

# Notices to Members

## August 2001

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**INFORMATIONAL**

## Registration Of Chief Compliance Officers

SEC Approves NASD Rule Proposal Requiring Registration Of Chief Compliance Officers; Effective Date: January 1, 2002

**SUGGESTED ROUTING**

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

- Executive Representatives
- Legal & Compliance
- Operations
- Senior Management

**KEY TOPICS**

- Chief Compliance Officers
- Continuing Education/Testing/Qualifications
- Registration

### Executive Summary

On June 19, 2001, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD®) Rule 1022(a), "General Securities Principal."<sup>1</sup> These changes will require the chief compliance officer designated on Schedule A of a member's Form BD to be registered as a general securities principal unless the member's activities are limited to particular areas of the investment banking or securities business. In that case, the individual may apply for a limited principal registration. Acceptable limited principal categories for a chief compliance officer are the Limited Principal Investment Company and Variable Contracts Products (Series 26), Limited Principal Direct Participation Programs (Series 39), and the Government Securities Principal, if the activities of the chief compliance officer's firm are limited to these areas. NASD Regulation will accept, in lieu of any of these NASD principal examinations, the New York Stock Exchange (NYSE) Series 14 Compliance Official examination.

The amendments also permit individuals who have been listed continuously as a firm's chief compliance officer for the two years preceding January 1, 2002, to be grandfathered, *i.e.*, not be required to take a principal examination, provided they have no disciplinary history as specified in Rule 1022(a).

The text of the amendments as provided in Attachment A becomes effective on January 1, 2002.

### Questions/Further Information

Questions concerning this *Notice* may be directed to Carole B.

Hartzog, Qualifications Department, Department of Member Regulation, NASD Regulation, Inc., at (240) 386-4678; John J. Linnehan, Director, Continuing Education Department, Department of Member Regulation, NASD Regulation, Inc., at (240) 386-4684; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8844.

### Discussion

This rule change requires the chief compliance officer designated on Schedule A of a member's Form BD to be registered as a Series 24 General Securities Principal.<sup>2</sup> If the member's activities are limited to particular areas of the investment banking or securities business, the chief compliance officer may apply for a limited principal registration. Acceptable limited principal categories for a chief compliance officer are the Limited Principal Investment Company and Variable Contracts Products (Series 26), Limited Principal Direct Participation Programs (Series 39), and Government Securities Principal.<sup>3</sup> To avoid imposing duplicative examination requirements on dual NASD/NYSE members, NASD Regulation will accept, for purposes of chief compliance officer registration, the NYSE Series 14 Compliance Official examination in lieu of the NASD Series 24, Series 26, or Series 39 principal examinations.<sup>4</sup> Any person who is listed as the chief compliance officer on the Form BD who is not already registered as a principal will be required to apply for principal registration and pass the appropriate examination within 90 calendar days of January 1, 2002, the effective date of the rule change. Likewise, any person who becomes a chief compliance

officer for the first time on or after January 1, 2002, will also be required to apply for principal registration and pass the required examination. All persons, including chief compliance officers, who are required to take a principal examination must take any prerequisite examination.

### **Grandfathering Provision**

The rule change also permits certain chief compliance officers to be "grandfathered," *i.e.*, to register and qualify as a principal without having to take the appropriate qualification examination. The grandfathering provision applies only to the chief compliance officer function. A person who has been continuously designated as a chief compliance officer on Schedule A of Form BD from January 1, 2000 through January 1, 2002, will not be required to pass the appropriate qualification examination, provided that he or she has not been subject within the last 10 years to: any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended; a suspension; or the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding. A chief compliance officer who has been employed continuously but by more than one firm during the grandfathering period should contact NASD Regulation's Qualifications Department to determine whether they qualify for the grandfathering provision or whether they are eligible for a

waiver of the applicable examination requirement pursuant to NASD Rule 1070(e).

### **Limited Principal Registration**

A chief compliance officer who becomes registered as a limited principal, *i.e.*, a Limited Principal Investment Company and Variable Contracts Products (Series 26), Limited Principal Direct Participation Programs (Series 39), or a Government Securities Principal, either by examination or grandfathering, must restrict his or her activities to those permitted by such registration category unless he or she thereafter becomes registered in some other principal category. If a chief compliance officer who has been registered as a limited principal, either by examination or by grandfathering, wishes to serve as a principal for any other function, he or she must be appropriately qualified and registered. For example, a Series 26 Limited Principal who later becomes the chief compliance officer at a full-service firm must requalify by taking the Series 24 or Series 14 examination.

### **Continuing Education Requirement**

All chief compliance officers, including those that have been "grandfathered," will be subject to all applicable continuing education requirements. Accordingly, chief compliance officers will generally be subject to the Regulatory Element requirements by virtue of the fact that they are registered persons. Firm Element requirements will apply to those whose activities deem them to be "covered registered persons."

### **Registration Requirements Of Chief Compliance Officers Who Are Also General Counsels**

Under this rule change, all chief compliance officers, including those who also serve as a firm's general counsel, must be registered in a principal capacity. It is incumbent upon a member firm that employs an attorney to serve as both the general counsel and chief compliance officer to provide for the appropriate separation of these functions. The NASD has a mandatory statutory obligation to ensure compliance with its rules and the federal securities laws, and member firms are obligated to cooperate with the NASD in its investigations and actions to ensure compliance.

### **Registration Requirements Of General Counsels Who Are Not Chief Compliance Officers**

The chief compliance officer registration requirement does not change the current requirement that any individual, including a firm's general counsel, who is involved in the day-to-day management of the firm's business or who has management-level responsibilities for supervising any aspect of the member's investment banking or securities business is required to be registered as a principal. NASD Regulation determines whether an individual is involved in the management of a member firm on a case-by-case basis, regardless of whether the concerned individual is also the firm's general counsel. As described in *NASD Notice to Members 99-49* (providing interpretive guidance on registration requirements), a firm's general counsel who solely

provides legal advice and does not participate in the management of the member or have management-level supervisory responsibilities is not required to register in a principal capacity. In addition, a member's general counsel may advise the firm's executive, management, or operations committees and avoid triggering the registration requirement if he or she only provides counsel and does not vote.

### **Registration Procedures**

To register a chief compliance officer as a principal:

- Members must file a Form U-4 on Web CRD for the candidate to request registration as a General Securities Principal or other acceptable limited principal registration determined by the scope of the member's securities business.
- The candidate must take the appropriate prerequisite and principal exams within 90 days of January 1, 2002.<sup>5</sup>

To register a chief compliance officer as a principal under the grandfathering provision:

- Members must file a Form U-4 on Web CRD for the candidate to request registration as a General Securities Principal or other acceptable limited principal registration determined by the scope of the member's securities business.
- In addition to filing the Form U-4, members also must provide a statement indicating that the candidate has been designated as the firm's chief compliance officer on Schedule A of the Form BD for at least two years

immediately prior to January 1, 2002. (If the candidate has been designated as the chief compliance officer for more than one firm during the two years immediately prior to January 1, 2002, that information also should be provided.) The request must be signed by a principal of the firm and sent to:

***Waiver Coordinator  
NASD Regulation, Inc.  
Testing and Continuing  
Education Department  
9509 Key West Avenue  
Rockville, MD 20850***

To register a chief compliance officer who is an NYSE Series 14 compliance official as a principal:

- A joint NASD/NYSE member firm may request a waiver of the Series 24 General Securities Principal examination for persons who have passed the Series 14 Compliance Official examination and are properly registered with the NYSE. The member must file a Form U-4 on Web CRD for the candidate to request registration as a General Securities Principal or other limited principal registration determined by the scope of the member's securities business.
- In addition to filing the Form U-4, members also must provide a statement indicating that the candidate is designated as the firm's chief compliance officer on Schedule A of the Form BD. The request must be signed by a principal of the firm and sent to the Waiver Coordinator at the above address.
- A chief compliance officer who does not qualify for the grandfathering provision, but who wishes to request an

examination waiver, must submit a written request for waiver from the qualification examination requirement, signed by a principal of the firm, to the Waiver Coordinator at the above address.

### **Effective Date Of Amendments**

These amendments become effective on January 1, 2002.

### Endnotes

- 1 See Securities Exchange Act Release No. 44451 (June 19, 2001), 66 FR 33985 (June 26, 2001) (File No. SR-NASD-99-46) ("SEC Approval Order").
- 2 The chief compliance officer registration requirement does not create the presumption that a chief compliance officer has supervisory responsibilities or is otherwise a control person. As in the past, NASD Regulation will hold a chief compliance officer responsible for supervision only where supervision is his or her responsibility. Many chief compliance officers are already registered as principals. NASD Regulation does not presume that these individuals have supervisory responsibility by virtue of their title. NASD Regulation will continue to determine whether a chief compliance officer is acting in a supervisory capacity based on the actual responsibilities and functions that the chief compliance officer performs for the firm.
- 3 Chief compliance officers for member firms limited to options activities cannot take the Series 4 exam (Registered Options Principal) in order to satisfy the chief compliance officer principal registration requirement. Also, because there is no qualifying examination for government securities principals, government securities principals are only required to register as such.
- 4 For example, if a person has a NYSE Series 14 license, and after January 1, 2002, accepted a chief compliance officer position with an NASD member, the person would not be required to take the Series 24 examination. In addition, if a person becomes a chief compliance officer for the first time after the effective date of the proposed rule change for a dual NASD/NYSE member, that person may elect to take the NYSE Series 14 exam in lieu of the NASD Series 24 exam.
- 5 The Registration/Exam Fee Schedule may be found on the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)).

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**ATTACHMENT A – RULE TEXT**

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

**1022. Categories of Principal Registration****(a) General Securities Principal**

(1) Each person associated with a member who is included within the definition of principal in Rule 1021, and each person designated as a Chief Compliance Officer on Schedule A of Form BD, shall be required to register with the Association as a General Securities Principal and shall pass an appropriate Qualification Examination before such registration may become effective unless [his] such person's activities are so limited as to qualify [him] such person for one or more of the limited categories of principal registration specified hereafter. A person whose activities in the investment banking or securities business are so limited is not, however, precluded from attempting to become qualified for registration as a General Securities Principal, and if qualified, may become so registered. Each person seeking to register and qualify as a General Securities Principal must, prior to or concurrent with such registration, become registered, pursuant to the Rule 1030 Series, either as a General Securities Representative or as a Limited Representative-Corporate Securities. A person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002 and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding shall be required to register as a General Securities Principal, but shall be exempt from the requirement to pass the appropriate Qualification Examination. If such person has acted as a Chief Compliance Officer for a member whose business is limited to the activities described in Rule 1022(d)(1)(A) or Rule 1022(e)(2), he or she shall be exempt from the requirement to pass the appropriate Qualification Examination only if he or she registers as a Limited Principal pursuant to Rules 1022(d) or Rule 1022(e), as the case may be, and restricts his or her activities as required by such registration category. A Chief Compliance Officer who is subject to the Qualification Examination requirement shall be allowed a period of 90 calendar days following January 1, 2002 within which to pass the appropriate Qualification Examination for Principals.

**(a)(2) through (a)(6)** No change

**(b) through (g)** No changes

**INFORMATIONAL**

## Registration Requirements

**SEC Approves NASD Rule Proposal Relating To Registration Requirements For Limited Principals-Financial And Operations And Limited Principals-Introducing Broker/Dealer Financial And Operations; Effective Date: September 17, 2001**

**SUGGESTED ROUTING**

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

- Executive Representatives
- Legal & Compliance
- Operations
- Senior Management

**KEY TOPICS**

- Limited Principal—Financial and Operations
- Limited Principal—Introducing Broker/Dealer Financial and Operations

### Executive Summary

On May 21, 2001, the Securities and Exchange Commission (SEC) approved amendments to National Association of Securities Dealers, Inc. (NASD®) Rule 1022(b), "Limited Principal - Financial and Operations" ("FINOP"), and NASD Rule 1022(c) "Limited Principal - Introducing Broker/Dealer Financial and Operations" ("Introducing FINOP").<sup>1</sup> Effective September 17, 2001, these changes will require every firm approved for membership in the NASD on or after September 17, 2001, that is also subject to the requirements of the SEC's net capital rule (Exchange Act Rule 15c3-1), to have at least one associated person registered as either a Series 27 FINOP or Series 28 Introducing FINOP, depending upon the firm's net capital requirement.<sup>2</sup> Members that were specifically exempted from the requirement to employ a Series 27 FINOP or Series 28 Introducing FINOP prior to September 17, 2001, will not be subject to these requirements.<sup>3</sup> No firm will be permitted to seek an exemption from this requirement under NASD Rule 9610(a). The amendments to NASD Rules 1022(b) and 1022(c) also clarify their applicability to NASD members by making citations in them consistent with Exchange Act Rule 15c3-1. The changes to Rules 1022(b) and 1022(c) will not affect individuals who currently are grandfathered from the Series 27 or Series 28 examinations because these individuals are considered to possess the license for which they were grandfathered.<sup>4</sup>

The text of the amendments as provided in Attachment A become effective on September 17, 2001.

### Questions/Further Information

Questions concerning this *Notice* may be directed to Susan DeMando, Director, Financial Operations, Member Regulation, NASD Regulation, Inc., at (202) 728-8411; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8844.

### Discussion

The purpose of requiring members to employ a FINOP or Introducing FINOP is to protect investors and the public interest by helping to ensure that the financial and operations personnel of broker/dealers subject to the net capital requirements of Exchange Act Rule 15c3-1 have the training and competence needed to ensure the member's compliance with applicable net capital, recordkeeping, and other financial and operational rules.

As of September 17, 2001, these rule changes will require all firms that are subject to the net capital requirements of Exchange Act Rule 15c3-1, and that have not previously been exempted from the requirement to employ a FINOP or Introducing FINOP, to have either a registered FINOP or registered Introducing FINOP. There will be no exceptions. Accordingly, the NASD has eliminated Rule 1022 from the list of rules in Rule 9160(a) from which members may seek exemptive relief.

The amended Rule 1022(b) will require members that have a minimum \$250,000 net capital requirement under Exchange Act Rule 15c3-1(a)(1)(ii) or (a)(2)(i) and municipal securities brokers' brokers that have a minimum \$150,000 net capital requirement

under Exchange Act Rule 15c3-1(a)(8) to have a registered Series 27 FINOP. All other members will be required under the amended Rule 1022(c) to have at least one associated person registered as a Series 28 Introducing FINOP.

These rule changes will not affect an exemption from the FINOP or Introducing FINOP requirement that was granted to a member prior to September 17, 2001. Nevertheless, as is current practice, NASD Regulation may require a firm that has been exempted from the requirement to have a Series 28 Introducing FINOP to employ a Series 27 FINOP if the business conducted by the firm at the time the exemption was granted changes, *i.e.*, the firm substantially increases its business or adds new lines of business, regardless of whether the firm's net capital requirement also changes. NASD Regulation will require a firm that has an exemption from the Introducing FINOP requirement to employ a FINOP if a business change causes the firm to operate under Exchange Act Rule 15c3-1(a)(1)(ii), Rule 15c3-1(a)(2)(i), or Rule 15c3-1(a)(8). Members also are reminded that NASD Regulation may impose a disciplinary sanction that requires a previously exempt firm to employ a FINOP or Introducing FINOP.

These rule changes will not affect individuals who currently are grandfathered for the Series 27 or Series 28 examinations because they are considered duly registered within the applicable registration category. Firms also may continue to seek exam waivers for qualified individuals pursuant to NASD Rule 1070(e) ("Qualification Examination and Waiver of Requirements") and NASD Rule 9610 ("Procedures for Exemptions"). Members are

reminded that NASD Regulation may impose a disciplinary sanction that requires a grandfathered individual to take the Series 27 FINOP examination or Series 28 Introducing FINOP examination.

### Effective Date Of Amendments

These amendments become effective on September 17, 2001.

### Endnotes

- 1 See Securities Exchange Act Release No. 44332 (May 21, 2001), 66 FR 29196 (May 29, 2001) (File No. SR-NASD-00-77).
- 2 Government securities firms that are subject only to the capital requirements imposed by the U.S. Department of the Treasury will not be subject to the requirements of Rules 1022(b) and 1022(c).
- 3 NASD Regulation, Inc. nonetheless reserves the right to require a firm to employ a FINOP or Introducing FINOP if the business conducted by the firm at the time the exemption was granted changes, *e.g.*, the firm substantially increases its business or adds new lines of business, regardless of whether the firm's net capital requirement also changes. NASD Regulation will require a previously exempt firm to employ a FINOP if a change in business requires it to operate under Exchange Act Rule 15c3-1(a)(1)(ii), Rule 15c3-1(a)(2)(i), or Rule 15c3-1(a)(8). NASD Regulation also may impose a disciplinary sanction that requires a previously exempt firm to employ a FINOP or Introducing FINOP.

