kingdom)** 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 31 days. Without admitting or denying the allegations, Patel consented to the described sanctions and to the entry of findings that she was in possession of unauthorized materials during a general securities representative Series 7 qualification exam.

Patel's suspension began December 2, 2002, and will conclude January 1, 2003. (NASD Case #C10020106)

**Edward Walter Planche (CRD #4400866, Associated Person, Arlington, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Planche consented to the described sanction and to the entry of findings that, in order to deceive a member firm's personnel, he presented a document that purported to indicate he received a passing score on a general securities representative Series 7 exam when, in fact, he had received a failing score on the exam. The findings also stated that Planche failed to respond to NASD requests to appear and provide testimony at an on-the-record interview. (NASD Case #C10020105)

**Jennifer Marie Resil (CRD #4190629, Registered Representative, Edison, New Jersey)** 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, Resil consented to the described sanction and to the entry of findings that she withdrew \$14,969.68 from a public customer's retirement account, had a check issued in the customer's name, and attempted to convert the proceeds of the withdrawal for her personal use without permission or authority of the customer. NASD also found that the member firm check, containing a forgery of the customer's endorsement and Resil's signature, was later presented to a bank for deposit. (NASD Case #C9B020081)

**Stephen Gerald Roehrig (CRD #2826376, Registered Representative, Rochester, New York)** and **Mark James Palazzo (CRD #1221009, Registered Principal, Pittsford, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which Roehrig was suspended from association with any NASD member in any capacity for 10 business days and Palazzo was fined \$10,000 and suspended from association in any principal or supervisory capacity for 10 business days. In light of the financial status of Roehrig, a fine of \$1,000 has

been imposed. In lieu of payment of the fine to NASD, Roehrig and Palazzo were ordered to make partial restitution to a public customer by paying the full amount of their fines to the customer or the customer's estate. Roehrig and Palazzo must provide proof of full payment of the restitution to NASD within 30 days or they will be suspended from association with any NASD member in any capacity until proof of payment has been provided. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Roehrig recommended and effected transactions in the account of a public customer without having reasonable grounds for believing the recommendations and resultant transactions were suitable for the customer on the basis of his financial situation and needs. The findings also stated that Palazzo failed to supervise Roehrig adequately in that he knew, or reasonably should have known, that such transactions were not suitable for the customer.

Roehrig's suspension began December 2, 2002, and concluded at the close of business December 13, 2002. Palazzo's suspension began December 2, 2002, and concluded at the close of business December 13, 2002. **(NASD Case #C8B020024)**

**Christopher George Romani (CRD #2590681, Registered Representative, Savage, Minnesota)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Romani converted, for his own use and benefit, public customer funds totaling \$38,140.97 without the knowledge or consent of the customers. In addition, Romani improperly used customer funds totaling \$18,159.43 in that he obtained loans from the insurance policies held by customers and applied the funds as a credit to other customer policy loans. Romani also failed to respond to NASD requests for information. **(NASD Case #C04020013)**

**Amy Shui (CRD #707519, Registered Representative, Long Branch, New Jersey)** 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, Shui consented to the described sanction and to the entry of findings that she effected transactions in public customers' accounts without the customers' prior knowledge, authorization, or consent. NASD also found that, without the knowledge or approval of her member firm, Shui paid customers \$10,000 in exchange for the customers' agreement not to file an arbitration statement of claim against her. **(NASD Case #C9B020080)**

**Arnold Robert Sinko (CRD #4408383, Registered Representative, Strongsville, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. The sanction was based on findings that Sinko willfully failed to disclose a material fact on his Form U-4. **(NASD Case #C8B020023)**

**Jeffery Scott Sloan (CRD #1845998, Registered Representative, Belle Mead, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, required to pay \$40,410 in disgorgement of commissions in partial restitution to public customers, and suspended from association with any NASD member in any capacity for six months. The fine and restitution amount must be paid before Sloan reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Sloan consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firms, in that he effected various promissory note transactions.

Sloan's suspension began November 18, 2002, and will conclude May 17, 2003. **(NASD Case #C9B020076)**

**Thomas Avery Smith (CRD #1134969, Registered Principal, Owensboro, Kentucky)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 days. Without admitting or denying the allegations, Smith consented to the described sanctions and to the entry of findings that he executed an unauthorized purchase of shares of a mutual fund in the trust account of a public customer without the account trustee's knowledge or consent.

Smith's suspension began November 18, 2002, and concluded at the close of business November 27, 2002. **(NASD Case #C05020051)**

**David Wayne Steele (CRD #1628075, Registered Representative, Piqua, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$42,109.49, including disgorgement of \$37,109.49 in commissions received, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Steele reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Steele consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide his member firm with detailed written notice of the transactions and his role therein, and to receive permission from his firm to engage in the transactions.

Steele's suspension began November 4, 2002, and will conclude at the close of business May 15, 2003. **(NASD Case #C8B020021)**

**Joseph Philip Stelweck (CRD #2022057, Registered Representative, Cherry Hill, 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, Stelweck consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. (NASD Case #C04020037)

**Gary Earll Stevens (CRD #862409, Registered Representative, Rochester, 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, Stevens consented to the described sanction and to the entry of findings that he entered into a General Release with a public customer to resolve issues surrounding funds Stevens had received from the customer, and entered into a Confidentiality Agreement with the customer to prevent the customer from disclosing information about a settlement to any person or entity, including his member firms and regulatory authorities. The findings also stated that Stevens failed to disclose his receipt of funds from the customer to his member firms, and failed to tell the firms about settling a complaint with the customer away from the firms. (NASD Case #C8B020025)

**John Patrick Sullivan, Jr. (CRD #2223824, Registered Principal, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 20 business days. Without admitting or denying the allegations, Sullivan consented to the described sanctions and to the entry of findings that he promised a public customer that, for a one-month period, he would guarantee her against any loss in the value of her shares of a stock if she agreed not to sell those shares.

