

Notices to Members

November 1999

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INFORMATIONAL

Arbitration

**NASD Regulation
Announces New
Discovery Guide To Be
Used In Arbitration
Proceedings****SUGGESTED ROUTING**

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

- Legal & Compliance
- Registered Representatives
- Senior Management
- Training

KEY TOPICS

- Arbitration
- Discovery Guide

Executive Summary

On September 2, 1999, the Securities and Exchange Commission (SEC) approved the use of the *Discovery Guide* (see Exhibit I) in National Association of Securities Dealers, Inc. (NASD®) arbitration proceedings involving customer disputes with firms and associated persons. The *Discovery Guide* is now available to use in NASD arbitration proceedings.

The *Discovery Guide*, which includes Document Production Lists, provides guidance to parties on which documents they should exchange without arbitrator or staff intervention, and to arbitrators in determining which documents customers and member firms or associated persons are presumptively required to produce in customer arbitrations.

Questions/Further Information

Questions regarding this *Notice to Members* may be directed to Gary Tidwell, Director, Neutral Management, Office of Dispute Resolution, NASD Regulation, Inc. (NASD RegulationSM), at (212) 858-4352; or Eric Moss, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8982.

Discussion

The *Discovery Guide* will be used as a supplement or an addendum to the guidance regarding discovery provided in *The Arbitrator's Manual*, published by Securities Industry Conference on Arbitration (SICA), and particularly the provisions in the section entitled, "Prehearing Conference," on pages 11 through 16. *The Arbitrator's Manual* is compiled by members of SICA as a guide for arbitrators, and is designed to supplement and explain the Uniform Code of

Arbitration as developed by SICA. The procedures and policies described in *The Arbitrator's Manual* are discretionary and may be changed by the arbitrators. Further, nothing in the *Discovery Guide*, including the Document Production Lists, precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the *Discovery Guide*.

The *Discovery Guide* consists of introductory and instructional text, and 14 Document Production Lists. It is intended for use by arbitrators in customer arbitrations only. These lists include the following (parenthetical references refer to the party from whom documents are sought):

List 1:

Documents To Be Produced In All Customer Cases (Firm/Associated Person(s))

List 2:

Documents To Be Produced In All Customer Cases (Customer)

List 3:

Churning (Firm/Associated Person(s))

List 4:

Churning (Customer)

List 5:

Failure To Supervise (Firm/Associated Person(s))

List 6:

Failure To Supervise (Customer)

List 7:

Misrepresentation/Omissions (Firm/Associated Person(s))

List 8:

Misrepresentation/Omissions (Customer)

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List 9:
Negligence/Breach Of Fiduciary
Duty (Firm/Associated
Person(s))

List 10:
Negligence/Breach Of Fiduciary
Duty (Customer)

List 11:
Unauthorized Trading
(Firm/Associated Person(s))

List 12:
Unauthorized Trading
(Customer)

List 13:
Unsuitability (Firm/Associated
Person(s))

List 14:
Unsuitability (Customer)

The Office of Dispute Resolution (ODR) will provide the parties with the *Discovery Guide* including the Document Production Lists at the time ODR serves the statement of claim. The document production requirements in the first two Document Production Lists, "List 1, Documents To Be Produced In All Customer Cases: Firm/Associated Person(s)," and "List 2, Documents To Be Produced In All Customer Cases: Customer," would apply in virtually all cases involving member-customer or associated person-customer disputes, unless the arbitrator, in the exercise of discretion, determines that some or all of the documents in the relevant Document Production Lists should not be produced. For cases in which allegations of churning, failure to supervise,

misrepresentation/omissions, negligence/breach of fiduciary duty, unauthorized trading, or unsuitability are stated, additional Document Production Lists (e.g., Document Production Lists 3 and 4 - Churning) provide additional guidance. If a Document Production List is applicable, the *Discovery Guide* is drafted to guide the arbitrator to order production, unless in the exercise of discretion, the arbitrator believes that there is good cause not to order production.

Exhibit I**DISCOVERY GUIDE**

For NASD arbitrations, the Discovery Guide supplements the section in the Securities Industry Conference on Arbitration ("SICA") publication entitled *The Arbitrator's Manual*, and captioned "Prehearing Conference," found on pages 11 through 16, regarding public customer cases.