The requirement under Rules 1022(b) and 1022(c) that all brokers or dealers subject to the net capital requirements of Exchange Act Rule 15c3-1 have at least one associated person registered as a FINOP or Introducing FINOP does not mean that a member must hire an additional person to be its FINOP or Introducing FINOP. An existing employee may become a FINOP or Introducing FINOP and continue to act in other registered capacities.

- 4 Again, NASD Regulation reserves the right to require a grandfathered individual to take the Series 27 or Series 28 examinations in certain instances. For example, NASD Regulation may impose a disciplinary sanction that requires a grandfathered individual to take the Series 27 or Series 28 examinations. *See supra* note 3.

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## ATTACHMENT A – RULE TEXT

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

### 1020. Registration of Principals

#### 1022. Categories of Principal Registration

(a) No change

##### (b) Limited Principal-Financial and Operations

(1) Every member of the Association, [unless exempted by subparagraph (4),] that is operating pursuant to the provisions of SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate as Limited Principal-Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who performs the duties described in subparagraph [(b)](2) hereof. Each person associated with a member who performs such duties shall be required to register as a Limited Principal-Financial and Operations with the Association and shall pass an appropriate Qualification Examination before such registration may become effective.

(2) and (3) No change

[(4) Pursuant to the Rule 9600 Series, the Association may exempt a member or an applicant for membership in the Association from the requirement to have a Limited Principal – Financial and Operations if:]

[A] it has been expressly exempted by the Commission from SEC Rule 15c3-1(b)(1)(iii);]

[B] it is subject to the provisions of SEC Rule 15c3-1(a)(2) or to Section 402.2(c) of the rules of the Treasury Department.]

[(5)] (4) A person registered solely as a Limited Principal-Financial and Operations shall not be qualified to function in a principal capacity with responsibility over any area of business activity not described [prescribed] in subparagraph (2) hereof.

##### (c) Limited Principal-Introducing Broker/Dealer Financial and Operations

(1) Every member of the Association, [which is operating pursuant to the provisions of SEC Rule 15c3-1(a)(2)(i) or (vi) and to the provisions of SEC Rule 15c3-3(k)(2)(ii),] that is subject to the requirements of SEC Rule 15c3-1, other than a member operating pursuant to SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8) in which case paragraph (b) shall apply, shall designate as Limited Principal-Introducing Broker/Dealer Financial and Operations those persons associated with it, as least one of whom shall be its chief financial officer, who perform the duties described in [paragraph] subparagraph (2)[,] hereof. Each person associated with a member who performs such duties shall be required to register as a Limited Principal-Introducing Broker/Dealer Financial and Operations with the Association and shall pass an appropriate Qualification Examination before such registration may become effective.

(2) No change

(3) Except as provided in Rule 1021(c), a person designated pursuant to the provisions of subparagraph (1) hereof, shall not be required to take the Limited Principal-Introducing Broker/Dealer Financial and Operations Examination and shall be qualified for registration as a Limited Principal-Introducing Broker/Dealer Financial and Operations if such a person is qualified to be registered or is registered as a Limited Principal-Financial and Operations as defined in paragraph (b)(2) hereof.

(4) No change

(d) through (g) No change

## **9600. PROCEDURES FOR EXEMPTIONS**

### **9610. Application**

#### **(a) Where to File**

A member seeking [an exemption from] exemptive relief as permitted under Rules 1021, [1022,]1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b) and (c) No change

**INFORMATIONAL**

## **Subordination Agreements**

### **Procedures Governing The Review And Approval Of Subordination Agreements Filed With The NASD**

**SUGGESTED ROUTING**

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

- Executive Representatives
- Legal & Compliance
- Operations
- Senior Management

**KEY TOPICS**

- Broker/Dealer Financial and Operations

### **Executive Summary**

On April 26, 2001, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) staff reported to the Board of Directors that it would: (1) discontinue publishing the "Procedures Governing the Review and Approval of Subordination Agreements filed with the Association" ("Procedures") in the *NASD Manual* (following Appendix D to Rule 15c3-1 under the Securities Exchange Act of 1934) and, instead, publish the Procedures in hard copy as part of the instructions for subordination agreements; and (2) change the 30/10-day time frames previously contained in the Procedures from a requirement to a guideline.

### **Questions/Further Information**

Questions concerning this *Notice* may be directed to Susan DeMando, Director, Financial Operations, Member Regulation, NASD Regulation, Inc., at (202) 728-8411; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8844.

### **Discussion**

Since 1975, the NASD has published the Procedures in the *NASD Manual* following Appendix D to Rule 15c3-1 under the Securities Exchange Act of 1934. Among other things, the Procedures **require** firms to submit their subordination agreements to the appropriate District Office within 30 days of the scheduled effective date or within 10 days of the scheduled effective date in the case of a temporary subordination agreement.

Increased staff experience and the use of standardized subordinated loan agreement forms have enabled District Office staff routinely to review and approve subordination agreements in less than the 30/10 days contemplated by the Procedures. Thus, although members may at times fail to submit subordinated loan agreements 30 or 10 days prior to the scheduled effective dates as contemplated by the Procedures, District Office staff has nonetheless been able to process the agreements so that a loan can become effective on the scheduled effective date. Moreover, members generally submit agreements sufficiently in advance of the scheduled effective dates to avoid potential net capital deficiencies.

This *Notice* is announcing two changes:

- (1) Staff has removed the Procedures from the *NASD Manual* and, instead, will publish the Procedures in hard copy as part of the instructions for subordination agreements; and
- (2) Staff is changing the 30/10-day time frames set forth in the Procedures from a requirement to a guideline. This will remove an outdated time restriction and will give District Office staff greater flexibility in reviewing and approving subordination agreements. Members are reminded that they should read the Procedures included in the subordinated agreements carefully and that they must obtain staff approval of their subordination agreements prior to the effective date in order for the subordination agreements to have value for net capital purposes.

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## **NASD Notice to Members 01-53**

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readers in a format that is easily understandable.  
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**INFORMATIONAL**

## Minor Violations Of Rules And Late Fees

SEC Approves Proposed Additions To The List Of Rules Appropriate For Disposition As Minor Violations Of Rules And For The Establishment Of Late Fees For Certain Filings And Reports

**SUGGESTED ROUTING**

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

- Legal & Compliance
- Senior Management

**KEY TOPICS**

- Minor Rule Violation Plan
- Schedule A of the NASD By-Laws

### Executive Summary

On July 3, 2001, the Securities and Exchange Commission (SEC) approved rule changes proposed by the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) that afford the NASD more flexibility in responding to certain technical or minor violations of NASD rules.<sup>1</sup> The NASD is expanding upon the list of rule violations that can be resolved through its Minor Rule Violation Plan (MRVP) and is establishing late fees for certain filings and reports.

The amendments become effective on September 10, 2001. The text of the amendments is attached (see Attachment A).

Questions concerning this *Notice* may be directed to the Legal Division, Enforcement, NASD Regulation, Inc., at (202) 974-2800, Legal Section, Market Regulation, NASD Regulation, Inc., at (240) 386-5139; or Office of General Counsel, NASD Regulation, Inc., at (202) 728-8071.

### Late Fees

The NASD is amending Schedule A of its By-Laws to impose late filing fees for certain filings and reports. The late fees will be assessed on a per-day basis for a period of not more than 10 business days. The fees are administrative rather than disciplinary in nature and should help to deter violations of certain NASD filing requirements. The NASD staff may institute disciplinary proceedings where the late filing is serious.

In those instances where a member knows it is unable to meet a filing deadline, the member may request an extension no later than three days prior to the

deadline. Extensions only will be granted for delays outside of the control of the member, e.g., technical difficulties, third-party contractor delays, and auditor delays.

The NASD will send notice of the late fee to the member after a document has been correctly filed, or after 10 business days from the filing deadline. When the notice has been sent, any accrued late fees will be automatically deducted from the member's Central Registration Depository (CRD) Account.

Initially, the designated filings and reports for the imposition of late fees will be limited to untimely filings pursuant to Rule 17a-5 under the Securities Exchange Act of 1934 (Exchange Act), monthly and quarterly FOCUS reports, and annual audit reports. Inaccurate or incomplete filings will not be deemed filed. The NASD may seek to amend this list from time to time as appropriate.

### Minor Violations Of Rules

In 1984, the SEC adopted amendments to Exchange Act Rule 19d-1(c) to allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.<sup>2</sup> In 1993, pursuant to this Rule, the NASD established a MRVP.<sup>3</sup> NASD Rule 9216(b) authorizes the NASD to impose a fine of \$2,500 or less on any member or associated person for a minor violation of certain specified rules as identified in IM-9216.<sup>4</sup>

The number and seriousness of the violations, as well as the previous disciplinary history of the respondent, will be reviewed to determine if a matter is appropriate for disposition

pursuant to the MRVP and to determine the amount of the fine. Once the NASD has brought a minor violation of a rule against an individual or member firm, the NASD may, at its discretion, issue progressively higher fines for all subsequent minor violations of rules within the next 24-month period or initiate more formal disciplinary proceedings.

The purpose of the MRVP is to provide for a meaningful sanction for the minor or technical violation of a rule when the initiation of a disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted. The MRVP provides an efficient alternative means by which to deter violations of rules while maintaining procedural rights for disciplined persons.

Inclusion of a rule in the NASD's MRVP does not mean it is an unimportant rule; rather, a minor or technical violation of the rule may be appropriate for disposition under the MRVP.<sup>5</sup> The NASD retains the discretion to bring full disciplinary proceedings for any violation of a rule included in the MRVP, including situations where: (1) a violation is more than technical, minor, or inadvertent; (2) there is a history or pattern of repeat violations; or (3) a violation significantly impacts investors or impairs the ability of the NASD to regulate the market.

### Description Of Additions To The MRVP

The NASD stated when it established the MRVP that it would revisit the list of eligible rule violations from time to time. As discussed above, the NASD now is expanding the list of eligible rule violations. The following is a discussion of rule violations that

are being added to the MRVP.

- *Article IV of NASD By-Laws—Failure to timely submit amendments to Form BD.* Members are required, pursuant to Article IV, Section 1(c) of the NASD By-Laws, to ensure that their membership applications are kept current at all times through amendments to Form BD. The failure to amend Form BD in a timely manner may be considered a minor violation.
- *Article V of NASD By-Laws—Failure to timely submit amendments to Form U-4.* Article V, Section 2(c) of the NASD By-Laws requires that applications for the registration of registered representatives and associated persons must be kept current at all times through amendments to Form U-4. The failure to amend Form U-4 in a timely manner may be considered a minor violation.
- *Rule 1120—Failure to comply with the Firm Element of the Continuing Education Requirements.* In evaluating whether a violation of the Firm Element of NASD Rule 1120 may be considered a minor violation, the staff will look at the length of time that the firm failed to fully comply with the rule; the number of registered persons affected; the experience of the registered representatives in the securities industry with the financial products marketed by the firm; and the nature of the firm's business. The staff also will consider whether the firm promptly corrected any deficiencies after receiving notice from the staff and whether the firm was the subject of prior formal or informal disciplinary actions. In general, a minor violation of the Rule would be considered for non-technical violations of the rule where the firm has made a good faith effort to comply with the Rule's requirements, has provided training to all or substantially all of its registered representatives, has no prior formal or informal action in this area, and has promptly corrected any deficiencies after being contacted by the staff. Violations of the Regulatory Element of NASD Rule 1120 will not be considered a minor violation.
- *Rule 3010(b)—Failure to timely file reports pursuant to the Taping Rule.* NASD Rule 3010(b)(2)(vii) requires members subject to the taping requirements of the Rule to file quarterly reports that detail the member's supervision of the telemarketing activities of its registered persons. A report not filed in a timely manner may be considered a minor violation.
- *Rule 3070—Failure to timely file reports.* NASD Rule 3070 requires member firms to file a report with the NASD when any of 10 specified events occur. In addition, member firms are required to collect and report statistical and summary information regarding customer complaints by the 15th of the month following the calendar quarter in which the member receives the customer complaints. A report not filed in a timely manner may be considered a minor violation.
- *Rule 4619(d)—Failure to timely file reports pursuant to SEC Regulation M.* NASD Rule 4619(d) requires member firms to file certain notifications with the NASD to comply with SEC Regulation M,<sup>6</sup> SEC

Rules 101,<sup>7</sup> 103,<sup>8</sup> and 104<sup>9</sup> (*i.e.*, notification of withdrawal of quotations and identification of quotations as those of a passive market maker). Specifically, NASD Rule 4619(d) requires a member to file an Underwriting Activity Report no later than close of business the day before the member wishes to have its quotations identified as those of a passive market maker or intends to withdraw its quotations.

An untimely notification filed pursuant to NASD Rule 4619(d) may be considered a minor violation, where, for instance, a member inadvertently misses the filing deadline but files the notification the following day before the commencement of trading and no customer harm has occurred.

- *Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620, and 6720—Transaction reporting in equity, convertible debt, and high yield securities.* The NASD's trade reporting Rules require member firms to submit reports of transactions in equity, convertible debt, and high yield securities. The Rules concern trade reporting in certain Nasdaq securities, listed securities (commonly known as the "third market"), over-the-counter (OTC) equity securities, non-Nasdaq securities, and high yield securities. The failure to properly report such transaction data may be considered a minor violation.
- *Rules 6130 and 6170—Transaction reporting to the Automated Confirmation Transaction Service (ACT).* NASD Rules 6130 and 6170 require member firms to

submit reports of transactions in "ACT Eligible Securities"<sup>10</sup> to ACT. The failure to submit required transaction reports to ACT may be considered a minor violation.

- *Rules 6954 and 6955—Failure to submit data in accordance with the Order Audit Trail System (OATS).* The OATS Rules impose obligations on member firms to record in electronic form and to report to the NASD items of information with respect to orders they receive to effect transactions in equity securities traded in The Nasdaq Stock Market. The OATS Rules require that each member receiving an order relating to equity securities traded in The Nasdaq Stock Market must capture specific information and electronically transmit this information to OATS. The failure to submit data in accordance with the OATS Rules may be considered a minor violation.

For example, minor violations of the rules may include instances where a firm files information with missing or inaccurate data elements but the information does not significantly limit the usefulness of the Order Audit Trail. However, omissions and errors that should have been detected by a firm through its monitoring of the data made available by the NASD on the OATS Web Site may not be appropriate for disposition as minor violations.

- *Rule 11870—Failure to abide by Customer Account Transfer Contracts.* NASD Rule 11870 requires members to follow certain procedures for the transfer or closing-out of customer accounts. The Rule

requires members to validate or object to a customer account transfer within three days of receipt of the transfer notice. Members must complete the transfer within three days of validation.<sup>11</sup> The failure to validate or object to the transfer within the stated time or failure to properly transfer a customer account within the stated period may be considered a minor violation.

- *SEC Rule 11Ac1-4—Failure to properly display limit orders.* SEC Rule 11Ac1-4<sup>12</sup> requires, subject to certain exceptions, a registered broker or dealer acting as an OTC market maker to "immediately" display qualifying customer limit orders in its published quotes. The failure to immediately display qualifying limit orders pursuant to Rule 11Ac1-4 may be considered a minor violation.
- *SEC Rule 11Ac1-1(c)(5)—Failure to properly update published quotations in certain Electronic Communication Networks (ECNs).* SEC Rule 11Ac1-1(c)(5)<sup>13</sup> requires an OTC market maker to update its published quotations to reflect qualifying priced orders that it enters into a specific type of ECN. The failure to display such priced orders may be considered a minor violation.
- *SEC Rule 17a-5—Failure to timely file FOCUS reports.* SEC Rule 17a-5 requires broker/dealers to submit certain financial information on a monthly, quarterly, and annual basis, known as FOCUS reports.<sup>14</sup> The failure to file FOCUS reports in a timely manner may be considered a minor violation.

- *Municipal Securities Rulemaking Board (MSRB) Rule A-14—Failure to timely pay annual fee.* MSRB Rule A-14 requires each broker, dealer, and municipal securities dealer to pay an annual fee to the MSRB in each fiscal year in which the broker, dealer, and municipal securities dealer conducts municipal securities activities. The MSRB must receive the fee no later than October 31 of the fiscal year in which the fee is due. The failure to pay the annual fee in a timely manner may be considered a minor violation. Any fines imposed pursuant to the MRVP would be in addition to the annual fee owed to the MSRB.
- *MSRB Rules G-12 and G-14—Failure to Report Transactions or Inaccurate Reporting of Transactions.* The NASD uses certain information to determine a member's compliance with MSRB Rule G-14 reporting requirements and related MSRB Rule G-12 requirements concerning clearance and settlement. With respect to determining a member's compliance with inter-dealer only trades, the NASD uses as one factor, the "T-Input Percentage." The T-Input Percentage is an indicator compiled by the National Securities Clearing Corporation, Inc., which provides information on the accuracy and timely submission of reports on inter-dealer municipal securities transactions. Other indicators used to determine a member's compliance with MSRB Rules G-14 and G-12 for both inter-dealer and customer municipal securities transactions include, among other things: 1) the accuracy of the effecting

broker symbol; 2) the accuracy or the reporting of time of trade; 3) the number of canceled and/or amended transactions; and 4) the number of late-trade submissions.