Sullivan's suspension began December 2, 2002, and will conclude at the close of business December 30, 2002. (NASD Case #C11020042)

**Douglas Keith Throneburg (CRD #2515160, Registered Representative, Bloomington, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam following the suspension before acting in the securities industry in any capacity. Throneburg must pay the fine before he reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Throneburg consented to the described sanctions and to the entry of findings that he made misrepresentations to public customers in his recommendations and sale of long-term callable certificates of deposit (CDs) to public customers. The findings also stated that Throneburg described the investments as one-year callable CDs when, in fact, the CDs matured in 10, 15, or 20 years and could only be called at the end of the first year if the issuing bank chose to do so. In addition, NASD found that if the customer wanted a return of principal at the one-year point, and

the investment was not called, the customer would be required to sell the CD on the secondary market and incur a significant risk of loss of principal.

Throneburg's suspension began November 18, 2002, and will conclude at the close of business November 17, 2003. (NASD Case #CAF020049)

**Nikolas John Tries (CRD #2984407, Registered Representative, Milwaukee, Wisconsin)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Tries misappropriated his member firm's funds and failed to respond to NASD requests for information. (NASD Case #C8A020037)

**Steven Gary Walder (CRD #1865103, Registered Representative, Roslyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for one year, and required to pay \$6,365, plus interest, in restitution to member firms. The fine must be paid before Walder reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Walder consented to the described sanctions and to the entry of findings that he entered priced limit orders in NASDAQ securities through his member firm's terminals in order to improve the National Best Bid or Offer (NBBO) in such securities, and after having entered such orders in electronic communication networks, Walder entered, via the Internet, orders to buy and sell shares of such securities in his personal account. The findings also stated that Walder knew that the orders placed in his personal account would be routed to market makers whose automated execution systems were programmed to buy or sell, and did buy and sell, such securities on an automated basis at prices equal to the NBBO. NASD determined that by this course of conduct Walder was able, in his personal account, to buy shares of these securities at prices that were lower, and then sell the shares at prices that were higher than he would otherwise have been able to obtain, but for his entry of the NBBO improving orders into electronic communication networks. Furthermore, the findings stated that, within a short time after Walder received the executions of the orders that he had placed in his personal account, he cancelled 18 of the 20 priced limit orders that he had placed into the networks, thereby securing a profit of approximately \$6,365.50.

Walder's suspension began November 18, 2002, and will conclude at the close of business November 17, 2003. (NASD Case #CMS020199)

**Stephen Robert Walling (CRD #2265946, Registered Representative, Jackson, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Walling engaged in unauthorized trading in the accounts of public customers without the customers' prior knowledge, authorization, or consent. In

addition, Walling failed to respond to NASD requests for information. (NASD Case #C9B020039)

**George Charles Wilkinson, Sr. (CRD #2411651, Registered Representative, Boardman, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Wilkinson, no monetary sanctions have been imposed. Without admitting or denying the allegations, Wilkinson consented to the described sanction and to the entry of findings that he engaged in private securities transactions away from his member firm and failed to provide his member firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions.

Wilkinson's suspension began November 4, 2002, and will conclude at the close of business February 3, 2003. (NASD Case #C8B020020)

**Vaughn Lee Woods (CRD #853692, Registered Principal, La Jolla, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Woods consented to the described sanctions and to the entry of findings that he recommended purchases, plus related sales, of certain general equity securities in the retirement accounts of public customers and, because certain regulations governing the retirement accounts prohibit investments in any general equity securities, the transactions underlying the recommendations were impermissible and therefore not suitable for these types of retirement accounts.

Woods' suspension began December 2, 2002, and concluded at the close of business December 13, 2002. (NASD Case #C02020052)

**Irina Yunayeva (CRD #3225768, Registered Representative, Rego Park, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Yunayeva had imposters take the Series 6 and Series 63 qualification exams on her behalf. The findings also stated that Yunayeva attempted to have an imposter take the Series 7 qualification exams on her behalf. (NASD Case #C10020046)

## 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.

**Kenneth Ray Bell (CRD #2191634, Registered Representative, Memphis, Tennessee)** was named as a respondent in an NASD complaint alleging that he effected unauthorized sales and cash withdrawals totaling \$124,900 from a variable annuity belonging to a public customer, and converted the funds to his own use and benefit without the knowledge or consent of the customer. (NASD Case #C05020053)

**Donner Corporation International n/k/a National Capital Securities, Inc. (CRD #37702, Oklahoma City, Oklahoma), Jeffrey Lyle Baclet (CRD #2022409, Registered Principal, Santa Ana, California), Vincent Michael Uberti (CRD #2618595, Registered Principal, Santa Ana, California), and Paul Alan Runyon (CRD #3159920, Registered Representative, Lake Forest, California)** were named as respondents in an NASD complaint alleging that the firm, acting through Baclet and Uberti, intentionally or recklessly prepared and disseminated research reports on reporting companies that included fraudulent, exaggerated, and unwarranted claims, and failed to disclose material information regarding the true financial condition of the companies and the "going concern" opinion of the auditor. The complaint also alleges that the firm, acting through Baclet and Uberti, failed to provide in the research reports any reasonable basis for recommendations, and to explain the recommendations in light of the going concern opinions included in auditor reports and the underlying financial conditions of the companies. In addition, the complaint alleges that the firm, Baclet, and Uberti directly or indirectly employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit upon persons in connection with the purchase or sale of securities.