I. The Need for New Discovery Procedures

Discovery disputes have become more numerous and time consuming. The same discovery issues repeatedly arise. To minimize discovery disruptions, the NASD Regulation Office of Dispute Resolution has developed two initiatives to standardize the discovery process: early appointment of arbitrators to conduct an initial prehearing conference and document production lists (Document Production Lists).

No requirement under the Discovery Guide supersedes any record retention requirement of any federal or state law or regulation or any rule of a self-regulatory organization.

The Discovery Guide and Document Production Lists are designed for customer disputes with firms and Associated Person(s).¹ The Discovery Guide also discusses additional discovery requests, information requests, depositions, admissibility of evidence, and sanctions. The Discovery Guide, including the Document Production Lists, will function as a guide for the parties and the arbitrators; it is not intended to remove flexibility from arbitrators or parties in a given case. For instance, arbitrators can order the production of documents not provided for by the Document Production Lists or alter the production schedule described in the Discovery Guide. Further, nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide. In fact, the Office of Dispute Resolution encourages the parties to agree to the voluntary exchange of documents and information and to stipulate to various matters. The fact that an item appears on a Document Production List does not shift the burden of establishing or defending any aspect of a claim.

II. Document Production Lists

The Office of Dispute Resolution will provide the parties with Document Production Lists (attached to the Discovery Guide) at the time it serves the statement of claim in customer cases. The arbitrators and the parties should consider the documents described in Document Production Lists 1 and 2 presumptively discoverable. Absent a written objection, documents on Document Production Lists 1 and 2 shall be exchanged by the parties within the time frames set forth below.

The arbitrators and parties also should consider the additional documents identified in Document Production Lists 3 through 14, respectively, discoverable, as indicated, for cases alleging the following causes of action: churning, failure to supervise, misrepresentation/omission, negligence/breach of fiduciary duty, unauthorized trading, and unsuitability. For the general document production and for each of these causes of action, there are separate Document Production Lists for firms/Associated Person(s) and for customers.

NASD Rule 10321 provides that the parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration process. As noted, nothing in the Discovery Guide precludes parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide.

A. Time Frames For Document Production and Objections

The parties should produce all required documents listed in the applicable Document Production Lists not later than thirty days² from the date the answer is due or filed, whichever is earlier. If a party redacts any portion of a document prior to production, the redacted pages (or ranges of pages) shall be labeled "redacted." A party may object to the production of any document, which would include an objection based upon an established privilege such as the attorney-client privilege. If any party objects to the production of any document listed in the relevant

Document Production Lists, the party must file written objections with the Office of Dispute Resolution and serve all parties not later than thirty days following the date the answer is due or filed, whichever is earlier. Objections should set forth the reasons the party objects to producing the documents. An objection to the production of a document or a category of documents is not an acceptable reason to delay the production of any document not covered by the objection. A response to an objection should be served on all parties within 10 days from service of the written objections. Objections and responses should be filed with the Office of Dispute Resolution at the time they are served on the parties. The arbitrator(s) shall then determine whether the objecting party has overcome the presumption based upon sufficient reason(s).

B. Confidentiality³

If a party objects to document production on grounds of privacy or confidentiality, the arbitrator(s) or one of the parties may suggest a stipulation between the parties that the document(s) in question will not be disclosed or used in any manner outside of the arbitration of the particular case, or the arbitrator(s) may issue a confidentiality order. The arbitrator(s) shall not issue an order or use a confidentiality agreement to require parties to produce documents otherwise subject to an established privilege. Objections to the production of documents, based on an established privilege, should be raised in accordance with the time frame for objections set forth above.

C. Affirmation In The Event That There Are No Responsive Documents or Information

If a party responds that no responsive information or documents exist, the customer or the appropriate person in the brokerage firm who has personal knowledge (i.e., the person who has conducted a physical search), upon the request of the requesting party, must: 1) state in writing that he/she conducted a good faith search for the requested information or documents; 2) describe the extent of the search; and 3) state that, based on the search, no such information or documents exist.

III. The Initial Prehearing Conference

To maximize the efficient administration of a case by the arbitration panel,⁴ the Office of Dispute Resolution staff will schedule an initial prehearing conference in which the arbitrator(s) usually participates.⁵ The initial prehearing conference gives the arbitrator(s) and the parties an opportunity to organize the management of the case, set a discovery cut-off date,⁶ identify dispositive or other potential motions, schedule hearing dates, determine whether mediation is desirable, and resolve any other preliminary issues.⁷ During the initial prehearing conference, the arbitrator(s) and the parties should schedule hearing dates for the earliest available time, consistent with the parties' need to prepare adequately for the hearing.