The failure by a member firm to submit transaction reports or the filing of inaccurate or untimely transaction reports pursuant to MSRB Rules G-12 and G-14 may be considered minor violations.

- *MSRB Rule G-36—Failure to timely submit reports.* MSRB Rule G-36 concerns the delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to the MSRB. MSRB Rule G-36, in part, requires the sending—within certain specified time frames—of two copies of certain issuer documents to the MSRB. Failure to file Form G-36(OS) or G-36(ARD) within the published time frames may be considered a minor violation.
- *MSRB Rule G-37—Failure to timely submit reports for political contributions and MSRB Rule G-38—Failure to timely submit reports detailing consultant activities.* MSRB Rules G-37 and G-38 require, in part, the disclosure on MSRB Form G-37/38, of certain political contributions, solicitation of municipal securities business, and the use of consultants by municipal securities dealers. Due dates for these required disclosures are January 31, April 30, July 31, and October 31. The late filing of these reports may be considered a minor violation. In addition, form filings which are incomplete or inaccurate, or inaccurate record keeping

as required under MSRB Rules G-37 and G-38, may also be considered minor violations.

### Endnotes

- 1 See Exchange Act Rel. No. 44512 (July 3, 2001), 66 Fed. Reg. 36812 (July 13, 2001) (File No. SR-NASD-00-39) (“SEC Approval Order”).
- 2 See Exchange Act Rel. No. 21013 (June 1, 1984), 49 Fed. Reg. 23833 (June 8, 1984).
- 3 See Exchange Act Rel. No. 32076 (Mar. 31, 1993), 58 Fed. Reg. 18291 (Apr. 8, 1993) (SR-NASD-93-06). See also *Notice to Members 93-42* (July 1993) (SEC Approves NASD’s Minor Rule Violation Plan).
- 4 Generally, the disposition of disciplinary matters brought by NASD staff pursuant to the NASD Rule 9000 Series must be reported to the SEC as “final disciplinary actions” pursuant to SEC Rule 19d-1. Disciplinary actions disposed of pursuant to NASD Rule 9216(b) will not be considered “final” pursuant to Exchange Act Rule 19d-1(c)(2) and may be reported to the SEC by the NASD in quarterly or periodic summary reports. In addition, matters brought pursuant to NASD Rule 9216(b) may not be required to be reported on Form BD, or Forms U-4 and U-5. For a discussion of the imposition of censures by the NASD, see *Notice to Members 99-59*.
- 5 The SEC Approval Order states, “In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the NASD’s [MRVP]. The Commission believes that the violation of any self-regulatory organization’s rules, as well as Commission rules, is a serious matter. However, in an effort to provide the NASD with greater flexibility in addressing certain violations, the MRVP provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings.”
- 6 17 CFR 242.
- 7 17 CFR 242.101.
- 8 17 CFR 242.103.
- 9 17 CFR 242.104.
- 10 NASD Rule 6110(a).
- 11 NASD Rule 11870 was amended to provide that the total post-validation transfer period be reduced from four days to three days. See Exchange Act Rel. No. 43635 (Nov. 29, 2000), 65 Fed. Reg. 75990 (Dec. 5, 2000) (File No. SR-NASD-00-68).
- 12 17 CFR 240.11Ac1-4.
- 13 17 CFR 240.11Ac1-1(c)(5).
- 14 17 CFR 240.17a-5.

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## ATTACHMENT A

### SR-NASD-00-39, Text of Rule Language, as amended

(Note: New language is underlined.)

#### Schedule A to the NASD By-Laws

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

#### Section 2-Fees

(a) through (k) No Change.

(l) (1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to the Association at least three business days prior to the due date; and

(2) Any report filed pursuant to this Rule containing material inaccuracies or filed incompletely shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

(3) List of Designated Reports:

(A) SEC Rule 17a-5 -Monthly and quarterly FOCUS reports and annual audit reports.

#### IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

-Rule 2210(b) and (c) and Rule 2220(b) and (c) - Failure to have advertisements and sales literature approved by a principal prior to use; failure to maintain separate files of advertisements and sales literature containing required information; and failure to file advertisements with the Association within the required time limits.

-Rule 3360 -Failure to timely file reports of short positions on Form NS-1.

-Rule 3110 -Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of the Association.

-Rule 8211, Rule 8212, and Rule 8213 -Failure to submit trading data as requested.

-Article IV of the NASD By-Laws -Failure to timely submit amendments to Form BD.

-Article V of the NASD By-Laws -Failure to timely submit amendments to Form U-4.

-Rule 1120 -Failure to comply with the Firm Element of the continuing education requirements.

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- Rule 3010(b) -Failure to timely file reports pursuant to the Taping Rule.
- Rule 3070 -Failure to timely file reports.
- Rule 4619(d) -Failure to timely file notifications pursuant to SEC Regulation M.
- Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620, And 6720 -Transaction reporting in equity, convertible debt, and high yield securities.
- Rules 6130 and 6170 -Transaction reporting to the Automated Confirmation Transaction Service ("ACT").
- Rules 6954 and 6955 -Failure to submit data in accordance with the Order Audit Trail System ("OATS").
- Rule 11870 -Failure to abide by Customer Account Transfer Contracts.
- SEC Exchange Act Rule 11Ac1-4 -Failure to properly display limit orders.
- SEC Exchange Act Rule 11Ac1-1(c)(5) -Failure to properly update published quotations in certain Electronic Communication Networks ("ECN's").
- SEC Exchange Act Rule 17a-5 -Failure to timely file FOCUS reports.
- MSRB Rule A-14 -Failure to timely pay annual fee.
- MSRB Rule G-12 -Failure to abide by uniform practice rules.
- MSRB Rule G-14 -Failure to submit reports.
- MSRB Rule G-36 -Failure to timely submit reports.
- MSRB Rule G-37 -Failure to timely submit reports for political contributions.
- MSRB Rule G-38 -Failure to timely submit reports detailing consultant activities.

## FIPS Changes

### Fixed Income Pricing System<sup>SM</sup> Additions, Changes, And Deletions As Of June 21, 2001

#### SUGGESTED ROUTING

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

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

#### KEY TOPICS

- FIPS

As of June 21, 2001, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>).

Symbol	Name	Coupon	Maturity
ADVP.GA	AdvancePCS	8.500	04/01/08
AES.GJ	AES Corp	8.750	06/15/08
AES.GK	AES Corp	7.375	06/15/13
ATWC.GA	American Tower Corp	9.375	02/01/09
BID.GA	Sotheby's Holdings Inc	6.875	02/01/09
BRUQ.GA	BRL Universal Equipment Corp	8.875	02/15/08
BUCB.GA	Blum CB Corp	11.250	06/15/11
CMS.IM	CMS Energy Corp	8.900	07/15/08
CNC.GH	Conseco Inc	10.750	06/15/08
ELEP.GA	El Paso Energy Partners LP	8.500	06/01/11
KME.GA	Key3Media Group Inc	11.250	06/15/11
LEVI.GC	Levi Strauss & Co	11.625	01/15/08
LQI.GB	La Quinta Properties Inc	7.600	07/15/01
NWSW.GB	Northwestern Steel & Wire Co	9.500	06/15/49
NXTL.GI	Nextel Communications Inc	9.500	02/01/11
POAN.GC	Protection One Alarm Monitoring Inc	8.125	01/15/09
PPP.GC	Pogo Producing Co	8.250	04/15/11
STN.GG	Station Casinos Inc	8.375	02/15/08
UFI.GA	Unifi Inc	6.500	02/01/08

As of June 21, 2001, the following bonds were deleted from the Fixed Income Pricing System.

Symbol	Name	Coupon	Maturity
BEPA.GA	BE Aerospace Inc	9.875	02/01/06
CHTT.GA	Chattem Inc	12.750	06/15/04
CIDL.GC	Citadel Broadcasting Co	9.250	11/15/08
CONA.GC	Container Corp of America	11.250	05/01/04
CPN.GA	Calpine Corp	9.250	02/01/04
GTFL.GA	Green Tree Financial Corp	10.250	06/01/02
ICIX.GA	Intermedia Communications Inc	12.500	05/15/06
ICIX.GB	Intermedia Communications Inc	11.250	07/15/07
ICIX.GD	Intermedia Communications Inc	8.500	01/15/08
ICIX.GE	Intermedia Communications Inc	8.875	11/01/07
ICIX.GF	Intermedia Communications Inc	8.600	06/01/08
ICIX.GG	Intermedia Communications Inc	12.250	03/01/09
ICIX.GH	Intermedia Communications Inc	9.500	03/01/09
LQI.GB	La Quinta Property	7.600	07/15/01
LU.GA	Lucent Technologies Inc	6.900	07/15/01
MEOP.GA	Mesa Operating Company	10.625	07/01/06
MEOP.GB	Mesa Operating Company	11.625	07/01/06
MORT.GE	Marriott Corp	10.250	07/18/01
MUZK.GA	Musicland Group Inc	9.000	06/15/03
PDC.GA	Presley Cos Del	12.500	07/01/01
PLH.GA	Pierce Leahy Corp	11.125	07/15/06

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<u>Symbol</u>	<u>Name</u>	<u>Coupon</u>	<u>Maturity</u>
PYTX.GD	Playtex Family Products Corp	9.000	12/15/03
RJR.GB	RJ Reynolds Tobacco Holdings Inc	8.000	07/15/01
RT.GD	Ryerson Tull Inc	8.500	07/15/01
STN.GC	Station Casinos Inc	10.125	03/15/06
TRFI.GA	Trans Financial Bancorp Inc	7.250	09/15/03

As of June 21, 2001 changes were made to the symbols of the following FIPS bonds:

<u>New Symbol</u>	<u>Old Symbol</u>	<u>New Name/Old Name</u>	<u>Coupon</u>	<u>Maturity</u>
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There were no symbol changes for this time period.

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Patricia Casimates, NASDR Market Regulation, at (240) 386-4994.

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

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# Disciplinary Actions

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## Disciplinary Actions Reported For August

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of July 2001.

### Firm Expelled

**Royal Hutton Securities Corp. (CRD #14489, New York, New York)** submitted an Offer of Settlement in which the firm was fined \$20,000 and expelled from NASD membership. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it engaged in stock manipulation and fraudulent sales practices. The firm, directly and/or indirectly, singly and in concert, by use of the means or instrumentalities of interstate commerce, or of the mails, and in connection with the purchase and sale of securities, knowingly or recklessly employed a device, scheme, or artifice to defraud, made untrue statements of material fact and/or omitted material facts necessary to make statements made, in light of the circumstances, not misleading, and/or engaged in acts, practices, or courses of business which operated as a fraud or deceit upon persons. The findings also stated that the firm, directly or indirectly, controlled registered representatives and principals that, in connection with the sale of house stocks, made material misrepresentations, received excessive commissions, failed to inform purchasers that they were receiving these excessive

commissions, and discouraged the sale of the stocks. In addition, the NASD found that the firm knowingly allowed representatives and principals to withhold material information from public customers including the nature of the risk of the investment, the amount of commission the broker would receive in connection with the transaction, and the limitations on the circumstances under which such securities could be sold. **(NASD Case #CAF000042)**

### Firm Expelled, Individual Sanctioned

**Global Equities Group, Inc. (CRD #34039, New York, New York) and Igor Eric Kuvykin (CRD #2268044, Registered Representative, Brooklyn, New York)**. The firm was fined \$1,142,330, expelled from NASD membership, and ordered to disgorge \$872,330 in ill-gotten gains. Kuvykin was fined \$160,000 and barred from association with any NASD member in any capacity. The fines must be paid before the respondents' reentry into the securities industry. The sanctions were based on findings that the firm, acting through Kuvykin and others, operated as a "boiler room" and caused the firm's sales force to use high-pressure sales tactics, to make material misstatements of fact including baseless price and performance predictions, and to withhold material information from customers purchasing securities. The findings also stated that the firm, acting through Kuvykin and others, maintained a policy that required the firm's retail customers who purchased a security in an initial public offering (IPO) to purchase approximately three common stock shares for every one warrant and failed to disclose the policy in the prospectus and

other documents delivered to customers. The firm, acting through Kuvykin and others, also allocated IPO warrants to the firm's sales force as a gift, bonus, or incentive to sell the IPO securities, and failed to require the brokers to disclose this fact to the customers.

The NASD found that the firm, acting through Kuvykin and others, acted as a market maker in, and entered bids for, IPO common stock and warrants while the firm was acting as a distribution participant. In addition, the findings stated that the firm, acting through an individual, violated the Free-Riding and Withholding Interpretation and executed the purchase of shares and warrants in the accounts of public customers who sold the stock and warrants in the immediate aftermarket for profit. The NASD also found that the firm permitted individuals to engage in activities that required registration with the NASD even though the individuals were not properly registered with the NASD and Kuvykin engaged in activities requiring registration as a general securities principal even though he was not registered as such with the NASD. Furthermore, the NASD found that the firm, acting through individuals, failed to establish, maintain, and enforce written supervisory procedures pertaining to the firm's underwriting and retail brokerage activities and the qualifications of and registration process for associated persons. Moreover, the NASD found that Kuvykin failed to testify truthfully during NASD on-the-record interviews. **(NASD Case #C1000029)**

### **Firms Fined, Individuals Sanctioned**

**Grady and Hatch & Company, Inc. (CRD #14262, Staten Island, New York) and Robert Edward Grady (CRD #226921, Registered Principal, Dix Hills, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and the firm and Grady were fined \$10,000, jointly and severally. Grady was also suspended from association with any NASD member in any principal capacity for five business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Grady, misrepresented its net capital and failed to maintain sufficient net capital while conducting a securities business. The findings also stated that the firm, acting through Grady, failed to adopt, maintain, and enforce written supervisory procedures adequately designed to ensure compliance with the Securities and Exchange Commission (SEC) net capital rule.

Grady's suspension began August 6, 2001, and concluded at the close of business August 10, 2001. **(NASD Case #C10010089)**

**Joseph Dillon & Company, Inc. (CRD #35220, Great Neck, New York), Steven Richard Jaloza (CRD #1320831, Registered Principal, Muttontown, New York), Patrick Gerard Hennessy (CRD #1666607, Registered Principal, Aberdeen, New Jersey)** submitted Offers of Settlement in which the firm was censured, fined \$25,000 jointly and severally with Jaloza, and ordered to disgorge \$125,000, jointly and severally with Jaloza to the NASD. Jaloza was suspended from association with any NASD

member in any capacity for 90 days and barred from association with any NASD member in any registered principal capacity. In light of his financial status, Hennessy was fined \$5,000, and he was suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm conducted an IPO for which the registration statement disclosed two selling shareholders whose shares were subject to a two-year lockup agreement that could only be released at the sole discretion of the firm. The findings stated that the firm and Jaloza released the lockup agreements, engaged in a distribution of the selling shareholders' shares, and repurchased and resold shares in a second distribution immediately upon the beginning of aftermarket trading that made representations in the prospectus materially misleading. In addition, the NASD found that the firm and Jaloza failed to immediately amend the prospectus to disclose the release of the lockup agreements, failed to disclose that the firm received compensation for the sale of shares, and failed to inform the NASD that the firm would be receiving compensation in connection with the distribution of the selling shareholders' shares. The firm, acting through another individual, sold warrants of the IPO to an immediate family member in violation of the Free-Riding and Withholding Interpretation. Furthermore, the NASD found that the firm and Jaloza failed to establish a supervisory system that included written procedures to achieve compliance with applicable securities laws and regulations regarding sales

activities. The findings also stated that Hennessy consented to the described sanctions and to the entry of findings that he published quotations for, and bid for, shares of the IPO during distributions in violation of SEC and NASD rules and regulations.

Jaloza's bar in any registered principal capacity became effective June 25, 2001. Jaloza's suspension began August 6, 2001, and will conclude November 3, 2001. Hennessy's first five-day suspension began July 23, 2001, and concluded at the close of business July 27, 2001. Hennessy's second five-day suspension will begin August 20, 2001, and will conclude at the close of business August 24, 2001. **(NASD Case #CAF000040)**

**Protective Group Securities Corporation (CRD #6757, Minneapolis, Minnesota) and Michael Frederick Flannigan (CRD #1135700, Registered Principal, Excelsior, Minnesota)** were fined \$25,000, jointly and severally, and Flannigan was barred from association with any NASD member in any supervisory capacity. The National Adjudicatory Council (NAC) affirmed the sanctions following appeal of an Officer of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm, acting through Flannigan, allowed individuals registered with another member firm and not registered with Protective to engage in Protective's securities business and exercised discretionary authority for customer accounts by following directions from registered representatives of another member firm with respect to trading in Protective's customer accounts.