NASD also alleges that the firm, Baclet, and Uberti failed to disclose in the research reports the compensation the firm received for the preparation and dissemination of the research reports. Moreover, the complaint alleges that the firm, acting through Baclet, failed to obtain the signature or initials of a principal of the firm indicating approval of the research reports it disseminated, and failed to establish or maintain written procedures to supervise the preparation and dissemination of research reports reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules. Furthermore, the complaint alleges that Uberti and Runyon issued a research report with a speculative buy recommendation for a common stock and failed to disclose material information that an auditor had issued a going concern opinion for the stock and the financial information about the stock that made communications with the public misleading. NASD also alleges that Uberti and Runyon exaggerated the market potential for

companies issuing common stock and ignored specific facts, causing the research report to be misleading. The complaint also alleges that Uberti and Runyon directly or indirectly employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit upon persons in connection with the purchase or sale of securities. Furthermore, the complaint alleges that Uberti and Runyon failed to disclose the existence of "going concern" opinions in research reports, failed to disclose the underlying basis cited by the auditor for the "going concern" opinions, failed to disclose the true financial condition of the companies and other material information, and made exaggerated, false, and misleading statements about companies in research reports. (NASD Case #CAF020048)

**Thomas Charles Green (CRD #228650, Registered Principal, Sherman Oaks, California)** was named as a respondent in an NASD complaint alleging that he engaged in manipulative, deceptive, or fraudulent conduct by intentionally or recklessly causing to be executed and reported to The NASDAQ Stock Market, Inc., last-sale reports of transactions in a common stock, at or near the close of the market, for the purpose of affecting the reported closing last-sale price in the security. The complaint alleges that, as a result, all of the transactions represented the closing last-sale price for the stock, and were reported at a price higher than the price of the last preceding trade in the stock reported to The NASDAQ Stock Market, Inc.; or were the only trade of the day in the stock and were reported at a price higher than the prevailing inside bid by between approximately \$0.125 and \$1 for the days upon which the transactions were effected. In addition, the complaint alleges that Green had an interest in having the stock perform well financially because of the substantial positions in the stock held by him, his member firm, and its customers. (NASD Case #CMS020169)

**Heriberto Marrero (CRD #1696583, Registered Representative, Ft. Lauderdale, Florida)** was named as a respondent in an NASD complaint alleging that he converted funds totaling \$44,093.35 to his own use from the bank accounts of public customers without their authorization by preparing or altering debit and credit memos containing forged customer signatures. The complaint also alleges that Marrero failed to respond to NASD requests for information. (NASD Case #C07020086)

**Herbert Mario Miller (CRD #1394124, Registered Representative, Grand Island, New York)** was named as a respondent in an NASD complaint alleging that he received checks totaling \$70,892.90 from public customers, failed to apply the funds as intended or in any other manner for the benefit of the customers, and, instead, used the funds for his

own benefit. The complaint also alleges that Miller failed to respond to NASD requests for information. (NASD Case #C8B020022)

**Michael John Price (CRD #1723203, Registered Representative, Atlanta, Georgia)** was named as a respondent in an NASD complaint alleging that he effected unauthorized trades in the account of a public customer. (NASD Case #C07020081)

**Nima Taherian (CRD #3258193, Registered Principal, Ferndale, Michigan)** was named as a respondent in an NASD complaint alleging that he engaged in a scheme to purchase and sell securities in the form of put and call options in his cash and margin accounts at his member firm, without having the ability or intent to pay for the purchases. The complaint alleges that Taherian made a practice of effecting transactions in his cash account whereby the cost of the securities purchased was met by the sale of the same securities, and caused his member firm to defer the deposit of cash and securities beyond the time when such transactions would normally be settled or to meet the margin requirements by the liquidation of securities in his margin account. The complaint also alleges that Taherian intentionally or recklessly misrepresented or omitted material facts to his member firm that he could not or did not intend to pay for his securities transactions, thereby causing his firm to unwittingly assume the risk of his trading activities. (NASD Case #C06020019)

### **Firm Suspended Pursuant to NASD Rule 9530 Series for Failure to Pay Dues, Fees, or Other Charges**

The date the registration was suspended is included after the entry. If the firm has complied, the listing also includes the date the suspension was lifted.

**J.E. Liss & Company, Inc. d/b/a  
Liss Financial Services,  
Milwaukee, Wisconsin  
(November 7, 2002)**

### **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.)**

**Bari, Jr., James L.  
Woodhaven, New York  
(October 31, 2002)**

**Boedigheimer, David W.**  
Morris, Illinois  
(October 31, 2002)

**Bongiorno, Gaspare**  
Glendale, New York  
(October 21, 2002)

**Boockmeier, James T.**  
Marble Falls, Texas  
(October 11, 2002)

**Cassuto, David I.**  
Lido Beach, New York  
(October 24, 2002)

Cassuto has appealed this action to the SEC, and the bar has not been stayed pending consideration of the appeal. (NASD Case #8210-10020007)