Prior to the initial prehearing conference, each arbitrator should become familiar with the claims and defenses asserted in the pleadings filed by the parties. At the initial prehearing conference, the arbitrator(s) should order time limits for discovery that will allow the scheduling of hearing dates within a reasonable time and address all outstanding discovery disputes. If the exchange of properly requested documents has not occurred, the arbitrator(s) should order the production of all required documents, including those outlined in the Document Production Lists (see Section II. above), within 30 days following the conference.

IV. Additional Discovery Requests

The parties may request documents in addition to those identified in the Document Production Lists pursuant to Rule 10321(b). Unless a longer period is allowed by the requesting party, requests should be satisfied or objected to within 30 days from the date of service of the document request. A response to an objection should be served on all parties within 10 days from service of the written objections. Requests, objections, and responses should be filed with the Office of Dispute Resolution at the time they are served on the parties.

A party may move to compel production of documents when the adverse party (a) refuses to produce such documents or (b) offers only to produce alternative documents that are unacceptable to the requesting party. The Office of Dispute Resolution will provide the chairperson of the panel with the motion, opposition, and reply, along

with the underlying discovery documents the parties have attached to their pleadings. The chairperson should determine whether to decide the matter on the papers or to convene a prehearing conference (usually via telephone). In considering motions to compel, particularly where non-production is based upon an argument asserting an established privilege, such as the attorney-client privilege, the arbitrator(s) should always give consideration to the arguments set forth by both sides, particularly as to the relevancy of the documents or information. The arbitrator(s) should carefully consider such motions, regardless of whether the item requested is on any of the Document Production Lists. If in doubt, the arbitrator(s) should ask the requesting party what specific documents it is trying to obtain and what it seeks to prove with the documents.

V. Information Requests

Like requests for documents, parties may serve requests for information pursuant to Rule 10321(b). Requests for information are generally limited to identification of individuals, entities, and time periods related to the dispute; such requests should be reasonable in number and not require exhaustive answers or fact finding. Standard interrogatories, as utilized in state and federal courts, are generally not permitted in arbitration.

Unless a longer period is allowed by the requesting party, information requests should be satisfied or objected to within 30 days from the date of service of the requests. A response to an objection should be served on all parties within 10 days from service of the written objections. Requests, objections, and responses should be filed with the Office of Dispute Resolution at the time they are served on the parties.

A party may move to compel responses to requests for information that the adverse party refuses to provide. The Office of Dispute Resolution will provide the chairperson of the panel with the motion, opposition, and reply, along with the underlying discovery documents the parties have attached to their pleadings. The chairperson should determine whether to decide the matter on the papers or to convene a prehearing conference (usually via telephone).

VI. Depositions

Depositions are strongly discouraged in arbitration. Upon request of a party, the arbitrator(s) may permit depositions, but only under very limited circumstances, such as: 1) to preserve the testimony of ill or dying witnesses; 2) to accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not otherwise be required to participate in the hearing; 3) to expedite large or complex cases; and 4) to address unusual situations where the arbitrator(s) determines that circumstances warrant departure from the general rule. Balanced against the authority of the arbitrator(s) to permit depositions, however, is the traditional reservation about the overuse of depositions in arbitration.

VII. Admissibility

Production of documents in discovery does NOT create a presumption that the documents are admissible at the hearing. A party may state objections to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

VIII. Sanctions

The arbitration panel should issue sanctions if any party fails to produce documents or information required by a written order, unless the panel⁸ finds that there is "substantial justification" for the failure to produce the documents or information. The panel has wide discretion to address noncompliance with discovery orders. For example, the panel may make an adverse inference against a party or assess adjournment fees, forum fees, costs and expenses, and/or attorneys' fees caused by noncompliance. In extraordinary cases, the panel may initiate a disciplinary referral against a registered entity or person who is a party or witness in the proceeding or may, pursuant to Rule 10305(b), dismiss a claim, defense, or proceeding with prejudice as a sanction for intentional failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.