On July 2, 2001, Flannigan appealed the NAC's decision to the Securities and Exchange Commission and requested that the Commission stay imposition of the sanctions imposed and publication of the NAC's decision. The SEC denied the stay request. The supervisory bar therefore was effective as of the issuance of the NAC's decision on June 4, 2001. **(NASD Case #C8A980097)**

#### **Firms And Individuals Fined**

**Continuum Capital, Inc. (CRD #29864, New York, New York) and Mark Abraham Zborowski (CRD #1325328, Registered Principal, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$22,630, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Zborowski, engaged in an options business with public customers without qualifying an individual at the firm as a registered options principal. The findings also stated that the firm, acting through Zborowski, failed to submit an amended Form BD with the NASD following the termination of its Limited Principal – Financial and Operations (FINOP) within 30 days and failed to designate a new FINOP. The NASD also found that the firm, acting through Zborowski, permitted an individual to perform functions requiring registration as a registered representative while such registration was inactive for failing to complete the Regulatory Element of the Continuing Education Program within the prescribed time period. Furthermore, the NASD found that the firm, acting through Zborowski, allowed another individual to

engage in a securities business while not being properly registered with the firm. **(NASD Case #C10010077)**

**Falkin Platnick Securities Company, Inc. (CRD #22367, Cranford, New Jersey) and Albert Barry Platnick (CRD #715612, Registered Principal, Livingston, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Platnick, engaged in a private placement offering on a best-efforts basis without establishing an escrow account and transmitted investor funds to the general partner of the private placement offering prior to meeting the minimum contingency set forth in the offering memorandum. The findings also stated that the firm, acting through Platnick, conducted a securities business while failing to maintain its minimum net capital. **(NASD Case #C10000092)**

**Harrison Douglas, Inc. (CRD #16515, Denver, Colorado) and Douglas Wayne Schriener (CRD #1140409, Registered Principal, Aurora, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,500, jointly and severally. The firm was also fined an additional \$7,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm sold shares of an IPO to residents of Missouri when the IPO was not registered for sale in Missouri. The NASD found that the firm, acting through Schriener, completed a post-IPO

questionnaire for the lead underwriter that failed to disclose that shares sold to Missouri residents were inaccurately included as sales to Colorado residents. The findings also stated that the firm and Schriener failed to promptly file an amended Form BD and amended Form U-4s to reflect a final disciplinary action and bankruptcies. Furthermore, the NASD found that the firm, acting through Schriener, had no written needs analysis or written training plan with respect to the Firm Element of Continuing Education—Membership and Registration Rule. **(NASD Case #C3A010023)**

**Ni Securities Corp. (CRD #30444, Akron, Ohio) and Michael Edmond Zulick (CRD #1834341, Registered Principal, Akron, Ohio)** were fined \$10,747.67, jointly and severally. Zulick was also fined an additional \$1,500. The sanctions were based on findings that the firm permitted Zulick to act in a capacity requiring registration when his registration had been deemed inactive pending completion of the Continuing Education Regulatory Element requirements. The findings also stated that Zulick executed securities transactions during a period of non-compliance with the Continuing Education Regulatory Element requirements. **(NASD Case #C8B010004)**

**Pond Equities, Inc. (CRD #30934, Brooklyn, New York) and Ezra Yehuda Birnbaum (CRD #1553347, Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. The firm was also fined an additional \$7,000. Without admitting or denying the allegations, the respondents consented to the described

sanctions and to the entry of findings that the firm, acting through Birnbaum, failed to enforce its written supervisory procedures in that it could not provide evidence that when customers made checks payable to the firm, the firm informed the customers in writing of the requirement to make checks payable to the clearing firm in the future. The findings also stated that the firm failed to show the correct time of execution on the order memoranda in transactions. In addition, the NASD found that the firm executed short sale transactions in Nasdaq National Market® (NNM) securities and failed to report the transactions to Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>), with a short sale modifier. Furthermore, the findings stated that the firm, acting through Birnbaum, failed to report customer complaints to the NASD as part of the Statistical and Summary Reporting requirement. **(NASD Case #C10010081)**

**Preferred Trade, Inc. (CRD #10993, San Francisco, California) and Glenn Scott McCrae (CRD #2158955, Corte Madera, California)** submitted an Offer of Settlement in which the firm was censured and fined \$50,000, and McCrae was censured and fined \$10,000. McCrae must pay the fine before any application for reentry into the securities industry will be considered. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and McCrae permitted an individual to act as a representative of the firm without being registered with the NASD. The findings also stated that the firm failed to report transactions in, NNM securities within 90 seconds and failed to

designate those transactions as late, failed to accurately record the time of execution in order tickets and effected transactions without recording the time of execution on the order tickets, and effected transactions without making a record of the terms and conditions of the transactions. The NASD also determined that the firm effected transactions in NNM securities without making a record of the time of entry and whether the transactions were long or short, effected transactions in NNM securities without making a record of the contra side of the transactions, recorded an incorrect price or number of shares for the transactions, and failed to report the contra side of the trade to ACT. Furthermore, the NASD found that the firm effected transactions in NNM securities and failed to report the transactions. **(NASD Case #C01010001)**

## **Firms Fined**

**Alpine Securities Corporation (CRD #14952, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures with respect to firm quotations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that as a registered market maker, it failed to execute orders presented to the firm at the firm's published bid or offer in an amount up to its published quotation size and thereby failed to honor its published quotation. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations

concerning firm quotations.  
**(NASD Case #CMS010103)**

**Cathay Financial LLC (CRD #30065, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. The findings also stated that the firm executed short sale orders in certain securities and failed to annotate an affirmative determination prior to executing such transactions, and the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning short sales. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person(s) responsible at the firm to ensure compliance with the applicable rules, a statement of the step(s) that such person(s) should take to ensure compliance therewith, and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS010104)**

**Crowell, Weedon & Co. (CRD #193, Los Angeles, California)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to submit revised written supervisory procedures with respect to compliance with the firm quote rule to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the

entry of findings that as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, failed to execute orders, and thereby, failed to honor its published quotation. The NASD also found that the firm failed to establish, maintain, and enforce written supervisory procedures. **(NASD Case #CMS010099)**

**Dean Witter Reynolds, Inc. (CRD #7556, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that as a market maker in securities, without making reasonable efforts to avoid a locked market by executing transactions with all market makers whose quotations would be locked, entered bid or asked quotations in The Nasdaq Stock Market<sup>®</sup> that caused a locked market condition to occur in each instance. **(NASD Case #CMS010102)**

**Hold Brothers On-Line Investment Services, Inc., f/k/a, On-Line Investment Services (CRD #36816, Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$41,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it forwarded commission checks to an individual who was not registered with the firm in any capacity and who performed various services for the firm. The findings also stated that the firm prepared and

maintained a press release on its Web page that contained an exaggerated, unwarranted, and misleading statement regarding its day traders' success rate without any documentation to support the statement. The NASD also determined that the firm failed to report sell transactions as short sales and failed to supervise the activities of an individual adequately and properly in that the individual was given checks based on the commissions earned while not being required to become registered with the firm. **(NASD Case #C8A010034)**

**International Securities Corporation (CRD #36023, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$2,500, jointly and severally, and fined an additional \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through an individual, it filed an inaccurate FOCUS report and failed to maintain sufficient net capital while conducting a securities business. The findings also stated that the firm failed to utilize the services of an independent public accountant to audit its year-end fiscal reports filed with the NASD. Furthermore, the NASD found that the firm failed to report to ACT transactions within 90 seconds of execution and failed to designate transactions as late. In addition, the NASD found that the firm failed to correctly report to ACT whether it acted as a principal or as an agent in transactions and failed to establish a Continuing Education Program (Firm Element) for its registered employees. **(NASD Case #C10010088)**

**New World Securities, Inc. (CRD #14694, Garden City, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$18,500, and required to revise its written supervisory procedures with respect to securities laws and regulations and NASD rules concerning short sales. 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 in certain securities and failed to make an affirmative determination prior to executing such transactions and failed to properly mark the order tickets as short for those orders. The findings also stated that the firm failed to report to ACT the correct symbol indicating whether the firm executed transactions in eligible securities in a principal or agency capacity, executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier, and executed short sale transactions in certain securities, all of which were NNM securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. Furthermore, the findings stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules concerning short sales. **(NASD Case #CMS010101)**

**Penson Financial Services, Inc. (CRD #25866, Dallas, Texas)** 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 as a market maker

in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or asked quotations in The Nasdaq Stock Market that caused a locked or crossed market condition to occur in each instance. **(NASD Case #CMS010081)**

**Pruco Securities (CRD #5685, Newark, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to file with the NASD customer complaints that were required to be reported in a timely manner. According to the findings, approximately 25 of these customer complaints incorrectly identified the dates on which the firm initially became aware of the subject complaints. The findings also stated that the firm failed to establish, maintain, and enforce procedures (including written supervisory procedures) reasonably designed to ensure compliance with the NASD customer-complaint-reporting requirement. **(NASD Case #C9B010051)**

**Redwood Brokerage Services, Inc. (CRD #39416, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to transmit to the Order Audit Trail System (OATS<sup>SM</sup>) reports

containing each applicable item of order information identified in NASD Marketplace Rule 6954. The findings also stated that the firm's supervisory system failed to provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws, regulations, and NASD rules concerning OATS. **(NASD Case #CMS010076)**

**R.J. Steichen & Company, n/k/a Miller Johnson Steichen Kinnard, Inc. (CRD #694, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$19,505. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it permitted individuals to conduct a securities business and to act in registered capacities when their registrations had lapsed for non-compliance with the Regulatory Element of the Continuing Education Requirement. **(NASD Case #C04010027)**

**Robb, Peck, McCooley Clearing Corporation (CRD #7432, New York, New York)** submitted an Offer of Settlement in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in NNM securities and transactions in CQS securities to ACT within 90 seconds of execution, and failed to designate each of these transactions as late by appending the ".SLD" modifier. The findings also stated that the firm engaged in a pattern and practice of late trade reporting without exceptional circumstances, and failed to establish, maintain, and enforce written supervisory procedures reasonably designed

to achieve compliance with applicable securities laws, regulations, and NASD rules concerning trade reporting. **(NASD Case #CMS000057)**

**Southwest Securities, Inc. (CRD #6220, Dallas, Texas)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$39,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, in transactions for or with a customer, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to display immediately customers' limit orders in Nasdaq securities in its public quotation and the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations. Furthermore, the NASD found that the firm, as a market maker in securities, failed to execute orders upon presentment and thereby failed to honor its published quotation, and without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered or maintained a bid in The Nasdaq Stock Market, Inc. during the period of time that secondary trading commenced immediately following the completion of an IPO of the subject security which caused a locked or crossed market condition to occur in each instance. **(NASD Case #CMS010097)**

**Wien Securities Corporation (CRD #10467, Jersey City, New Jersey)** 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 ACT short sale reporting, Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) trading, locked and crossed markets, information barriers, OATS, and the regular and rigorous assessment of competing markets. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. The findings also stated that the firm failed to immediately display customer limit orders in its public quote, when each such order was at a price better than its public quote, or at a price equal to its public quote when such quote was priced equal to the national best bid or offer in such security and that order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. Furthermore, the NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning ACT short sale reporting, SOES trading, locked and crossed markets, information barriers, OATS, and the regular and rigorous assessment of competing markets. **(NASD Case #CMS010078)**

**Wise Planning Corporation (CRD #899, Hicksville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured

and fined \$20,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it maintained representative registrations for individuals who were no longer active in the firm's securities business. **(NASD Case #C10010079)**

### **Individuals Barred Or Suspended**

**Robert Stephen Ambrozy (CRD #1736286, Registered Representative, Cranford, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, which includes the disgorgement of \$6,800 in commissions, and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Ambrozy reassociates with a member firm following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ambrozy consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide written notification to, or obtain written approval from, his member firm.

Ambrozy's suspension began August 6, 2001, and will conclude at the close of business February 5, 2003. **(NASD Case #C10010086)**

**Robert Ira Ballon (CRD #1652114, Registered Representative, Escondido, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$9,050, and suspended from association with any NASD member in any capacity for 10

business days. Without admitting or denying the allegations, Ballon consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to, and receive written approval from, his member firm prior to engaging in such activities.

Ballon's suspension began August 6, 2001, and will conclude at the close of business August 17, 2001. **(NASD Case #C02010010)**

**Saleem Barkat (CRD #1571045, Registered Representative, Philadelphia, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,800, suspended from association with any NASD member in any capacity for one month, and required to demonstrate that he has paid \$7,200 in restitution. Without admitting or denying the allegations, Barkat consented to the described sanctions and to the entry of findings that he participated in private securities transactions for compensation and failed to provide written notification to, or obtain written approval from, his member firm.

Barkat's suspension began August 6, 2001, and will conclude at the close of business September 5, 2001. **(NASD Case #C3A010022)**

**Radcliff St. Aubyn Bent (CRD #1306247, Registered Representative, Colts Neck, New Jersey)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 business days for failing to execute a sell order, fined \$70,000 and barred from association with any NASD member in any capacity for effecting unauthorized transactions in public customer accounts, and barred from association with any

NASD member in any capacity for testifying falsely in an NASD on-the-record interview. Bent was also ordered to pay \$175,605, plus interest, in restitution to public customers. The fines are due and payable when and if Bent seeks to reenter the securities industry. The restitution amounts shall become due and payable on a date set by the NASD.

The sanctions were based on findings that Bent executed unauthorized transactions in the accounts of public customers without their prior knowledge, authorization, or consent. The findings also stated that Bent failed to execute a customer sell order and provided false testimony during an NASD on-the-record interview.

Bent's bar was effective July 2, 2001. **(NASD Case #C1000026)**

**Richard Alan Blake (CRD #813822, Registered Representative, DeKalb, Illinois), Frank Thomas Devine (CRD #2035363, Registered Representative, Oswego, Illinois), and Timothy James Fergus (CRD #1995006, Registered Representative, Lisle, Illinois).** Blake was fined \$35,000, suspended from association with any NASD member in any capacity for 180 days, and required to requalify by exam as an investment company and variable contracts products representative. Devine was fined \$34,825.42, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by exam as an investment company and variable contracts product representative. Fergus was fined \$8,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by

exam as an investment company and variable contracts product representative. The NAC imposed the sanctions following a call for review of an OHO decision. The sanctions were based on findings that Blake, Devine, and Fergus sold securities in the form of promissory notes without providing prior written notice to, and receiving approval from, their member firm.

Devine has appealed this action to the SEC and the sanctions against him are not in effect pending consideration of the appeal. Fergus' suspension began July 2, 2001, and will conclude at the close of business August 30, 2001. Blake's suspension began July 2, 2001, and will conclude at the close of business December 31, 2001. **(NASD Cases #C8A990025, C8A990026, and C8A990027)**

**Robert Orville Boettcher (CRD #1839053, Registered Representative, Elgin, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to provide proof of payment of restitution for commissions earned totaling \$8,183, plus interest, to customers with any submission to re-enter the securities industry. Without admitting or denying the allegations, Boettcher consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to, and receive written approval from, his member firm prior to engaging in such activities. **(NASD Case #C8A010031)**

**Patrick Andrew Brady (CRD #2536672, Registered Representative, Toledo, Ohio)** was fined \$42,943.31 and

suspended from association with any NASD member in any capacity for one year for engaging in private securities transactions, and barred from association with any NASD member in any capacity for failure to respond. The fine is due and payable prior to Brady's re-entry into the securities business. The sanctions are based on findings that Brady engaged in private securities transactions for compensation without giving his member firm prior written notice and without receiving prior written approval. The findings also stated that Brady failed to respond to NASD requests for information.

Brady's bar became effective July 16, 2001. **(NASD Case #C8B000013)**

**Henry Dwayne Bumpers (CRD #2830074, Registered Representative, Tigard, Oregon)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bumpers consented to the described sanction and to the entry of findings that he engaged in securities transactions in the accounts of public customers without the knowledge or consent of the customers and in the absence of written or oral authorization to exercise discretion in the accounts. The findings also stated that Bumpers, pursuant to verbal authority, exercised discretion to purchase securities for the accounts of public customers without prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm. **(NASD Case #C3B000016)**

**William Keith Bunn (CRD #35193, Registered Supervisor, Deerfield Beach, Florida)** submitted an Offer of Settlement

in which he was suspended from association with any NASD member in any capacity for 30 days. In light of the financial status of Bunn, no monetary sanction has been imposed. Without admitting or denying the allegations, Bunn consented to the described sanction and to the entry of findings that he failed to disclose to his member firm, orally or in writing, his efforts to compensate a public customer for losses in her account.