**Finkel, David Solomon**  
West Hempstead, New York  
(October 31, 2002)

**Ford, Ralph**  
White Pigeon, Michigan  
(October 16, 2002)

**Frankovich, Jason**  
Staten Island, New York  
(October 11, 2002)

**Morgan, Leslie E.**  
Converse, Texas  
(October 21, 2002)

**Noor, Danoo**  
Rego Park, New York  
(October 9, 2002)

**Shuey, III, Robert A.**  
Dallas, Texas  
(October 31, 2002)

**Speights, Sharon**  
Toledo, Ohio  
(October 22, 2002)

**Tambke, Theodore**  
New York, New York  
(October 31, 2002)

**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.)**

**Auten, Opie**  
Fort Worth, Texas  
(October 9, 2002)

**Bealman, Vicki D.**  
Virginia Beach, Virginia  
(October 10, 2002)

**Brocail, Scott E.**  
Springdale, Arkansas  
(October 16, 2002)

**Chanin, Jay E.**  
Cherry Hill, New Jersey  
(October 22, 2002)

**Lemieux, Charles J.**  
Levittown, New York  
(October 31, 2002)

**Lively, Billy Don**  
North Little Rock, Arkansas  
(October 16, 2002)

**Manning, Cathey D.**  
Grand Rapids, Michigan  
(October 16, 2002)

**Neiswender, John**  
Scottsdale, Arizona  
(October 31, 2002)

**Peres, Ajax Manuel**  
Vallejo, California  
(October 9, 2002)

**Pero, Belinda**  
Yantic, Connecticut  
(October 16, 2002)

**Rutland, Chris H.**  
Payson, Arizona  
(October 2, 2002)

**Scott, James L.**  
Gardnerville, Nevada  
(October 10, 2002)

**Sherr, Samuel**  
Brooklyn, New York  
(October 23, 2002)

**Smith, Gabriele**  
Yonkers, New York  
(October 17, 2002)

## **Individuals Whose Registrations Were Revoked for Failing to Pay Fines and/or Costs in Accordance With NASD Rule 8320**

**Aleshire, Ellen M.**  
Antioch, Illinois  
(October 18, 2002)

**Dabney, Michael**  
Plainsboro, New Jersey  
(October 18, 2002)

**Grossman, Gerald M.**  
Bakersfield, California  
(October 18, 2002)

**Hanson, Roger A.**  
Milwaukee, Wisconsin  
(October 18, 2002)

## **NASD's NAC Upheld Previous Decision; Fraudulent Manipulation and Illegal Short Sales Result in Expulsion of Fiero Bros., Bar of John Fiero, and Fine of \$1 Million**

NASD announced that its National Adjudicatory Council (NAC) affirmed an NASD Hearing Panel's decision that John Fiero and Fiero Brothers, Inc., of New York, NY, violated NASD and federal securities antifraud laws when they colluded to manipulate the market for several small cap securities through a massive short-selling campaign. The NAC also found that Mr. Fiero and Fiero Brothers violated NASD affirmative determination requirements by executing numerous short sales without having determined that they could borrow the securities or otherwise provide for delivery. The NAC fined John Fiero and Fiero Brothers \$1 million, barred Mr. Fiero in all capacities, and expelled Fiero Brothers from membership.

The NAC determined that John Fiero and Fiero Brothers participated in a "bear raid," a coordinated, manipulative action in which short selling is used to drive down the price of a security by creating a false imbalance of sell-side interest. Fiero

and Fiero Brothers engaged in a manipulation and deception that "violated public trust and jeopardized market integrity," according to the decision.

Specifically, John Fiero and the firm intentionally drove down the prices of several small cap securities by amassing sizeable short positions in those securities with the aim of demonstrating a large demand to sell the securities. The underwriter of the manipulated securities, who held large proprietary positions in the securities, was coerced to sell Fiero Brothers blocks of the manipulated securities at deeply discounted prices. Mr. Fiero used the discounted securities to cover the firm's short positions at a sizeable profit and sold the remaining securities to other short sellers to cover their short positions, thereby generating significant profits for them and additional profits for Fiero Brothers.

The NAC also found that Fiero Brothers, after covering its short positions, commenced a second wave of illegal short selling in the same securities that eventually drove Hanover Sterling & Co., Inc., the underwriter of the securities, out of business, and led to the bankruptcy of its clearing firm, Adler Coleman Clearing Corp.

A key aspect of Mr. Fiero and Fiero Brothers' manipulative conduct was its violation of NASD's affirmative determination rule. The affirmative determination rule requires a securities firm to determine, prior to selling a stock short, that it can borrow securities or provide for delivery by settlement date before effecting a short sale of the securities. The rule prevents short selling by those who do not have, and have no intention of delivering, the stock that they are selling. The NAC found that, over the course of two months and in connection with Fiero Brothers' short sales of the manipulated securities, Mr. Fiero and the firm violated NASD's affirmative determination rule in a number of instances.

The NAC concluded that, as a result of John Fiero and Fiero Brothers' manipulative conduct, they intentionally injected into the marketplace inaccurate information regarding the level of interest in the manipulated securities because it was the concerted efforts of Mr. Fiero and Fiero Brothers and not the free forces of supply and demand that created the appearance in the marketplace of a massive selling effort.

The NAC is a 14-person committee composed of seven industry and seven non-industry members that decides appeals from disciplinary, membership, and exemption decisions; rules on statutory disqualification applications; and advises on other policy matters. Before John Fiero and Fiero Brothers appealed this case to the NAC, an NASD Hearing Panel heard the matter. A Hearing Panel consists of an NASD Hearing Officer along with two members of the securities industry.

## **NASD Fines and Suspends Research Analyst for Misusing Confidential Information Obtained in Clinical Drug Trial; Sterling Financial and Others Also Sanctioned for Misleading and Inaccurate Research Reports**

NASD has fined and suspended David Risk, a research analyst, and his brother, Doug Risk, a research associate, both formerly employed by Sterling Financial Investment Group of Boca Raton, FL. The Risk brothers violated NASD rules in connection with their gathering and use of confidential information in a research report relating to ongoing clinical trials for a new sleep medication. Sterling was also fined and Steven Kirsch, the head of Sterling's research department, was fined and suspended.

David Risk was suspended for eight months and fined \$35,000. Doug Risk was suspended for five months and fined \$5,000. Sterling was fined \$40,000 and was ordered to retain an outside consultant to review the firm's policies and procedures concerning its research department. Kirsch was fined \$10,000 and suspended as a principal and supervisor for 30 days.