DOCUMENT PRODUCTION LISTS**LIST 1****DOCUMENTS TO BE PRODUCED IN ALL CUSTOMER CASES⁹****FIRM/ASSOCIATED PERSON(S)**

- 1) All agreements with the customer, including, but not limited to, account opening documents, cash, margin, and option agreements, trading authorizations, powers of attorney, or discretionary authorization agreements, and new account forms.
- 2) All account statements for the customer's account(s) during the time period and/or relating to the transaction(s) at issue.
- 3) All confirmations for the customer's transaction(s) at issue. As an alternative, the firm/Associated Person(s) should ascertain from the claimant and produce those confirmations that are at issue and are not within claimant's possession, custody, or control.
- 4) All "holding (posting) pages" for the customer's account(s) at issue or, if not available, any electronic equivalent.
- 5) All correspondence between the customer and the firm/Associated Person(s) relating to the transaction(s) at issue.
- 6) All notes by the firm/Associated Person(s) or on his/her behalf, including entries in any diary or calendar, relating to the customer's account(s) at issue.
- 7) All recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the Associated Person(s) and the customer (and any person purporting to act on behalf of the customer), and/or between the firm and the Associated Person(s).
- 8) All Forms RE-3, U-4, and U-5, including all amendments, all customer complaints identified in such forms, and all customer complaints of a similar nature against the Associated Person(s) handling the account(s) at issue.
- 9) All sections of the firm's Compliance Manual(s) related to the claims alleged in the statement of claim, including any separate or supplemental manuals governing the duties and responsibilities of the Associated Person(s) and supervisors, any bulletins (or similar notices) issued by the compliance department, and the entire table of contents and index to each such Manual.
- 10) All analyses and reconciliations of the customer's account(s) during the time period and/or relating to the transaction(s) at issue.
- 11) All records of the firm/Associated Person(s) relating to the customer's account(s) at issue, such as, but not limited to, internal reviews and exception and activity reports which reference the customer's account(s) at issue.
- 12) Records of disciplinary action taken against the Associated Person(s) by any regulator or employer for all sales practices or conduct similar to the conduct alleged to be at issue.

LIST 2**DOCUMENTS TO BE PRODUCED IN ALL
CUSTOMER CASES****CUSTOMER**

- 1) All customer and customer-owned business (including partnership or corporate) federal income tax returns, limited to pages 1 and 2 of Form 1040, Schedules B, D, and E, or the equivalent for any other type of return, for the three years prior to the first transaction at issue in the statement of claim through the date the statement of claim was filed.
- 2) Financial statements or similar statements of the customer's assets, liabilities and/or net worth for the period(s) covering the three years prior to the first transaction at issue in the statement of claim through the date the statement of claim was filed.
- 3) Copies of all documents the customer received from the firm/Associated Person(s) and from any entities in which the customer invested through the firm/Associated Person(s), including monthly statements, opening account forms, confirmations, prospectuses, annual and periodic reports, and correspondence.
- 4) Account statements and confirmations for accounts maintained at securities firms other than the respondent firm for the three years prior to the first transaction at issue in the statement of claim through the date the statement of claim was filed.
- 5) All agreements, forms, information, or documents relating to the account(s) at issue signed by or provided by the customer to the firm/Associated Person(s).
- 6) All account analyses and reconciliations prepared by or for the customer relating to the account(s) at issue.
- 7) All notes, including entries in diaries or calendars, relating to the account(s) at issue.
- 8) All recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the Associated Person(s) and the customer (and any person purporting to act on behalf of the customer).
- 9) All correspondence between the customer (and any person acting on behalf of the customer) and the firm/Associated Person(s) relating to the account(s) at issue.
- 10) Previously prepared written statements by persons with knowledge of the facts and circumstances related to the account(s) at issue, including those by accountants, tax advisors, financial planners, other Associated Person(s), and any other third party.
- 11) All prior complaints by or on behalf of the customer involving securities matters and the firm's/Associated Person(s)' response(s).
- 12) Complaints/Statements of Claim and Answers filed in all civil actions involving securities matters and securities arbitration proceedings in which the customer has been a party, and all final decisions and awards entered in these matters.
- 13) All documents showing action taken by the customer to limit losses in the transaction(s) at issue.

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LIST 3

CHURNING

FIRM/ASSOCIATED PERSON(S)

1) All commission runs relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the customer's account(s) at issue.

2) All documents reflecting compensation of any kind, including commissions, from all sources generated by the Associated Person(s) assigned to the customer's account(s) for the two months preceding through the two months following the transaction(s) at issue, or up to 12 months, whichever is longer. The firm may redact all information identifying customers who are not parties to the action, except that the firm/Associated Person(s) shall provide at least the last four digits of the non-party customer account number for each transaction.