Bunn's suspension began August 6, 2001, and will conclude at the close of business September 4, 2001. **(NASD Case #C07010023)**

**Stephen J. Carrione (CRD #1603335, Registered Representative, Bloomfield, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Carrione consented to the described sanctions and to the entry of findings that he exercised control over the joint account of public customers and effected numerous securities transactions in the account in a manner that was inconsistent with the customers' investment objectives. The findings also stated that Carrione, pursuant to verbal authority, exercised discretion in the joint accounts of public customers without having obtained prior written authorization from the customers and prior written acceptance of the accounts as discretionary by his member firm.

Carrione's suspension began July 16, 2001, and will conclude at the close of business August 14, 2001. **(NASD Case #C9B010050)**

**Mark Joseph Chavez (CRD #2411119, Registered Principal, Boca Raton, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Chavez failed to respond to NASD requests for information. **(NASD Case #C07000084)**

**Mario Joseph Coniglione (CRD #2423861, Registered Representative, West Orange, New Jersey)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Coniglione failed to respond to questions during a NASD on-the-record interview. **(NASD Case #C10000140)**

**Vincent Peter Coniglione (CRD #1756741, Registered Principal, Staten Island, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Coniglione failed to testify during a NASD on-the-record interview. **(NASD Case #C10000116)**

**John Joseph Conte (CRD #2528692, Registered Representative, Norristown, Pennsylvania)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Conte exercised discretion in the account of a public customer without prior written authorization from the customer and prior written acceptance of the account as discretionary from his member firm. The findings also stated that Conte failed to respond to NASD requests for information. **(NASD Case #C9A000046)**

**Edwin Arthur Dolan, Jr. (CRD #69506, Registered Principal, Parsippany, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he

was fined \$8,500, jointly and severally, and suspended from association with any NASD member in any principal capacity for 10 days. Without admitting or denying the allegations, Dolan consented to the described sanctions and to the entry or findings that a member firm, acting through Dolan, permitted an individual to act as a general securities representative and equity trader while failing to have registered in such capacities. The findings also stated that a member firm, acting through Dolan, failed to maintain written supervisory procedures mandating that the firm complete an annual training needs analysis, develop a written training plan, and implement the plan to achieve compliance with the Firm Element of the NASD Continuing Education Rules. The findings also stated that a member firm, acting through Dolan, failed to complete an annual training needs analysis, failed to develop a written training plan, and failed to implement a written training plan to achieve compliance with the Firm Element of the Continuing Education Rules.

Dolan's suspension will begin August 20, 2001, and will conclude at the close of business August 29, 2001. **(NASD Case #C9B010057)**

**Sean Patrick Dugan (CRD #1734681, Registered Representative, Davie, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dugan consented to the described sanction and to the entry of findings that he participated in private securities transactions and failed to give prior written notice to, and receive written approval from, his member firm to participate in

such transactions. **(NASD Case #C07010049)**

**Theodore Dack Fahman (CRD #2023322, Registered Principal, Fountain Valley, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from associating with any NASD member as a financial and operations principal, and suspended from association with any NASD member in any capacity for 45 business days. In light of the financial status of Fahman, a fine of \$3,500 has been imposed. Without admitting or denying the allegations, Fahman consented to the described sanctions and to the entry of findings that a former member firm, acting through Fahman, conducted a securities business while failing to maintain minimum required net capital.

Fahman's suspension began July 16, 2001, and will conclude at the close of business September 16, 2001. **(NASD Case #C02010028)**

**Richard Thomas Geck (CRD #2402873, Registered Principal, Toms River, 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, Geck consented to the described sanction and to the entry of findings that he converted at least \$44,040.05 in customer funds and used the funds for his own use and benefit without the customers' knowledge or consent. **(NASD Case #C9B010059)**

**Joseph Gaetano Gerace (CRD #1060223, Registered Representative, St. John's, Antigua, West Indies)** was fined \$10,000 and suspended from association with any NASD member in a securities principal capacity for one year. The NAC

affirmed the sanctions following appeal of an OHO decision. The sanctions were based on findings that in connection with a contingency offering, Gerace permitted his firm to fail to establish an escrow account to protect investors' funds received pursuant to the offering. Gerace also failed to sell the minimum amount of securities to bona fide public investors prior to delivering the investors' funds to issuers of the offering.

Gerace's suspension began July 2, 2001, and will conclude at the close of business June 28, 2002. **(NASD Case #C02990022)**

**Darren Scott Goldberg (CRD #2857732, Registered Representative, Suffern, 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 10 business days. The fine must be paid before Goldberg reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Goldberg consented to the described sanctions and to the entry of findings that he signed a customer's name on a letter of authorization, at the request of a registered representative, without the customer's consent or authority to do so.

Goldberg's suspension began August 6, 2001, and will conclude at the close of business August 17, 2001. **(NASD Case #C9B010055)**

**Charles William Herbert (CRD #4000097, Registered Representative, Philadelphia, 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, Herbert consented to the described sanction and to the entry of findings that he converted approximately \$50,000 from a bank and its customers by effecting unauthorized transfers of funds from a bank operating account to a personal account and using the funds for his own purposes. **(NASD Case #C9A010018)**

**Bryan Gregory Holland (CRD #2668952, Registered Representative, Pittsburgh, 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, Holland consented to the described sanction and to the entry of findings that he received approximately \$65,000 from a public customer to invest in a non-profit corporation and, rather than investing the funds, he converted the funds to his own use and benefit without the customer's knowledge or consent. **(NASD Case #C9A010020)**

**Glen Evan Horecky (CRD #1912346, Registered Representative, Delray Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Horecky consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without giving prior written notice to his member firm.

Horecky's suspension began July 16, 2001, and will conclude at the

close of business August 14, 2001. **(NASD Case #C07010041)**

**William Leslie Hudley (CRD #1804457, Registered Representative, Montclair, 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, Hudley consented to the described sanctions and to the entry of findings that he converted at least \$161,000 from public customer accounts and used the funds for his own use and benefit without the customers' knowledge or consent. The findings also stated that Hudley failed to respond to NASD requests for information. **(NASD Case #C9B010058)**

**Gregory Morton Jones, Sr. (CRD #1672249, Registered Representative, Overland Park, Kansas)** 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, Jones consented to the described sanctions and to the entry of findings that he received checks totaling \$95,000 intended for the purchase of a fixed annuity and a variable universal life insurance policy. The NASD found that Jones endorsed the checks, purchased a fixed annuity for \$75,000 and a variable universal life insurance policy for \$10,000, and did not invest the remaining \$10,000 as intended by the customer nor promptly return the remaining funds to the customer. The NASD also found that Jones failed to promptly invest the \$75,000 in the fixed annuity as intended by the customer, and instead, held the funds in his

account. **(NASD Case #C04010023)**

**Michael Patrick Kaselnak (CRD #2003171, Registered Representative, Rochester, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Kaselnak consented to the described sanctions and to the entry of findings that he sold promissory notes to public customers without providing prior written notice to his member firm.

Kaselnak's suspension began August 6, 2001, and will conclude at the close of business September 4, 2001. **(NASD Case #C04010024)**

**Sara Ellen Kocher (CRD #55676, Registered Representative, Boca Raton, Florida)** 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 six weeks. Without admitting or denying the allegations, Kocher consented to the described sanctions and to the entry of findings that she signed the name of a public customer to a letter of instructions to a mutual fund distributor without the knowledge or consent of the customer. The findings also stated that Kocher signed the names of co-trustees of an irrevocable family trust to a form confirming an authorization of the liquidation of mutual fund shares without their knowledge or consent.

Kocher's suspension began August 6, 2001, and will conclude September 16, 2001. **(NASD Case #C05010029)**

**Fernando Larrea (CRD #3230636, Registered Representative, Winter Springs, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Larrea reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Larrea consented to the described sanctions and to the entry of findings that he signed a customer's name to a client acknowledgement form without the customer's knowledge or consent.

Larrea's suspension began July 16, 2001, and will conclude at the close of business July 15, 2003. **(NASD Case #C07010046)**

**Tam Thanh Le (CRD #3132393, Registered Representative, Balch Springs, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Le received a \$2,000 check from a public customer for the purchase of a variable annuity and, without the customer's knowledge or consent, applied the funds to pay premiums on other customers' policies. The findings also stated that Le failed to respond to NASD requests for information. **(NASD Case #C05010002)**

**Jeffrey James Lenoy (CRD #2932231, Registered Representative, Hawthorne, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings

that Lenoy asked another registered representative to sign a customer's name on a letter of authorization without having obtained the customer's consent or authority to do so.

Lenoy's suspension began August 6, 2001, and will conclude at the close of business August 17, 2001. **(NASD Case #C9B010056)**

**Joseph Ferrer Leomo (CRD #2898668, Registered Representative, Northridge, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Leomo consented to the described sanction and to the entry of findings that, without authorization from his member firm, he used the firm's letterhead and purported auspices as a knowing and willing participant in a scheme to mislead and defraud members of the public. According to the findings, through the letters, Leomo represented that a certain individual held an account with the firm, and that the firm guaranteed that sufficient funds existed in the purported customer's account to cover commitments the customer had with certain members of the public. The NASD found that Leomo's representations made through the subject letters were false because, without limitation, the purported customer did not maintain an account with the firm as of the date the letters were sent by Leomo, and the firm never extended or guaranteed any financial commitments in favor of the non-customer to any member of the public. The NASD determined that the purpose of the letters was to induce the recipients of the letters to extend credit or to advance payments to the non-customer. The findings also stated

that Leomo received \$15,000 in funds from a public customer intended for investment purposes and \$100,000 from a public customer intended to be placed in trust for the customer at his member firm, failed to apply the funds as directed by the customers, and instead, without the customers' knowledge or consent, misused the funds by wiring the funds to, and for the benefit of, a third-party corporation. The wiring of the customers' funds did not benefit the customers. **(NASD Case #C02010031)**

**Vito Robert Lomonaco (CRD #2159938, Registered Principal, Bronx, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$11,000, plus interest, in restitution to a public customer. Satisfactory proof of payment of restitution, plus interest, must be provided before Lomonaco reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lomonaco consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction and failed to provide written notification to, or obtain written approval from, his member firm. The findings also stated that Lomonaco failed to appear for NASD on-the-record interviews. **(NASD Case #C10010084)**

**Jenny Loo (CRD #2422041, Registered Principal, Staten Island, New York)** submitted an Offer of Settlement in which she was fined \$25,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid

before Loo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Loo consented to the described sanctions and to the entry of findings that she failed to respond truthfully and non-deceptively during an NASD on-the-record interview.

Loo's suspension began July 16, 2001, and will conclude at the close of business July 15, 2003. **(NASD Case #C10010046)**

**Frank Joseph Macri, Jr. (CRD #703524, Registered Representative, Apalachin, New York)** 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 one month. Without admitting or denying the allegations, Macri consented to the described sanctions and to the entry of findings that he failed to update his Form U-4 to disclose a material fact.

Macri's suspension began July 2, 2001, and concluded at the close of business August 1, 2001. **(NASD Case #C11010025)**

**Robert Michael Mark (CRD #1053836, Registered Representative, Weirton, 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, Mark consented to the described sanction and to the entry of findings that he converted approximately \$10,000 from a public customer by obtaining loans against an insurance policy in the customer's name and then using the funds for his own purposes

without the customer's knowledge or consent. **(NASD Case #C9A010021)**

**John Lee McSwain (CRD #1405138, Registered Principal, Shelby, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to demonstrate that he has paid \$25,402.99 in disgorgement to public customers. Proof of payment of the disgorgement must be provided before reassociating with any NASD member. Without admitting or denying the allegations, McSwain consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide written notification to, or obtain written approval from, his member firm. The NASD also found that McSwain received compensation for participating in financial activities for an entity without providing his member firm with prompt written notice of his outside business activity. **(NASD Case #C3A010021)**

**Alphonse Mekalainas, Jr. (CRD #1276859, Registered Principal, Farmingdale, 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 principal capacity for 10 business days. Without admitting or denying the allegations, Mekalainas consented to the described sanctions and to the entry of findings that he failed to establish written supervisory procedures specifically addressing his member firm's government securities business and failed to designate a principal responsible for supervising his firm's government securities business.

The findings also stated that Mekalainas reviewed, initialed, and approved, in a principal capacity, order tickets for government securities transactions for which public customers of his member firm were charged excessive markups.

Mekalainas' suspension will begin August 20, 2001, and will conclude at the close of business August 31, 2001. **(NASD Case #C10010091)**

**John Richard Monderine (CRD #2692814, Registered Representative, Nesconsett, 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, Monderine consented to the described sanction and to the entry of findings that he used the registered representative numbers of other registered representatives to effect securities transactions on behalf of public customers residing in states in which he was unregistered, thereby circumventing state securities laws. The findings also stated that Monderine provided false testimony during NASD on-the-record interviews. **(NASD Case #C10010093)**

**Johnny Alberto Mora (CRD #2952626, Registered Representative, Placentia, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity, and required to pay \$95,400, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Mora consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the

securities account of a public customer, and affixed the signature of the authorized representative for a corporate customer on an offering coupon to purchase bonds and on an authorization to liquidate the customer's position in bonds, without the customer's or customer's representative's knowledge or consent. The finding also stated that Mora recommended and/or engaged in purchase transactions in the customer's account and did not have reasonable grounds for believing that these recommendations and/or resultant transactions were suitable for the customer on the basis of the customers' financial situation, investment objectives, and needs. **(NASD Case #C02010030)**

**Michal Kevin Nickel (CRD #3099334, Registered Representative, Schofield, Wisconsin)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500, suspended from association with any NASD member in any capacity for six months, and ordered to disgorge \$20,184 in commissions. Payment of the fine and proof of disgorgement shall be a prerequisite to reassociation with a member firm following the suspension or to any such application or request for relief from any statutory disqualification. Without admitting or denying the allegations, Nickel consented to the described sanctions and to the entry of findings that he participated, for compensation, in private securities transactions and failed to give written notice of his intention to engage in such activities to his member firm, and failed to receive written approval from the firm prior to engaging in such activities. The findings also stated that Nickel participated in the sale of securities in the form of

promissory notes and failed to properly register and/or qualify in the appropriate capacity with his member firm prior to engaging in the securities transactions.

Nickel's suspension began August 6, 2001, and will conclude at the close of business February 5, 2002. **(NASD Case #C8A010036)**

**George Paul Nikitovich (CRD #840601, Registered Representative, Cross River, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$31,358, which includes disgorgement of \$21,358 in commissions received, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Nikitovich consented to the described sanctions and to the entry of findings that he exercised discretionary transactions in the account of a public customer without prior authorization from the customer, or from any representative of the customer, and prior written acceptance of the account as discretionary by his member firm. The findings also stated that Nikitovich liquidated transactions in the account of the public customer without authorization from a representative of the customer. Nikitovich was already advised that the customer had died.

Nikitovich's suspension began August 6, 2001, and will conclude at the close of business September 4, 2001. **(NASD Case #C10010080)**

**Michelle Marie Niska (CRD #2040226, Associated Person, Maple Grove, Minnesota)** 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, Niska consented to the described sanction and to the entry of findings that she directed a \$498,672.24 wire transfer from her member firm's general cash account to an account she controlled and converted the funds to her own use and benefit. The NASD also found that Niska affixed the signatures of designated authorized supervisors to wire transfers and failed to respond to NASD requests for information. **(NASD Case #C04010025)**

**Christopher Michael O'Connell (CRD #2305843, Registered Representative, Mineola, New York)** was fined \$35,000 and suspended from association with any NASD member in any capacity for nine months for permitting individuals to use his representative number and falsifying account records, and barred from association with any NASD member in any capacity for failing to permit the NASD staff to inspect and copy records. The sanctions were based on findings that O'Connell allowed unregistered individuals to engage in conduct requiring registration including using O'Connell's registered representative number and/or his production number to effect securities transactions on behalf of public customers. The findings also stated that O'Connell allowed registered representatives to use his registered representative number and/or his production number to effect securities transactions on behalf of public customers residing in states where the other representatives were not registered. In addition, the NASD found that O'Connell signed new customer account forms as the registered representative for accounts that were serviced by other registered

representatives, thereby falsifying customer records. Furthermore, the NASD found that O'Connell failed to respond to NASD requests to inspect and copy records.

O'Connell's bar became effective June 29, 2001. **(NASD Case #C10010001)**

**Chung Suk Oh (CRD #2838370, Registered Representative, New York, New York)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 50 days. The fine must be paid before Oh reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Oh consented to the described sanctions and to the entry of findings that he exercised discretion in the account of a public customer without prior written authorization from the customer or written acceptance of the account as discretionary by his member firm. The findings also stated that Oh failed to respond timely to NASD requests for information.