NASD found that David Risk and Doug Risk violated NASD rules in obtaining information about Neurocrine Biosciences, Inc., a company David Risk was researching for Sterling. In early February 2002, David Risk made an appointment at a clinic performing clinical trials of a medication to treat insomnia being developed by Neurocrine. On the day of the appointment, David Risk directed his brother, who was then acting as his assistant, to go to the clinic and portray himself as David Risk. Doug Risk did so and represented himself as David Risk, signed documents in the name of his brother, and completed a physical examination in the name of David Risk.

Doug Risk wrote David Risk's name on a registration sheet at the clinic that contained a confidentiality agreement. The agreement required that signatories not divulge the name of any patient or family participating in any clinic program. The statement further required him to keep any and all treatment information concerning patients or their families "in the strictest confidence."

In the course of portraying himself as his brother, Doug Risk obtained information, including confidential information, about the medication being studied and the clinical trials. This included information obtained from a questionable source with no personal knowledge of the events about a patient who allegedly could not be roused after taking the medication being tested on behalf of Neurocrine.

Despite the existence of the confidentiality agreement, Doug Risk told his brother what he learned at the clinic. David Risk did nothing to verify the accuracy of the information and included it in a research report he co-wrote about Neurocrine, which was issued to customers and potential customers of Sterling on February 20, 2002. The report contained other material written by David Risk that was inaccurate or misleading. David and Doug Risk were also charged with violating NASD rules by failing to advise Sterling, in writing, of accounts they had at other firms. Doug Risk made trades in one of those accounts, including trades in stocks Sterling was following, without notifying Sterling of the trades.

Sterling was fined for having inadequate training and written supervisory procedures for its research department. Sterling and Kirsch were sanctioned for failure to supervise the activities of the firm's research department and research analysts. Actual supervision of the research department was minimal, and there was inadequate review of the activities of the analysts and department staff. In settling this case, the respondents neither admitted nor denied the findings made by NASD.

Neurocrine Biosciences, Inc., had no involvement in any of the misconduct that is the subject of this enforcement action.

---

## For Your Information

### NASD Reminds Firms of E-Mail Address Established to Report System Outages to Market Regulation Department

In the Winter 2000 *Regulatory & Compliance Alert* (2000 RCA), NASD provided the e-mail addresses specified below so that members could notify NASD's Market Regulation Department (the "staff") of system problems that impacted a member's ability to comply with certain SEC and NASD rules. Because firms experience system problems in the normal course of business and in connection with the implementation of new processes relating to market developments such as SuperMontage and TRACE, NASD staff is reminding members of these e-mail addresses, the purpose for which the e-mails are to be used, and the information that should be included in the e-mail messages.

As noted in the 2000 RCA, NASD staff performs periodic surveillance reviews or "sweeps" of the industry for compliance with a variety of rules including, among others, the Securities and Exchange Commission (SEC) Order Handling Rules and NASD rules relating to trade reporting for equities and corporate bonds (TRACE), ACT compliance, trading during a halt, and trade-or-move obligations. Using sophisticated automated technology, the staff reviews the trading and market making activity of all member firms. Where warranted, the staff's review may result in the imposition of informal or formal disciplinary action.

As part of its review, the staff considers whether a system outage or other technology-related problem caused, or contributed to, a member's failure to comply with a rule. To address such issues earlier in the "sweep" process, the Market Regulation Department established an e-mail address so that members can alert the staff when system outages or other technology-related problems have impeded the members' ability to comply with certain SEC or NASD rules. The staff uses the contemporaneous record created from the members' messages left at the e-mail address to evaluate the results of surveillance "sweeps." On a case-by-case basis, the staff will determine whether the incidents identified in that record should be viewed as a mitigating factor. NASD staff notes that any mitigation resulting from the notification of system problems is affected, among other things, by the cause, magnitude, duration, and

continued

---

frequency of the system problem. In addition, the promptness of the notification and the extent to which the member firm proactively addresses the problem will also be considered in assessing mitigation. It should be noted that the reporting of system problems in cases involving extended periods of non-compliance caused by such problems may not, by itself, have a mitigating effect unless the member firm can document sustained efforts to solve the problem.

In the event a member experiences a system outage or other technology-related problem that impacts that member's ability to meet the obligations imposed by the applicable rules, the member should send a message to the appropriate e-mail address below that includes the following information:

- ◆ The date(s) the system problem occurred;
- ◆ The specific systems that were affected (e.g., the member's internal systems, third party vendor system);
- ◆ The exact nature of the problem (e.g., complete outage, slow transmission times);
- ◆ The time the problem began;
- ◆ The time the member first detected the problem;
- ◆ The time the problem was resolved and a brief description of the resolution;
- ◆ The level of activity impacted (e.g., the approximate number of trades not reported) and a description of how the impact will be addressed (e.g., trade reports to be submitted on an "as of" basis the next business day);

Contact name and telephone number; and

Any additional information deemed relevant by the member firm reporting the problem.

All system outages or technology-related problems involving equities should be reported to *tradereporting@nasd.com*. All system outages or other technology-related problems involving TRACE should be reported to *bondreporting@nasd.com*.

---



## For Your Information

### Web-Based Appointment Scheduling and Confirmation System for Online Exam Scheduling Is Now Available

Firms and employees of firms who have registered through Web CRD to take a computer-based exam can now schedule and confirm online exam appointments through Prometric's Appointment Scheduling and Confirmation Web Site.

A sponsoring firm of the candidate must first request an examination on Web CRD before the candidate or firm can schedule an exam appointment using the online scheduling system.

NOTE: Appointments CANNOT be re-scheduled or canceled via the Web Site. If an appointment needs to be re-scheduled or canceled, the candidate or firm must call Prometric's toll-free number at 1-800-578-6273.