3) Documents sufficient to describe or set forth the basis upon which the Associated Person(s) was compensated during the years in which the transaction(s) or occurrence(s) in question occurred, including: a) any bonus or incentive program; and b) all compensation and commission schedules showing compensation received or to be received based upon volume, type of product sold, nature of trade (e.g., agency v. principal), etc.

LIST 4

CHURNING

CUSTOMER

No additional documents identified.

LIST 5

FAILURE TO SUPERVISE

FIRM/ASSOCIATED PERSON(S)

1) All commission runs and other reports showing compensation of any kind relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the customer's account(s) at issue.

2) All exception reports and supervisory activity reviews relating to the Associated Person(s) and/or the customer's account(s) that were generated not earlier than one year before or not later than one year after the transaction(s) at issue, and all other documents reflecting supervision of the Associated Person(s) and the customer's account(s) at issue.

3) Those portions of internal audit reports at the branch in which the customer maintained his/her account(s) that: (a) focused on the Associated Person(s) or the transaction(s) at issue; and (b) were generated not earlier than one year before or not later than one year after the transaction(s) at issue and discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the statement of claim.

4) Those portions of examination reports or similar reports following an examination or an inspection conducted by a state or federal agency or a self-regulatory organization that focused on the Associated Person(s) or the transaction(s) at issue or that discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the statement of claim.

LIST 6

FAILURE TO SUPERVISE

CUSTOMER

No additional documents identified.

LIST 7**MISREPRESENTATION/OMISSIONS**

FIRM/ASSOCIATED PERSON(S)

Copies of all materials prepared or used by the firm/Associated Person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

LIST 8**MISREPRESENTATION/OMISSIONS**

CUSTOMER

- 1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.
- 2) Copy of the customer's resume.
- 3) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 2.

LIST 9**NEGLIGENCE/BREACH OF FIDUCIARY DUTY**

FIRM/ASSOCIATED PERSON(S)

Copies of all materials prepared or used by the firm/Associated Person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

LIST 10**NEGLIGENCE/BREACH OF FIDUCIARY DUTY**

CUSTOMER

- 1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.
- 2) Copy of the customer's resume.
- 3) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 2.

LIST 11**UNAUTHORIZED TRADING**

FIRM/ASSOCIATED PERSON(S)

- 1) Order tickets for the customer's transaction(s) at issue.
 - 2) Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).
 - 3) All documents relied upon by the firm/Associated Person(s) to establish that the customer authorized the transaction(s) at issue.
-

LIST 12**UNAUTHORIZED TRADING**

CUSTOMER

- 1) Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).
- 2) All documents relied upon by the customer to show that the transaction(s) at issue was made without his/her knowledge or consent.

LIST 13**UNSUITABILITY**

FIRM/ASSOCIATED PERSON(S)

- 1) Copies of all materials prepared, used, or reviewed by the firm/Associated Person(s) related to the transactions or products at issue, including but not limited to research reports, prospectuses, other offering documents, including documents intended or identified as being "for internal use only," and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

- 2) Documents sufficient to describe or set forth the basis upon which the Associated Person(s) was compensated in any manner during the years in which the transaction(s) or occurrence(s) in question occurred, including, but not limited to: a) any bonus or incentive program; and b) all compensation and commission schedules showing compensation received or to be received based upon volume, type of product sold, nature of trade (e.g., agency v. principal), etc.
-

LIST 14**UNSUITABILITY**

CUSTOMER

- 1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.
- 2) Written documents relied upon by the customer in making the investment decision(s) at issue.
- 3) Copy of the customer's resume.
- 4) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 3.

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Endnotes

¹NASD Regulation may develop separate Document Production Lists for intra-industry disputes.

²All time periods referenced herein are calendar days.

³Section II.B. is also applicable to additional discovery requests and information requests (see Sections IV. and V.).

⁴The panel consists of three arbitrators in most cases. Claims between \$25,000 and \$50,000 may proceed with a single arbitrator. Claims under \$25,000 are decided by a single arbitrator, generally on the pleadings.

⁵In some instances, the parties may opt out of the initial prehearing conference. To opt out, parties must supply the following information to the Office of Dispute Resolution by the specified deadline:

- a minimum of four sets of mutually agreeable hearing dates;

- a discovery cut-off date;
- a list of all anticipated motions with the motion due dates, opposition due dates, and reply due dates provided;
- a minimum of four dates and times for any proposed prehearing conferences to hear motions; and
- a determination whether briefs will be submitted and, if so, the due date for submission.