Oh's suspension began July 16, 2001, and will conclude September 3, 2001. **(NASD Case #C10010009)**

**Danny Ray Parker (CRD #1921892, Registered Representative, Porter, Texas)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Parker received a \$7,000 check from an insurance customer intended as an insurance policy premium payment, entered his own name as the payee on the check, endorsed the check, and failed to apply the funds to the insurance

policy. Parker also failed to respond to NASD requests for information. **(NASD Case #C06010001)**

**Shailesh Babubhai Patel (CRD #2610523, Registered Principal, Huntington Beach, California)** was barred from association with any NASD member in any capacity. The NAC affirmed the sanction following appeal of an OHO decision. The sanction was based on findings that Patel received \$40,000 from public customers in order to purchase certain bonds. Patel failed to purchase the bonds or to make any other investment on their behalf. **(NASD Case #C02990052)**

**Anthony Joseph Peluso (CRD #2314102, Registered Representative, Deerfield Beach, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Peluso consented to the described sanction and to the entry of findings that he used high-pressure sales tactics and knowingly made to customers numerous baseless predictions of substantial price increases and material misrepresentations of fact in connection with his solicitation of orders to purchase low-priced speculative securities and other securities. **(NASD Case #C07010043)**

**Frank Anthony Persico (CRD #1693712, Registered Representative, Staten Island, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Persico failed to respond to questions during an NASD on-the-record interview. **(NASD Case #C10000139)**

**Donald Francis Reagan (CRD #1600836, Registered Principal, Cape Coral, Florida)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 90 business days for engaging in private securities transactions and barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The fine must be paid before Reagan seeks to reenter the securities industry. The sanctions are based on findings that Reagan engaged in private securities transactions for compensation and failed to provide his member firm with prior written notice describing in detail the proposed transactions, his role therein, and stating whether he had received, or might receive, compensation, and failed to receive his member firm's prior written permission. The findings also stated that Reagan failed to respond to NASD requests for information.

Reagan's bar became effective June 15, 2001. **(NASD Case #C05010008)**

**Mark Edwin Rothe (CRD #4279508, Associated Person, Godfrey, Illinois)** 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 one month. The fine must be paid before Rothe reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rothe consented to the described sanctions and to the entry of findings that he completed, signed, and submitted to the NASD a Form U-4 that failed to disclose a material fact.

Rothe's suspension began August 6, 2001, and will conclude at the close of business September 5, 2001. **(NASD Case #C8A010038)**

**Michael Victor Rozes (CRD #839852, Registered Representative, High Point, North Carolina)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Rozes 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, Rozes consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on a Form U-4.

Rozes' suspension began July 16, 2001, and will conclude at the close of business January 15, 2002. **(NASD Case #C07010040)**

**Trevor Douglas Seffren (CRD #2410677, Registered Representative, Aventura, Florida)** was fined \$20,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam as a general securities representative before acting in any capacity requiring that registration. The fine must be paid before any application for reentry into the securities industry will be considered. The sanctions were based on findings that Seffren failed to respond timely to NASD requests for information.

Seffren's suspension began August 6, 2001, and will conclude at the close of business August 5, 2002. **(NASD Case #C07010005)**

**Pauline Teresa Serfass (CRD #1561590, Registered Principal, Quakertown, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Serfass consented to the described sanctions and to the entry of findings that, as the representative of record for a variable annuity owned by a public customer, she gave instructions to the company that had issued the annuity that caused changes to be made in how the money in the annuity was invested. The findings also stated that Serfass caused all shares held in mutual funds to be sold and the money re-invested in different mutual funds. In addition, the NASD found that Serfass gave instructions whereby the total dollar value of the annuity as of that date was re-allocated equally among the sub-accounts, resulting in a partial liquidation of the shares held in the holdover mutual fund. Furthermore, the NASD found that the changes were made without the customer's knowledge or authorization.

Serfass' suspension began July 16, 2001, and will conclude at the close of business August 14, 2001. **(NASD Case #C9A010017)**

**James Thomas Shanley (CRD #839313, Registered Principal, Old Bridge, New Jersey)** submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any NASD member in a principal capacity for two months. Without admitting or denying the allegations, Shanley consented to the described sanctions and to the entry of findings that, on behalf of a member firm, he failed to establish, maintain, and enforce written procedures to supervise

the types of business in which the firm engaged that were reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to markdowns. The findings also stated that Shanley failed to supervise the activities of his member firm and its registered representatives with respect to excessive and fraudulent markdowns.

Shanley's suspension began July 16, 2001, and will conclude September 15, 2001. **(NASD Case #CAF000013)**

**Robert Stack, Jr. (CRD #1677025, Registered Representative, Redbank, New Jersey)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for 15 business days. In light of the financial status of Stack, a fine of \$25,000, of which \$20,000 represents disgorgement, has been imposed. Without admitting or denying the allegations, Stack consented to the described sanctions and to the entry of findings that he performed duties as a registered person for his member firm while his registration status was inactive based on his failure to complete the Regulatory Element of the NASD's Continuing Education Program.

Stack's suspension will begin August 20, 2001, and will conclude at the close of business September 10, 2001. **(NASD Case #C9B000017)**

**Sean Patrick Tenney (CRD #3055872, Registered Representative, Orlando, Florida)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Tenney forged a public customer's signature on a Mutual

Fund and Certificate Redemption, Exchange, and/or Transfer of Investment form and a Financial Advisory Service Agreement form without the customer's knowledge or authorization. Tenney also failed to respond to NASD requests for information. **(NASD Case #C07010012)**

**David Vazquez (CRD #2620841, Registered Principal, Glendale, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Vazquez consented to the described sanction and to the entry of findings that he embezzled \$210,000 in funds from his member firm by improperly obtaining checks made payable to a mutual fund account that he controlled, causing the checks to be deposited into the mutual fund account, and subsequently using them for his own benefit. Vazquez also failed to respond to NASD requests for information. **(NASD Case #C02010029)**

**Charles Keith Waddell (CRD #2347936, Registered Representative, Oklahoma City, Oklahoma)** was fined \$40,000, suspended from association with any NASD member in any capacity for two years, and ordered to pay \$100,000, plus interest, in restitution to a public customer. Waddell is also subject to special supervision for a minimum of two years with any NASD member with which he becomes associated following his suspension. The sanctions are based on findings that Waddell made untrue statements of material fact to a public customer in connection with a sale of securities and transferred a bond to an individual without the explicit permission of the public customer who was the beneficiary

of the bond. The findings also stated that Waddell engaged in private securities transactions for compensation without prior written notice to his member firm describing in detail the proposed transactions, his proposed role therein, and stating whether he had received, or might receive, selling compensation in connection with the transactions.

Waddell's suspension began July 2, 2001, and will conclude at the close of business July 1, 2003. **(NASD Case #C05000021)**

**O. Jennings Wilkinson, IV (CRD #2772955, Registered Representative, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$17,500, suspended from association with any NASD member in any capacity for two years, and ordered to disgorge \$6,233 to public customers. In light of the financial status of Wilkinson, a fine of \$17,500 was imposed. The fine payment and satisfactory proof of payment of the disgorgement must be provided before Wilkinson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Wilkinson consented to the described sanctions and to the entry of findings that he exercised discretion in the accounts of public customers without their prior written authorization and the prior written approval from his member firm to exercise discretion. The findings also stated that Wilkinson engaged in excessive trading in the account of public customers. In addition, the NASD found that Wilkinson engaged in outside business activities and failed to give prompt written notice to his member firm of his activities.

Wilkinson's suspension began July 16, 2001, and will conclude at the close of business July 15, 2003. **(NASD Case #C3A010019)**

**Shiewi Xu (CRD #2731114, Registered Representative, Edison, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before reassociating with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Xu consented to the described sanctions and to the entry of findings that he placed advertisements in a newspaper, soliciting customers to join an investment club without the approval of his member firm. The findings also stated that the advertisements contained exaggerated and unwarranted statements and claims, and failed to provide a sound basis for evaluating the product being offered rendering them misleading.

Xu's suspension began August 6, 2001, and will conclude at the close of business August 17, 2001. **(NASD Case #C9B010053)**

**Michael Edmond Zulick (CRD #1834341, Registered Principal, Akron, Ohio)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Zulick took checks from his member firm without firm authorization or notification, deposited the funds in his personal checking account, and used the funds to pay for personal expenses, thereby converting the funds for his own use and benefit. **(NASD Case #C8B000001)**

## Decision Issued

The following decision has been issued by the DBCC or the Office of Hearing Officers and has been appealed to or called for review by the NAC as of July 13, 2001. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. An initial decision whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

**Damien Robert Douglas (CRD #2255355, Registered Representative, Queens, New York)** was fined \$60,000, barred from association with any NASD member in any capacity, and ordered to pay \$29,886, plus interest, in restitution to public customers. The fine must be paid when and if Douglas seeks reentry into the securities industry. The sanctions were based on findings that Douglas executed transactions in the accounts of public customers without their prior knowledge, authorization, or consent. The findings also stated that Douglas provided false account information to a customer.

Douglas has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C10000026)**

## Complaints Filed

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

drawing any conclusions regarding the allegations in the complaint.

**Christian Weekley Baker (CRD #1639374, Registered Representative, St. Louis, Missouri)** was named as a respondent in an NASD complaint alleging that she received \$50,000 in cash from a public customer and mishandled customer funds by retaining possession of the currency, not returning the currency to the customer, and not assisting the customer by promptly depositing the full amount of the currency to the customer's investment account. The complaint further alleges that Baker engaged in a scheme to assist the customer in evading the federal cash transaction reporting requirements by failing to file a currency transaction report disclosing her receipt of \$50,000 in cash from the customer and depositing funds into the customer's accounts in increments of amounts less than \$3,000. Moreover, the complaint alleges that Baker failed to inform her member firm of her receipt of the cash, causing the failure of the firm to file a currency transaction report with the Internal Revenue Service that requires disclosure of deposits of \$10,000 or more. Furthermore, as a result of such actions, the NASD alleges that Baker caused her member to fail to record on its books and records the receipt of cash from a public customer. **(NASD Case #C8A010048)**

**Michael Alexander Bufano (CRD #3199805, Associated Person, Bronx, New York)** was named as a respondent in an NASD complaint alleging that he removed checks from his member firm's checkbook, filled out the checks for a total of \$2,000, and converted the funds for his own personal use and benefit without the firm's knowledge, authorization, or

consent. The complaint also alleges that Bufano forged the signatures of an authorized signatory employed by his firm and the purported drawee on the checks. In addition, the complaint alleges that Bufano failed to respond to NASD requests for information. **(NASD Case #C10010087)**

**Theodore Thomas Eastwick (CRD #1571559, Registered Principal, New York, New York)** was named as a respondent in an NASD complaint alleging that he prepared a letter from a public customer purportedly directing the liquidation of all shares held in an account of the customer even though the customer was deceased and that he forged the customer's signature to the letter. The complaint also alleges that Eastwick forged the customer's signature on a check-writing authorization form and specimen signature card for the customer's account. In addition, the complaint alleges that Eastwick forged the customer's signature on checks totaling approximately \$7,000 drawn against the account and converted the funds for his own use and benefit without the customer's knowledge, authorization, or consent. **(NASD Case #C10010090)**

**Thomas William Galuski (CRD #2005707, Registered Representative, Chicago, Illinois)** was named as a respondent in an NASD complaint alleging that he participated in private securities transactions and failed to give prior written notice to, and receive written approval from, his member firm prior to engaging in such activities. The complaint also alleges that Galuski issued false account documents to customers regarding investments in their accounts. **(NASD Case #C8A010040)**

**Peter Van Hamm (CRD #2530393, Registered Representative, Dunellen, New Jersey)** was named as a respondent in an NASD complaint alleging that he executed transactions in the accounts of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C10010082)**

**James Howard Jones (CRD #731895, Registered Representative, Anderson, Indiana)** was named as a respondent in an NASD complaint alleging that he received from a public customer a \$5,735 check to purchase shares in a variable annuity product, failed to apply the funds as directed, and without the knowledge and authorization of the customer, used the funds for his own benefit or for some purpose other than the benefit of the customer. The complaint further alleges Jones issued a false document to the customer purporting that the funds had been sent to and deposited into the customer's account, and falsely represented to the customer that he had created a "side fund" for the customer when, in fact, no such fund ever existed. **(NASD Case #C8A010037)**

**Emmanuel George Kavekos (CRD #2794227, Registered Representative, West Palm Beach, Florida)** was named as a respondent in an NASD complaint alleging that he engaged in unauthorized transactions in the accounts of public customers. The complaint further alleges that Kavekos made baseless price predictions to public customers in order to induce the customers to purchase securities and failed to respond to NASD requests for information. **(NASD Case #C07010045)**

**Key West Securities, Inc. (CRD #38305, Cardrift By The Sea, California) and Amr Ibrahim Elgindy (CRD #1824634, Registered Principal, Colleyville, Texas)** were named as respondents in an NASD complaint alleging that the firm, acting through Elgindy, engaged in a manipulative, deceptive, and fraudulent scheme involving the trading of a security by obtaining money, selling the security short at higher manipulated prices, and then attempting to cover the short position at a lower price by causing the price of the security to drop through the dissemination of deceptive sell recommendations about the security. The complaint further alleges that, in furtherance of the scheme, and in an attempt to profit from the security's short position, the firm, acting through Elgindy, disseminated, or made generally available to customers or the public, a report concerning the security in which the firm initiated coverage of the security with a sell recommendation. The complaint alleges that the report was deceptive in that the respondents failed to disclose that the firm was registered as a market maker and held a proprietary short position in the security. The NASD alleges that by this conduct, the firm, acting through Elgindy, by the use of means or instrumentalities of interstate commerce, to wit, the Nasdaq System and news wire services, intentionally and recklessly effected transactions in, and induced the purchase and sale of a security by means of manipulative, deceptive, and other fraudulent devices or contrivances. **(NASD Case #CMS000015)**

**Tuan Ba Le, a/k/a Jason Le (CRD #3079382, Registered Representative, Grand Prairie, Texas)** was named as a respondent in an NASD complaint alleging that he made

unauthorized withdrawals totaling \$176,000 from a public customer's savings account by signing the customer's name on a withdrawal slip and used the proceeds for his own use and benefit without the authorization, knowledge, or consent of the customer. **(NASD Case #C06010017)**

**Erik Robert Olufson (CRD #2875845, Registered Representative, Miami, Florida)** was named as a respondent in an NASD complaint alleging that he engaged in widespread, fraudulent sales practices by luring public customers into highly speculative investments in risky securities, without providing adequate and accurate information regarding the securities he recommended, particularly as to the risks of the investments, and omitted materially negative or cautionary information about the security being recommended. The complaint further alleges that Olufson acted as a registered representative without being registered with the NASD and failed to appear for testimony before the NASD. **(NASD Case #C07010039)**

**Gary Ronald Putti (CRD #2630113, Registered Principal, Miami, Florida)** was named as a respondent in an NASD complaint alleging that he received a \$2,000 check from an individual intended as a loan and failed to repay \$1,000 of the funds. The complaint also alleges that Putti failed to respond to NASD requests for information. **(NASD Case #C07010042)**

**Haskell Paul Stone, III (CRD #3035254, Registered Representative, Stuart, Florida)** was named as a respondent in an NASD complaint alleging that he engaged in widespread, fraudulent sales practices and lured

customers into highly speculative investments in risky securities by making misrepresentations and omissions to the customers, including baseless price predictions, and provided false statements to customers without disclosing adequate and accurate information regarding the securities without having a reasonable basis for such representations. The complaint also alleges that Stone recommended and implemented a course of trading in a customer's account that was unsuitable based upon the customer's lack of investment experience and the use of borrowed funds. **(NASD Case #C07010051)**

**Matthew David Stone (CRD #2922068, Registered Representative, Stuart, Florida)** was named as a respondent in an NASD complaint alleging that he engaged in widespread, fraudulent sales practices and lured customers into highly speculative investments in risky securities by making misrepresentations and omissions to the customers, by making baseless price predictions, providing false statements to customers without providing adequate and accurate information regarding the securities, and without having a reasonable basis for such representations. The complaint further alleges that Stone failed to follow customers' instructions to sell stock and engaged in unauthorized trading in a customer's account. **(NASD Case #C07010050)**

#### **Firms Suspended For Failure To Supply Financial Information**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD.