You may access the Web Site in two ways:

*[www.nasdr.com/2630\\_confirm.asp](http://www.nasdr.com/2630_confirm.asp)* provides instructions for using the Web Site and a link to the scheduling and confirmation Site

OR

*[www.2test.com](http://www.2test.com)* provides direct access to Prometric's Web Site.

---

## For Your Information

### Qualification Updates

Effective December 2, 2002, questions on the Limited Representative-Equity Trader Examination, Series 55, will be updated to refer to the revised rules on NASDAQ execution systems. Questions on SOES and SuperSoes will be replaced with questions on SuperMontage. Questions on the new NASD rules on automated display facilities will also be added to the bank of questions for this examination. SOES and SuperSoes questions on the Series 10, 11, 24, and 62 examinations will be updated to reflect these changes on December 9. If you have any questions regarding this information, contact Karen Bescher, Qualifications Analyst, NASD Testing and Continuing Education Department, at (240) 386-4677.

On September 30, 2002, the Municipal Securities Rulemaking Board (MSRB) filed a proposed rule change with the Securities and Exchange Commission for the MSRB's new Municipal Fund Securities Limited Principal Qualification Examination (Series 51), as well as an amendment to Rule G-3, on professional qualifications. Administration of the new Series 51 examination will begin on or about January 1, 2003. The amendment to Rule G-3 will extend to March 31, 2003, the transition period during which Series 24 and Series 26 principals may continue to supervise municipal fund securities activities without further qualification. This extension will provide a three-month period during which candidates can take and pass the Series 51 examination. ***Under the amendment, all municipal fund securities limited principals will be required to have taken and passed the Series 51 examination by April 1, 2003.*** This new exam requirement will not apply to individuals who are functioning as municipal securities principals or general securities sales supervisors, and who have passed either the Municipal Securities Principal Examination (Series 53) or the General Securities Sales Supervisors Examination (Series 8 or Series 9/10). For more information on this new examination requirement, contact Carole Hartzog, Assistant Director, NASD Testing and Continuing Education Department, at (240) 386-4678. This information is also available on the MSRB Web Site at [www.msrb.org](http://www.msrb.org).

---

## For Your Information

### 2002 - 2003 Filing Due Dates

NASD would like to remind members of their obligation to file the appropriate FOCUS reports, Annual Audits, and Customer Complaints by their due dates. The following schedule outlines due dates for 2003. Questions regarding the information to be filed can be directed to the appropriate District Office. Business questions as to how to file the FOCUS report, resetting passwords & technical questions concerning system requirements, file uploads, submission problems for Web-Based FOCUS and Customer Complaints can all be directed to (800) 321-NASD. Business questions regarding the Short Interest Reporting deadlines should be directed to Yvonne Huber at (240) 386-5034 or Jocelyn Rena at (240) 386-5091.

#### 2003 FOCUS Due Dates

*Annual Schedule I for  
2002 Year End*

*Due Date*

2002 FOCUS Schedule I

January 27, 2003

*Annual Schedule I for  
2003 Year End*

*Due Date*

2003 FOCUS Schedule I

January 27, 2004

---

### 2003 Monthly and Fifth FOCUS II/IIA Filings

A Fifth FOCUS report is an additional report that is due from a member whose fiscal year end is a date other than the calendar quarter.

January 31, 2003	February 26, 2003
February 28, 2003	March 25, 2003
April 30, 2003	May 23, 2003
May 31, 2003	June 24, 2003
July 31, 2003	August 25, 2003
August 31, 2003	September 24, 2003
October 31, 2003	November 25, 2003
November 30, 2003	December 23, 2003

### 2003 Quarterly FOCUS Part II/IIA Filings

<i>Quarter Ending</i>	<i>Due Date</i>
December 31, 2002	January 27, 2003
March 31, 2003	April 24, 2003
June 30, 2003	July 24, 2003
September 30, 2003	October 23, 2003
December 31, 2003	January 27, 2004



---

### 2003 Annual Audit Filings Due Dates

<i>Period End</i>	<i>Due Date</i>
January 31, 2003	April 1, 2003
February 28, 2003	April 29, 2003
March 31, 2003	May 30, 2003
April 30, 2003	June 29, 2003
May 31, 2003	July 30, 2003
June 30, 2003	August 29, 2003
July 31, 2003	September 29, 2003
August 31, 2003	October 30, 2003
September 30, 2003	November 29, 2003
October 31, 2003	December 30, 2003
November 30, 2003	January 29, 2004
December 31, 2003	February 29, 2004

### 2003 3070/Customer Complaints Due Dates

4th Quarter 2002:	January 15, 2003 (Wednesday)
1st Quarter 2003:	April 15, 2003 (Tuesday)
2nd Quarter 2003:	July 15, 2003 (Tuesday)
3rd Quarter 2003:	October 15, 2003 (Wednesday)
4th Quarter 2003:	January 15, 2004 (Thursday)

---

**Market Regulation Department 2003 Short Interest Reporting Deadlines**

<b>Trade Date</b>	<b>Settlement Date</b>	<b>Exchange-Listed Short Interest Due*</b>	<b>NASDAQ Short Interest Due*</b>
January 10 Friday	January 15 Wednesday	January 17 1:00 p.m. Friday	January 17 6:00 p.m. Friday
February 11 Tuesday	February 14 Friday	February 19 1:00 p.m. Wednesday	February 19 6:00 p.m. Wednesday
March 11 Tuesday	March 14 Friday	March 18 1:00 p.m. Tuesday	March 18 6:00 p.m. Tuesday
April 10 Thursday	April 15 Tuesday	April 17 1:00 p.m. Thursday	April 17 6:00 p.m. Thursday
May 12 Monday	May 15 Thursday	May 19 1:00 p.m. Monday	May 19 6:00 p.m. Monday
June 10 Tuesday	June 13 Friday	June 17 1:00 p.m. Tuesday	June 17 6:00 p.m. Tuesday