The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Equity Alliance Group**  
Torrance, California  
(June 18, 2001)

**Panta Management, Incorporated**  
New York, New York  
(June 15, 2001)

**Tasin & Company Inc.**  
Hauppauge, New York  
(June 15, 2001)

#### **Firm Expelled For Failure To Pay Fines, Costs And/Or Provide Proof Of Restitution In Connection With Violations**

**Millennium Securities Corp.**  
New York, New York  
(June 15, 2001)

#### **Firm Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement**

**Long Securities Corporation**  
Glendale, California  
(July 12, 2001)

#### **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.)**

**Arnett, Catherine**  
Rosemeade, California  
(July 5, 2001)

**Bailey, Richard Eugene**  
Cedar Rapids, Iowa  
(June 12, 2001)

**Cossu, Calude Gerald**  
Fairfield, California  
(July 5, 2001)

**Cullen, Michael K.**  
Fairview Heights, Illinois  
(June 12, 2001)

**Goodman, Barry**  
North Andover, Massachusetts  
(June 18, 2001)

**Spomer, Todd Jacob**  
Madison, South Dakota  
(July 11, 2001)

**St. Myer, Bradley David**  
Wexford, Pennsylvania  
(June 5, 2001)

**Warren, Raymond P.**  
Escondido, California  
(July 5, 2001)

#### **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.)**

**Atienza, Jr., Prospero**  
Buena Park, California  
(July 5, 2001)

**Carlson, Aaron J.**  
Beaverton, Oregon  
(June 5, 2001)

**Federico, Mark A.**  
Boston, Massachusetts  
(June 13, 2001)

**Johnson, Eric K.**  
South Branch, New Jersey  
(July 10, 2001)

**Lalle, Gregory**  
Clearwater, Florida  
(July 10, 2001)

**Ly, Danny Ben**  
North Hollywood, California  
(June 6, 2001)

**Radde, Kevin E.**  
Gilberts, Illinois  
(June 13, 2001)

**Spector, Gary J.**  
Burbank, California  
(June 20, 2001)

**Vitale, David**  
Pacific Beach, California  
(June 5, 2001)

**Yu, James W.**  
Ann Arbor, Michigan  
(June 8, 2001)

**Individuals Suspended Pursuant To NASD Rule Series 9510 For Failure To Comply With An Arbitration Award Or A Settlement Agreement**

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

**Jay, Lawrence S.**  
Camarillo, California  
(July 12, 2001)

**Small, Gregory**  
New York, New York  
(June 18, 2001)

**Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs And/Or Provide Proof Of Restitution In Connection With Violations**

**Azeltine, Frederick W.**  
Denver, Colorado  
(June 15, 2001)

**Christopher, Cooke B.**  
San Clemente, California  
(June 15, 2001)

**Hare, John W.**  
Darien, Connecticut  
(June 15, 2001)

**Kaplan, Adam**  
Brooklyn, New York  
(June 15, 2001)

**Orandello, Steven J.**  
Seaford, New York  
(June 15, 2001)

**Price, Michael J.**  
Atlanta, Georgia  
(June 15, 2001)

**Prout, Stephen E.**  
Clovis, California  
(June 15, 2001)

**Talboom, Jeffrey R.**  
Smithtown, New York  
(June 15, 2001)

**Velez, Alexander**  
Commack, New York  
(June 15, 2001)

**NASD Regulation Censures and Fines E\*Trade Securities \$90,000 for Violations of Advertising and Supervision Rules**

NASD Regulation announced that E\*Trade Securities was censured and fined \$90,000 for NASD advertising rule and supervisory system violations. In settling this matter, E\*Trade neither admitted nor denied NASD Regulation's allegations.

NASD Regulation found that E\*Trade failed to comply with NASD advertising rules when it published an advertisement in August 1999 introducing E\*Trade's new mutual fund, the E\*Trade Technology Index Fund (ETI Fund). The company said the objective of the ETI Fund was to match, before fees and expenses, the total return of the stocks that make up the Goldman Sachs Technology Index (GSTI Composite). The advertisement,

published on several days in four major publications—*The Wall Street Journal*, *The New York Times*, *Investors Business Daily* and *Barrons*—stated that the ETI Fund was “ranked by Morningstar as the lowest cost tech index fund.” In fact, Morningstar had not ranked the fund. Thus, the statement was incorrect rendering advertisement misleading. NASD Regulation also found that the advertisement referred to the 62.4 percent return of the GSTI Composite Index, but did not tell the reader that the ETI Fund was a new fund with no performance history, and did not clearly divorce the past performance of the index from the future performance of the ETI Fund. E\*Trade also failed to file the ETI Fund advertisement with the NASD Regulation Advertising Regulation Department prior to use as required by NASD advertising rules.

NASD Regulation also found violations in connection with two direct mail marketing campaigns not related to the ETI Fund. These were E\*Trade's “Check Coupon Direct Mailers” and “Prequalified for Margin Direct Mailers,” which the firm sent to almost 10 million potential investors. The first direct mail piece, distributed to 6.6 million potential investors between July 1999 and April 2000, featured a check-style coupon made out to the recipient offering a \$75 bonus to those who opened a brokerage account with E\*Trade. NASD Regulation found the Check Coupon Direct Mailers, through the use of the check-style coupon and accompanying text, informed the reader that a \$75 bonus would be credited to an account immediately. In fact, such credit could actually take several weeks to post to an account. The disclosure language on the back of the direct mail letters indicating when the \$75 bonus would be

received contradicted the main body of the letters that said that the \$75 bonus would be paid immediately. In addition, the Check Coupon Direct Mailers inaccurately portrayed the \$75 as a guaranteed return on an investment in the market, when, in fact, it was simply a bonus for opening an account.

NASD Regulation also found that E\*Trade's use of the Prequalified for Margin Direct Mailers violated the NASD advertising rules. These mailers were distributed to 3.2 million investors between October 1999 and April 2000, and stated that each recipient had been selected to receive an offer of a margin account based on his or her outstanding credit history. However, NASD Regulation found that a recipient's credit history did not place him or her at any advantage in obtaining a margin account, nor did a recipient have a "special qualification," which was not available to others, that would assist him or her in obtaining a margin account. In fact, approval for margin accounts at E\*Trade did not include a review of credit history.

NASD Regulation further found that E\*Trade's compliance and supervisory procedures in connection with its advertising activities failed to comply with NASD supervisory rules. E\*Trade did not require its compliance principals reviewing advertising material to obtain a final version, thereby allowing an advertisement to be published that did not incorporate compliance principals' edits. In addition, NASD Regulation found that E\*Trade had no formal auditing procedure to ensure that firm employees involved in developing advertising fully complied with its compliance and supervisory procedures.

This case was investigated by NASD Regulation's Enforcement Department, with assistance from the Advertising Regulation Department.

### **NASD Regulation Sanctions Ten Firms for Locked and Crossed Market Violations in Trading After Initial Public Offerings**

NASD Regulation announced that it has fined 10 firms and suspended five of them from market making activities in the immediate aftermarket of initial public offerings (IPOs) for causing the markets to lock and cross at the opening of secondary trading. Locked and crossed markets adversely effect an orderly market opening and efficient price discovery because many firms do not execute customer orders during locked and crossed markets or execute such orders at unfavorable prices.

The disciplinary actions announced resulted from violations of the NASD's locked and crossed markets rule. Markets become locked and crossed when a market maker enters or maintains an "ask" price for a security that is the same or lower than the "bid" price of another market maker. Locked or crossed quotations may occur in fast-moving markets and can have significant impact on the opening of trading in newly offered securities. Many secondary trading markets were opening crossed by several points and in some cases, the locked or crossed condition existed for many minutes into the initial secondary trading period.

These disciplinary actions result from an NASD Regulation Market Regulation Department review of market maker quotations from March 1, 1999, through June 15, 1999. Monetary sanctions in the

10 settled actions total \$473,000. These firms have neither admitted nor denied the allegations, but have consented to the entry of findings pursuant to the settlements.

In addition to a fine, NASD Regulation suspended five of the 10 firms from participating as a market maker in the trading of a security that has just completed an IPO from the beginning of secondary trading through the end of normal business hours on the next trade date. The firms will be suspended for periods of 10 to 30 business days.

The following firms were censured and fined by NASD Regulation: Fleet Securities, Inc., \$50,000; NDB Capital Markets LP, \$250,000; Herzog, Heine, Geduld, Inc., \$18,000; Schwab Capital Markets, \$12,000; and Spear, Leeds & Kellogg, \$10,000.

The following firms were fined and suspended by NASD Regulation: Access Securities, Inc., \$14,000 and a 30-business-day suspension; Aegis Capital Corp., \$19,000 and a 10-business-day suspension; Dalton Kent Securities Group, Inc., \$25,000 and a 30-business-day suspension; Ramius Securities L.L.C., \$61,000 and a 10-business-day suspension; and Torrey Pines Securities, Inc., \$14,000 and a 30-business-day suspension.

### **NASD Regulation Sanctions Eleven Firms for Trade or Move Violations**

NASD Regulation announced that it has settled 11 separate disciplinary actions against firms for violations of the NASD's Trade or Move Rule. The 11 firms involved in today's actions were censured and fined a total of \$355,000.

The Trade or Move Rule applies to all securities listed on The Nasdaq Stock Market, and is designed to ensure that the markets for Nasdaq stocks open in a fair and orderly manner. The Rule requires firms that lock or cross the market during the time period between 9:20 a.m. to 9:30 a.m., EST, immediately send Trade or Move messages to the parties with whom it has locked or crossed. Firms receiving Trade or Move messages during this time period must, within 30 seconds of receipt, either execute the trade in full or move their quote to an unlocking price.

Compliance with the Trade or Move Rule is critically important to ensuring accurate pricing at the open of The Nasdaq Stock Market, particularly on "Expiration Fridays" and index rebalancing days. The Rule generally has been viewed, since its adoption in 2000, as having increased the ability of investors to get fair prices, increased market transparency, and improved price discovery in The Nasdaq Stock Market at the open.

The following firms were censured and fined a total of \$355,000 by NASD Regulation for violations of the Trade or Move Rule: NDB Capital Markets, LP, \$75,000; Lehman Brothers, Inc., \$65,000; Fleet Securities, Inc., \$40,000; Herzog, Heine, Geduld, Inc., \$40,000; Banc of America Securities LLC, \$40,000; Credit Suisse First Boston Corporation, \$25,000; ING Barings LLC, \$20,000; Merrill Lynch, Pierce, Fenner & Smith, Inc. \$15,000; Penson Financial Services, Inc., \$15,000; Chase Securities, Inc., \$10,000; and Ramius Securities LLC, \$10,000. These actions are the result of reviews conducted by the Trading Practices Section within NASD Regulation's Market

Regulation Department. These firms have neither admitted nor denied the allegations, but have consented to the entry of findings pursuant to the settlements.

These disciplinary actions highlight NASD Regulation's commitment to enforce member compliance with trading rules essential to market quality and customer protection. NASD Regulation notes that industry-wide compliance with the Trade or Move Rule has improved considerably in recent periods of potential volatility, such as the June 2001 Expiration.

## For Your Information

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### **Annual Audit Filings**

Annual audits submitted to NASD Regulation should be sent to the following address:

*NASD Regulation, Inc.  
Member Regulation Programs/Systems Support  
Attn: Sherry Lawrence  
9509 Key West Avenue, 3rd Floor  
Rockville, MD 20850*

(Please note that the previous Rockville, MD addresses do not have mail facilities. Sending reports to those addresses will result in late reports.)

For assistance with annual audit issues, please call (240) 386-5162.

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## Special NASD Notice to Members 01-56

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### ACTION REQUESTED

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## Board Elections

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### NASD Notice Of Meeting And Proxy

### SUGGESTED ROUTING

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

- Executive Representatives

### KEY TOPICS

- Board Elections

The Annual Meeting of Members of the National Association of Securities Dealers, Inc. (NASD®) will be held on September 13, 2001, at 10:00 a.m., at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, in Washington, DC. The purpose of the meeting is to conduct the election of Governors to the NASD Board. Members can raise other topics for discussion by properly notifying the NASD of these topics.<sup>1</sup> The record date for the Annual Meeting is the close of business on August 9, 2001.

It is important that all members be represented at the Annual Meeting. Members are urged to vote in the election of Board members using one of the methods described below.

### Board Of Governors Election

There are eight vacancies to be filled at this meeting—four Industry governorships and four Non-Industry governorships. The nominees for the vacancies are listed in Attachment A. The nominees elected will serve for terms specified in Attachment A.

Attachment B includes the biographies of the nominees of the NASD National Nominating Committee. Attachment C contains the names of the current Board of Governors.

### Voting Methods

Members will be able to vote using one of the following three methods:

- U.S. Mail
- Internet
- Phone

The enclosed proxy contains detailed instructions on the voting procedures.

### Questions regarding this notice may be directed to:

*Barbara Z. Sweeney  
Senior Vice President and Corporate Secretary  
National Association of Securities Dealers, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500  
(202) 728-8062*

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<sup>1</sup> Pursuant to Sections 1 and 3(b) of Article XXI of the NASD By-Laws, an NASD member may properly bring any other business before the Annual Meeting by giving timely notice in writing to the Secretary of the NASD. In addition, the member must be an NASD member at the time of the delivery of such notice, and the other business must be a proper matter for member action. To be timely, a member's notice must be delivered to the Secretary at the NASD's principal executive offices (the address is listed above) within 25 days of the date of this notice. The member's notice must offer a brief description of the other business, any material interest of the member in such business, and the reasons for conducting such business at the Annual Meeting.

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## Special NASD Notice to Members 01-56

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### ATTACHMENT A—LIST OF NOMINEES

The following persons have been nominated by the NASD National Nominating Committee to serve on the Board of Governors of the NASD for a term specified below. Terms run from September 13, 2001 to September 2004.

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#### INDUSTRY                      Terms of Office 2001-2004

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<b>John W. Bachmann</b>	<i>Managing Partner, Edward Jones</i>
<b>Richard F. Brueckner</b>	<i>Chief Operating Officer, Pershing Division of Credit Suisse First Boston (Clearing Firm Candidate)</i>
<b>Stephen L. Hammerman</b>	<i>Vice Chairman of the Board, Merrill Lynch &amp; Co., Inc. (National Retail Firm Candidate)</i>
<b>Raymond A. Mason</b>	<i>Chairman of the Board and Chief Executive Officer, Legg Mason Wood Walker, Inc. (Regional Retail Firm Candidate)</i>

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#### NON-INDUSTRY                Terms of Office 2001-2004

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<b>James E. Burton</b>	<i>Chief Executive Officer, California Public Employees' Retirement System</i>
<b>Sir Brian Corby</b>	<i>Chairman, Prudential Assurance Company (Retired)</i>
<b>Harry P. Kamen</b>	<i>Chairman of the Board and Chief Executive Officer, Metropolitan Life Insurance Company (Retired)</i>
<b>John Rutherford</b>	<i>President and Chief Executive Officer, Moody's Corporation</i>

**ATTACHMENT B—BOARD NOMINEE PROFILES****Profiles Of Board Nominees For Industry Governors**

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**Industry**

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**John W. Bachmann**

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John W. Bachmann is Managing Partner of Edward Jones. Mr. Bachmann began his career at Jones as a part-time college intern, eventually succeeding Edward D. Jones, Jr. as Managing Partner in 1980. During Mr. Bachmann's tenure, Edward Jones has grown from 200 to 7,000-plus offices in the United States, and it has expanded to Canada and the United Kingdom. Mr. Bachmann has also served two terms as Chairman of the Securities Industry Association, as a member of the board of governors of the Chicago Stock Exchange, and as Chairman of District 4 for the NASD. Currently, Mr. Bachmann is Chairman of the Regional Chamber and Growth Association, and a Director of the U.S. Chamber of Commerce. He holds a BA degree in Economics from Wabash College, an MA degree in Finance from Northwestern University, two honorary degrees, and is a graduate of the Institute of Investment Banking at the Wharton School of Business.

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**Richard F. Brueckner**

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Richard F. Brueckner is Chief Operating Officer of the Pershing Division of Credit Suisse First Boston (formerly DLJ Securities Corporation) and Managing Director of its Financial Services Group. He previously was Treasurer of DLJ Securities and Chief Financial Officer of Pershing. Mr. Brueckner is Chairman of the Board of Trustees and CEO of the Securities Industry Foundation for Economic Education, and has served as a Governor of the NASD, Chairman of the NASD's National Adjudicatory Council, and Chairman of the NASD's New York District Committee. Mr. Brueckner graduated from Muhlenberg College with a BA degree in Economics and is a Certified Public Accountant.

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**Stephen L. Hammerman**

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Stephen L. Hammerman is Vice Chairman of the Board of Merrill Lynch & Co., Inc., serves on the corporation's Board of Directors, and is a member of the firm's Executive Committee. He has served as a Director of the New York Stock Exchange, as Chairman of the NASD, and as Director of the Securities Investors Protection Corporation. In addition to having served the government as New York Regional Administrator for the SEC and as an Assistant US Attorney in the Criminal Division for the southern district of New York, Mr. Hammerman is active in philanthropic, educational, and community affairs. Mr. Hammerman is a graduate of the University of Pennsylvania's Wharton School and received his law degree from New York University.

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## **Special NASD Notice to Members 01-56**

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### **Raymond A. Mason**

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Raymond A. Mason founded Mason and Company in 1962 and has spent his career building the financial services organization, Legg Mason, Inc. He serves as Chairman of the Board and Chief Executive Officer of its principal subsidiary, Legg Mason Wood Walker, Inc. Mr. Mason has served as Chairman and as a board member of the Securities Industry Association, Chairman of the Board of Governors of the NASD, and Chairman of the Regional Firms Committee of the New York Stock Exchange. Mr. Mason has many civic interests and is a trustee or board member of many educational and philanthropic institutions. Mr. Mason is Chairman-elect of the Johns Hopkins University Board of Trustees. He holds a BA degree in Economics from the College of William and Mary, and has received honorary Doctorate degrees from his alma mater, Loyola College, and Mount St. Mary's College.

**Profiles Of Board Nominees For Non-Industry Governors**

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**Non-Industry**

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**James E. Burton**

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James E. Burton is Chief Executive Officer of the California Public Employees' Retirement System, the nation's largest public pension fund. Previously, Mr. Burton served as Assistant Executive Officer of CalPERS investment operations, supervising investment operations in all asset classes. Prior to this position, Mr. Burton was Deputy State Controller. He has also served on a number of boards, commissions, and committees, and currently is Second Vice President and member of the Executive Committee of the National Association of State Retirement Administrators. He is also currently a member of the Executive Committee of the Council of Institutional Investors. Mr. Burton is a graduate of the University of San Francisco.

**Sir Brian Corby**

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Sir Brian Corby spent many years working for the Prudential Assurance Company in London where he held a number of positions—apart from working in its branch in South Africa—including Chief Actuary, Group Chief Executive, and Chairman. Sir Brian has held positions with advisory groups, art and educational institutions, and industry associations, including the Institute of Actuaries, where he qualified as a Fellow. He was a Director of the Bank of England from 1985 to 1993. Following his retirement from full-time executive employment, Sir Brian became President of the Confederation of British Industry from 1990 to 1992, the first such appointment from the insurance industry and he was Chancellor of the University of Hertfordshire from 1992 to 1996. Recently, Sir Brian has chaired a number of study groups for the Federal Trust on the subjects of European pension reform and venture capital and public-private partnerships in Europe. Sir Brian holds an honors degree in Mathematics from St. John's College, Cambridge, as well as three honorary degrees.

**Harry P. Kamen**

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Harry P. Kamen is former Chairman of the Board and Chief Executive Officer of Metropolitan Life Insurance Company. Mr. Kamen served in that capacity from 1993 to 1998, having joined the organization in 1959. He serves as a Director of the following corporate Boards: Banco Santander Central Hispano, Bethlehem Steel Corporation, Metropolitan Life, Pfizer Inc., and B-Direct Capital. Mr. Kamen holds an AB from the University of Pennsylvania and an LLB from Harvard University Law School.

**John Rutherford, Jr.**

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John Rutherford is President and Chief Executive Officer of Moody's Corporation. Mr. Rutherford joined Moody's in 1995 to develop new business activities with the title of Managing Director, Moody's Holdings. He was appointed Chief Administrative Officer in 1996 and President in January 1998. Mr. Rutherford is a graduate of Princeton University and Harvard Law School.

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**Special NASD Notice to Members 01-56**

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**ATTACHMENT C—CURRENT BOARD MEMBERS**

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**Governors With Terms Expiring In 2001**

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**Industry**

**Frank E. Baxter**  
Chairman and CEO  
Jefferies Group, Inc.

**Donald B. Marron**  
Chairman  
UBS PaineWebber Incorporated

**Kenneth D. Pasternak**  
President and CEO  
Knight Trading Group

**Todd A. Robinson**  
Chairman and CEO  
LPL Financial Services

**Non-Industry**

**Michael W. Brown**  
Retired CFO  
Microsoft

**Harry P. Kamen**  
Retired Chairman and CEO  
Metropolitan Life Insurance  
Company

**James S. Riepe**  
Vice Chairman  
T. Rowe Group, Inc.

**Public**

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**Governors With Terms Expiring In 2002**

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**Industry**

**M. LaRae Bakerink**  
First Vice President and Chief  
Compliance Officer  
Pacific American Securities, LLC

**David A. DeMuro**  
Lehman Brothers, Inc.

**Richard C. Romano**  
President  
Romano Brothers & Co.

**Non-Industry**

**H. Furlong Baldwin**  
Chairman  
Mercantile Bankshares Corporation

**Eugene M. Isenberg**  
Chairman and CEO  
Nabors Industries, Inc.

**Arthur Rock**  
Principal  
Arthur Rock & Co.

**James F. Rothenberg**  
President  
Capital Research and  
Management Company

**Public**

**Kenneth M. Duberstein**  
Chairman and CEO  
The Duberstein Group, Inc.

**Donald J. Kirk**  
Vice Chairman  
Public Oversight Board  
American Institute of Certified  
Public Accountants

**John D. Markese**  
President  
American Association of Individual  
Investors

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**Governors With Terms Expiring In 2003**

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**Industry**

**William C. Alsover, Jr.**  
Chairman  
Centennial Securities  
Company, Inc.

**Anthony J. Boglioli**  
President  
Whitehall Brokerage Services, Ltd.

**David S. Pottruck**  
President and  
Co-Chief Executive Officer  
The Charles Schwab Corporation

**Non-Industry**

**Arvind Sodhani**  
Vice President and Treasurer  
Intel Corporation

**Public**

**Brian T. Borders, Esq.**  
Association of Publicly  
Traded Companies  
Mayer, Brown & Platt

**Sharon P. Smith**  
Dean, College of Business  
Administration  
Fordham University

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## Special NASD Notice to Members 01-56

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**INFORMATIONAL**

## **NAC Nominations**

**NASD Announces  
Nomination Procedures  
For Regional Industry  
Member Vacancies  
On The National  
Adjudicatory Council;  
Nomination Deadline:  
September 14, 2001**

**SUGGESTED ROUTING**

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

- Legal & Compliance
- Senior Management

**KEY TOPICS**

- National Adjudicatory Council

### **Executive Summary**

The purpose of this *Special Notice to Members* is to advise members of the nomination procedures to fill two upcoming vacancies on the National Adjudicatory Council (NAC). The two-year terms of NAC regional Industry members from the West Region and the New York Region expire in January 2002. The current regional Industry members from these regions are eligible to serve another two-year term.

Exhibit I contains a list of NAC regional Industry members whose terms expire in January 2002. Exhibit II contains a list of all NAC members. The procedures to fill the NAC regional Industry vacancies are outlined in Exhibit III. Also, a Candidate Profile Sheet is included in Exhibit IV.

### **Nomination Process**

Members are encouraged to submit nominations for the upcoming NAC vacancies. To nominate a candidate, members should submit a cover letter and the Candidate Profile Sheet (Exhibit IV) to the appropriate Regional Nominating Committee Chair, the NASD Regulation District Director, or National Association of Securities Dealers, Inc. (NASD®) Corporate Secretary (listed in Exhibit I) by **September 14, 2001**.

The completed Candidate Profile Sheets will be provided to all Regional Nominating Committee members for review. On or about **October 3, 2001**, the Regional Nominating Committees will provide NASD members with written notice of NAC candidates the Committee proposes for nomination to the National Nominating Committee. Pursuant to Article V, Section 5.3(a) of the NASD Regulation By-Laws, the NASD National Nominating Committee shall nominate all

candidates for the NAC for subsequent appointment by the Board.

### **Questions/Further Information**

Questions concerning this *Special Notice to Members* may be directed to the District Directors listed in Exhibit I or to Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, at (202) 728-8062 or via e-mail at: [barbara.sweeney@nasd.com](mailto:barbara.sweeney@nasd.com).

### **National Adjudicatory Council Membership And Function**

#### **Membership**

The NAC consists of 14 members—seven Industry members and seven Non-Industry members. Exhibit II contains a list of all current NAC members. Two Industry members are appointed by the NASD Regulation Board of Directors as at-large members. Five Industry members each represent one of the following geographic regions:

**West Region:** Hawaii, California, Nevada, Arizona, Colorado, New Mexico, Utah, Wyoming, Alaska, Idaho, Montana, Oregon, and Washington.

**South Region:** Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, Florida, Georgia, North Carolina, South Carolina, Puerto Rico, Virginia, Canal Zone, and the Virgin Islands.

**Central Region:** Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Illinois, Indiana, Michigan, Western New York state, and Wisconsin.

**North Region:** Delaware, Maryland, Pennsylvania, West

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## **Special NASD Notice to Members 01-57**

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Virginia, District of Columbia, New Jersey, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for New York City, Long Island, and Western New York state).

**New York:** New York City and Long Island.

We are seeking nominations for the West and New York Regions.

### ***Function***

According to the NASD By-Laws, the NAC is authorized to act for the NASD Board of Governors in matters concerning:

- appeals or reviews of disciplinary proceedings, statutory disqualification proceedings, or membership proceedings;
- the review of offers of settlement; letters of acceptance, waiver, and consent; and minor rule violation plan letters;
- the exercise of exemptive authority; and
- other proceedings or actions authorized by the Rules of the Association.

The NAC also considers and makes recommendations to the Board on enforcement policy and rule changes relating to the business and sales practices of NASD members and associated persons.

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## Special NASD Notice to Members 01-57

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### EXHIBIT I

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#### NAC Industry Members With Terms Expiring In January 2002

##### West Region (Districts 1, 2, and 3)

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**NAC Incumbent: Anthony B. Petrelli**

If you are interested in nominating yourself or a colleague to represent the West Region for a two-year term on the NAC, please submit a cover letter and a completed Candidate Profile Sheet (Exhibit IV) to any of the following individuals by **September 14, 2001**.

**Dean A. Holmes**

Regional Nominating Committee Chair  
American General Financial Group  
222 S. Harbor Boulevard, Suite 100  
Anaheim, CA 92805  
(714) 817-8121

**Elisabeth P. Owens**

District 1 Director, NASD Regulation, Inc.  
525 Market Street, Suite 300  
San Francisco, CA 94105-2711  
(415) 882-1200

**Lani M. Sen Woltmann**

District 2 Director, NASD Regulation, Inc.  
300 South Grand Avenue, Suite 1600  
Los Angeles, CA 90071  
(213) 627-2122

**Frank Birgfeld**

District 3 Director, NASD Regulation, Inc.  
Republic Office Building  
370 17th Street, Suite 2900  
Denver, CO 80202-5629  
(303) 446-3100

**James G. Dawson**

District 3 Director, NASD Regulation, Inc.  
Two Union Square  
601 Union Street, Suite 1616  
Seattle, WA 98101-2327  
(206) 624-0790

**Barbara Z. Sweeney**

Senior Vice President and Corporate Secretary  
National Association of Securities Dealers, Inc.  
1735 K Street NW  
Washington, D.C. 20006  
(202) 728-8062

##### New York Region (District 10)

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**NAC Incumbent: Joan Caridi**

If you are interested in nominating yourself or a colleague to represent the New York Region for a two-year term on the NAC, please submit a cover letter and a completed Candidate Profile Sheet (Exhibit IV) to any of the following individuals by **September 14, 2001**.

**John Iachello**

Regional Nominating Committee Chair  
ABN AMRO Securities LLC  
55 East 52nd Street  
New York, NY 10055  
(212) 409-7199

**Robert B. Kaplan**

District 10 Deputy Director, NASD Regulation, Inc.  
One Liberty Plaza  
New York, NY 10006  
(212) 858-4487

**Joseph M. McCarthy**

District 10 Deputy Director, NASD Regulation, Inc.  
One Liberty Plaza  
New York, NY 10006  
(212) 858-4265

**Barbara Z. Sweeney**

Senior Vice President and Corporate Secretary  
National Association of Securities Dealers, Inc.  
1735 K Street NW  
Washington, D.C. 20006  
(202) 728-8062

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**Special NASD Notice to Members 01-57**

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**EXHIBIT II**

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**2001 National Adjudicatory Council**

<b>Mary E.T. Beach</b>	Attorney
<b>Robert J. Birnbaum</b>	Attorney
<b>Herbert H. Brown</b>	Attorney
<b>Joan Caridi</b>	CS First Boston
<b>David A. DeMuro</b>	Lehman Brothers, Inc.
<b>Alice T. Kane</b>	American General
<b>Roberta S. Karmel</b>	Kelley Drye & Warren LLP
<b>Douglas L. Kelly</b>	A.G. Edwards & Son, Inc.
<b>Mark D. Madoff</b>	Bernard L. Madoff Investment Securities
<b>Anthony B. Petrelli</b>	Neidiger, Tucker, Bruner, Inc.
<b>Mark A. Sargent</b>	Villanova University School of Law
<b>Theodore W. Urban</b>	Ferris Baker Watts, Inc.
<b>Barbara L. Weaver</b>	Legg Mason Wood Walker, Inc.
<b>Elliott J. Weiss</b>	Charles E. Ares Professor of Law, The University of Arizona

**EXHIBIT III**

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## National Adjudicatory Council Nomination Procedures

1. NASD Regulation maintains Regional Nominating Committees in the manner specified in Article VI of the By-Laws of NASD Regulation, Inc.
2. Members located in the West Region and New York are hereby notified of the upcoming election of members to the National Adjudicatory Council and are encouraged to submit names of potential candidates to their respective Chair of the Regional Nominating Committee, District Director or to NASD Corporate Secretary Barbara Z. Sweeney (see Exhibit I) by **September 14, 2001**.
3. Nominees will be asked to complete a Candidate Profile Sheet which will be reviewed by the Regional Nominating Committee.
4. The Regional Nominating Committee shall review the background of the candidates and the description of the NASD membership provided by NASD Regulation staff and shall propose one or more candidates for nomination to the National Nominating Committee. In proposing a candidate for nomination, the Regional Nominating Committee shall endeavor to secure appropriate and fair representation of the region.
5. On or about **October 3, 2001**, the Regional Nominating Committee shall notify in writing the Executive Representatives and branch offices of the NASD members in the region the name of the candidate it will propose to the National Nominating Committee for nomination to the National Adjudicatory Council.
6. If an officer, director, or employee of an NASD member in the region is not proposed for nomination by the Regional Nominating Committee and wants to seek the nomination, he or she shall send a written notice to the Regional Nominating Committee Chair or the Secretary of NASD Regulation within 14 calendar days after the mailing date of the Regional Nominating Committee's notice (#5 above) and proceed in accordance with the Contested Nomination Procedures found in Article VI of the NASDR By-Laws.
7. If no additional candidate comes forward within 14 calendar days, the Regional Nominating Committees shall certify their candidates to the National Nominating Committee.

Additional information pertaining to the National Adjudicatory Council Election Procedures can be found in Article VI of the By-Laws of NASD Regulation. The By-Laws can be found in the online *NASD Manual* at [www.nasdr.com](http://www.nasdr.com).

# Candidate Profile Sheet

## Current Employment

Name: \_\_\_\_\_ CRD#: \_\_\_\_\_

Firm: \_\_\_\_\_ #RRs at Firm: \_\_\_\_\_

Title/Primary Responsibility: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

## Prior Employment *(List the most recent first. Feel free to include extra pages if necessary.)*

Firm: \_\_\_\_\_

Title/Primary Responsibility: \_\_\_\_\_

Firm: \_\_\_\_\_

Title/Primary Responsibility: \_\_\_\_\_

### General Areas of Expertise *(please check all that apply)*

- |  |  |
|--|--|
| <input type="checkbox"/> Compliance/Legal      | <input type="checkbox"/> Investment Advisory   |
| <input type="checkbox"/> Corporate Finance     | <input type="checkbox"/> Retail Sales          |
| <input type="checkbox"/> Financial/Operational | <input type="checkbox"/> Trading/Market Making |
| <input type="checkbox"/> Institutional Sales   | <input type="checkbox"/> Other: _____          |
|  | _____  |

### Product Expertise *(please check all that apply)*

- |  |  |
|--|--|
| <input type="checkbox"/> Corporate Bonds                 | <input type="checkbox"/> Investment Company            |
| <input type="checkbox"/> Direct Participation Programs   | <input type="checkbox"/> Options                       |
| <input type="checkbox"/> Equity Securities               | <input type="checkbox"/> Variable Contracts Securities |
| <input type="checkbox"/> Municipal/Government Securities | <input type="checkbox"/> Other: _____                  |
|  | _____  |

## Memberships/Positions Held in Trade or Business Organizations

\_\_\_\_\_  
 \_\_\_\_\_

## Past NASD Experience and Dates of Service *(please check all that apply)*

- |   |                      |
|---|----------------------|
| <input type="checkbox"/> Committee Member (Identify committee: _____ )                  | Approx. Dates: _____ |
| <input type="checkbox"/> Arbitrator: _____  | Approx. Dates: _____ |
| <input type="checkbox"/> Mediator: _____  | Approx. Dates: _____ |
| <input type="checkbox"/> Expert Witness (arbitrations; disciplinary proceedings): _____ | Approx. Dates: _____ |
| <input type="checkbox"/> Other: _____   | Approx. Dates: _____ |

## Educational Background

School: \_\_\_\_\_ Degree: \_\_\_\_\_

School: \_\_\_\_\_ Degree: \_\_\_\_\_

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