---

<b>Trade Date</b>	<b>Settlement Date</b>	<b>Exchange-Listed Short Interest Due*</b>	<b>NASDAQ Short Interest Due*</b>
July 10 Thursday	July 15 Tuesday	July 17 1:00 p.m. Thursday	July 17 6:00 p.m. Thursday
August 12 Tuesday	August 15 Friday	August 19 1:00 p.m. Tuesday	August 19 6:00 p.m. Tuesday
September 10 Wednesday	September 15 Monday	September 17 1:00 p.m. Wednesday	September 17 6:00 p.m. Wednesday
October 9 Thursday	October 15 Wednesday	October 17 1:00 p.m. Friday	October 17 6:00 p.m. Friday
November 10 Monday	November 14 Friday	November 18 1:00 p.m. Tuesday	November 18 6:00 p.m. Tuesday
December 10 Wednesday	December 15 Monday	December 17 1:00 p.m. Wednesday	December 17 6:00 p.m. Wednesday

\* Eastern Standard Time

---



## For Your Information

### Updated Anti-Money Laundering Online Training Course

NASD is pleased to announce that we will be offering an updated Anti-Money Laundering online course for 2003. The core AML course and case studies, first made available in April of 2002, are intended to educate members about AML laws, policies, and procedures. The course for 2003 will be updated to reflect revisions in the Suspicious Activity Reporting and other rules that have taken effect in the last year. The updated course is scheduled to be available in early January 2003.

NASD also will launch supplemental online course modules with topics and case studies targeted to specific types of business. One specialty module will focus on the AML issues in the retail investments business. This module is scheduled to be available in the first quarter of 2003. A second specialty module is planned to focus on the AML issues in the institutional investments business. This module is scheduled to be available in the second quarter of 2003 and will reflect the Customer Identification rules that are currently being finalized.

Firms have flexibility in determining how to meet their statutory responsibilities under the PATRIOT Act. This employee training program is one option for members to consider using as part of the AML programs they develop to comply with the PATRIOT Act.

To access the training program and for further updates, visit this Web Page: <http://www.nasd.com/aml/training.htm>.

---



## For Your Information

### Elimination of Free-Riding Questionnaires

NASD administers a regulatory program that monitors and collects data on allocations of equity initial public offerings (IPOs) and the restrictions provided in the Free-Riding and Withholding Interpretation (NASD Conduct Rule IM-2110-1). For every equity IPO, the lead managing underwriter must submit information to the Corporate Financing Department (the Department) regarding each member participating in the offering and its retention amounts. The Department then notifies all participating members whether an offering is "hot" (i.e., trades at a premium in the secondary market) for purposes of the Free-Riding and Withholding Interpretation. The lead manager must report final retention amounts for each member after the offering. In addition, when IPO shares trade in the secondary market at premiums above a particular threshold level, the Department has required members to complete Free-Riding Questionnaires (FRQs) that provide more detail regarding allocations to accounts in order to demonstrate that the allocations are not made to accounts that are restricted under the Free-Riding and Withholding Interpretation. NASD has the technology and processes to effectively monitor compliance with the Free-Riding and Withholding Interpretation without requiring members to complete FRQs. Accordingly, NASD will no longer require members to complete FRQs and file them with the Department. Members, however, must continue to submit the initial and final retention information that NASD requires under the Free-Riding and Withholding Interpretation.

Questions regarding this information may be directed to Therese Woods, NASD Corporate Financing Department, at (240) 386-4661.

# Special Notice to Members

DECEMBER 2002

## SUGGESTED ROUTING

Legal and Compliance  
Operations  
Senior Management

## KEY TOPICS

Mutual Funds Transactions  
Breakpoints

## IMMEDIATE ACTION REQUIRED

### NASD Requires Immediate Member Firm Action Regarding Mutual Fund Purchases and Breakpoint Schedules

#### Executive Summary

Mutual funds that are sold with front-end sales loads often offer investors the opportunity to pay reduced sales loads under a variety of circumstances. The specified levels of dollar investment at which the front-end sales charge is reduced are set by the mutual fund company and are generally termed "breakpoints." As set by the mutual fund, the breakpoint levels can be reached through aggregating investments in specified related accounts.

As a result of recent and ongoing examinations, NASD and Securities and Exchange Commission (SEC) staff are concerned that some member firms have not been charging investors the correct sales loads in many instances, particularly for mutual fund transactions involving letters of intent and rights of accumulation. NASD is directing each of its member firms that sells mutual fund shares to immediately review the adequacy of its policies and procedures to ensure that they are designed and implemented so that investors are charged the correct sales loads on mutual fund transactions. This review must include an assessment by each firm of whether it has been charging investors the correct sales loads. Firms must promptly adopt and implement any changes to their policies and procedures that are necessary to ensure that investors are charged the correct sales loads on mutual fund transactions in the future. Finally, each firm must retain a record of its review and the results for examination by NASD.

In order for a customer purchasing a mutual fund through an NASD member firm to incur the most beneficial (the lowest) front-end sales charge percentage, complete information relating to the customer and certain related accounts is necessary. The required

02-85

---

information relates to the customer's account and related and linked accounts and includes the dollar size of the pending transaction, the dollar size of anticipated transactions, and amounts previously invested in the specific fund and other related funds, valued as specified in the prospectus.

With the advent of automated processing and settlement systems in the mutual fund industry, such as Fund/SERV, it is essential for members to enter correctly into these systems the breakpoint information pertaining to customer transactions. Members must have procedures reasonably designed to ascertain all information necessary to establish the correct breakpoint level; training and procedures to ensure that personnel understand the proper steps for inputting the information correctly into the automated processing and settlement system; and supervisory procedures that reasonably ensure compliance in this area. Due to the fact that automated processing and settlement systems may not disclose to the mutual fund company the identity of the member's customer, members cannot rely on the mutual fund company to allocate the correct breakpoint to a transaction or override the member's failure to do so.

After consultation with SEC staff, NASD is issuing this *Notice to Members* to alert members to this important issue and to specify appropriate member action that must be taken immediately to ensure that their customers receive the advantage of breakpoints to which the customers are entitled, namely, a reduction in the sales charges commensurate with the size and nature of the customers' transactions.

## Questions/Further Information

Questions regarding this *Notice* may be directed to Marc Menchel, Senior Vice President and General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8071, or Daniel Sibears, Senior Vice President and Deputy, Department of Member Regulation, Regulatory Policy and Oversight, NASD, (202) 728-8221.

## Discussion

Mutual funds sold with a front-end sales charge often have a breakpoint schedule that affords investors the opportunity to receive a discount on the front-end sales charge based on the specified dollar amounts of a transaction or series of transactions. For example, a mutual fund might charge a front-end sales load of 5.75% for all purchases less than \$50,000; reduce that front-end sales charge to 4.50% for purchases aggregating at least that amount, but less than \$100,000; and further reduce, or eliminate, the sales charge for various greater levels of aggregate purchases. Each mutual fund and family of funds can, in accordance with applicable law and disclosure requirements, set the terms concerning breakpoints. The terms for breakpoints thus vary from fund to fund.

Investors may be entitled to a reduced front-end sales charge based on a single transaction because of its dollar amount. In addition, investors may become entitled to receive breakpoints by using letters of intent or based on rights of accumulation. A letter of intent ("LOI") is a statement signed by the investor indicating his intent to purchase a certain amount of fund shares over a stated period of time. A right of accumulation ("ROA") is the discount or breakpoint

---

received in a current mutual fund transaction based on the cumulative value of previous transactions. In the case of either LOIs or ROAs, the other purchase transactions that are credited towards the discount may occur in accounts that are related or linked to the investor and in different mutual funds that are part of the same fund family.

Dramatic growth in the number of fund families, share classes, and, to a lesser extent, customer account types, has underscored the need to assure that breakpoints are applied appropriately. Breakpoint schedules, and the conditions under which discounts are available, differ among fund families, as noted above. For example, different fund families establish different opportunities to link accounts, transactions, and share classes. Sales charge discounts related to reinstated transactions<sup>1</sup> and exchanges also differ among fund families.

Prior to the advent of automated processing and settlement systems for mutual fund transactions, many members dealt directly with the fund complexes in the settlement of transactions on a basis in which the customer's identity was disclosed. This allowed the mutual fund company the opportunity to apply breakpoints in cases where the discount may not have been properly applied by the member effecting the transaction. NASD understands that many firms now utilize automated processing and settlement systems, such as Fund/SERV,<sup>2</sup> in which the underlying customer's identity may not be disclosed. The mutual fund company may be unable to monitor the application of the appropriate discount.

The terms of the dealer agreement with a mutual fund company or complex generally require the member in its

capacity as the dealer to assure that the member provides the appropriate breakpoint in a given transaction or series of transactions. Whether or not the terms of the dealer agreement imposes this obligation, a broker-dealer must (1) ensure that its registered representatives and other personnel engaged in processing these transactions understand the terms of offerings and reinstatements; (2) ascertain the information that should be recorded on the books and records of the member or its clearing firm, which is necessary in determining the availability and appropriate level of breakpoints; (3) apprise the customer of the breakpoint opportunity and inquire whether the customer has positions or transactions away from the member which should be considered in connection with a pending transaction; (4) make sure that the personnel processing these transactions are appropriately trained in order to ensure that the information pertaining to all aspects of a mutual fund order, including any applicable breakpoint, is accurately transmitted in a manner retrievable by the mutual fund company<sup>3</sup>; and (5) have in place appropriate and sufficient procedures, including supervisory procedures, with respect to breakpoint calculations.

In addition to the rights and obligations created by virtue of applicable clearing agreements and dealer agreements, the introducing broker must ensure that its customer receives the appropriate breakpoint in a given mutual fund transaction absent a clearing arrangement in which the clearing broker expressly assumes this agency obligation in accordance with NASD Rule 3230(a). Introducing firms must, therefore, determine (based on the services offered by their clearing firms, other systems

---

utilized to effect mutual fund transactions, or a combination of both) that they have the capacity and capability to ensure that customers receive the benefit of all applicable discounts.

### Conclusion

NASD and SEC staff consider it essential that mutual fund executions are effected on the terms most advantageous to the customer. Determining the correct sales charge is an obligation held by members and requires a high degree of vigilance to ensure that customers receive the full benefit of available price discounts to which they are entitled. Such vigilance includes extensive product and customer knowledge on the part of registered representatives and related personnel and requires appropriate training, policies and supervisory procedures.

### Endnotes

- 1 A fund may offer its shareholders a "reinstatement privilege" to redeem or sell shares in the fund and allow the shareholder to reinvest some or all of the proceeds, by paying a reduced sales load or no sales load, within a specified period of time (for example, 180 days), in the same share class of that fund or another fund within the same fund family subject to other terms and conditions.
- 2 FundSERV is a mutual fund transaction processing and settlement service offered by the National Securities Clearing Corporation.
- 3 NASD has reason to believe that in certain cases members have incorrectly transmitted breakpoint information through Fund/SERV by populating the wrong fields in their transaction input system. Members must assure themselves that personnel understand and adhere to the appropriate protocols in submitting information.