⁶The Office of Dispute Resolution recommends that the panel set a cut-off date during the initial prehearing conference for service of discovery requests, giving due consideration to time frames that permit timely resolution of objections and disputes prior to the scheduled exchange of hearing exhibits pursuant to the NASD Code of Arbitration Procedure.

⁷The arbitrators should direct one of the parties to prepare and forward to the Office of Dispute Resolution, within 48 hours, a written order memorializing the results of the prehearing conference, approved as to form

and content by the other parties. When motions are heard at the initial prehearing conference, the panel may order the parties to submit the order with a stipulation as to form and content from all parties.

⁸As with other rulings, an arbitration panel's ruling need only be by majority vote; it need not be unanimous.

⁹Only named parties must produce documents pursuant to the guidelines set forth herein. However, non-parties may be required to produce documents pursuant to a subpoena or an arbitration panel order to direct the production of documents (see Rule 10322). In addition, the arbitration chairperson may use the Document Production Lists as guidance for discovery issues involving non-parties.

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Errors and Omissions Insurance

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Note: *Coverage is not available in a few states, is not a guaranteed-issue, and is subject to underwriting. Coverage for individual registered representatives or branch offices is offered only through the broker/dealer firm.*

INFORMATIONAL

Imposition Of Censures

NASD Revises And Replaces *Notice to Members 99-59* And Issues New Censure Policy**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

- Disciplinary Actions
- *NASD Sanction Guidelines*

Executive Summary

In July 1999, the National Association of Securities Dealers, Inc. (NASD[®]) issued *Notice to Members 99-59* regarding a new censure policy adopted by the National Adjudicatory Council (NAC). This *Notice to Members* revises and replaces *Notice to Members 99-59*; members should discard their copies of the *Notice to Members 99-59* and refer to this *Notice to Members* for guidance on this issue.

The new censure policy provides that, in general, censures will no longer be imposed for certain designated violations when total monetary sanctions are \$5,000 or less, and when bars or suspensions are imposed. Censures still may be imposed, however, in litigated cases, where the policy would suggest no censure, if the adjudicator determines that extraordinary circumstances merit their imposition. Members are directed to attach this *Notice to Members* as an amendment to their *NASD Sanction Guidelines*.

Questions/Further Information

Questions concerning this new policy may be directed to Shannon Lane, Senior Attorney, Office of General Counsel, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-6904.

Background

The NASD may impose sanctions on member firms for violations of the federal securities laws, rules of the Municipal Securities Rulemaking Board (MSRB), and the Association's rules. When disciplining a member for such violations, the NASD may impose any fitting sanction including monetary sanctions (e.g., fines, disgorgement ordered payable as a fine, and orders of restitution) and non-monetary sanctions (e.g., censures, suspensions, bars, and expulsions). The *NASD Sanction Guidelines* recommend a range of monetary and non-monetary sanctions for particular violations.

Although the *NASD Sanction Guidelines* do not specifically recommend whether or not a censure should be imposed under any of the individual sanction guidelines for particular violations, the NASD has in the past routinely imposed censures for all violations except for certain quality of market violations when fines below \$5,000 were imposed. The NASD has determined to revise this practice in recognition of the fact that censures should be imposed when disciplining members for violations that particularly warrant the Association's official disapproval of a respondent's conduct.

NASD Notice to Members 99-91

This *Notice to Members* is issued to inform the membership of a new censure policy adopted by the NAC. Under the revised censure policy, the NASD has identified certain violations for which generally it will no longer impose censures when relatively low

monetary sanctions are imposed. Accordingly, the NASD generally will not impose censures in cases in which the total monetary sanction for any disciplinary action, regardless of the number of violations alleged, is \$5,000 or less (fines, disgorgement ordered

payable as a fine, and restitution), and when the violation(s) at issue consists solely of one or more of the following violations as set forth below.¹

Violations That Generally Will No Longer Be Subject To Censure When Monetary Sanctions Of \$5,000 Or Less Are Imposed

Quality of Markets violations

- ACT Violations - Rule 6100 Series
- Backing Away
- Best Execution and Interpositioning
- Confirmation of Transactions (SEC Rule 10b-10)
- ECN Display Rule
- Failure to Display Minimum Size in Nasdaq[®] Securities, CQS Securities, and OTC Bulletin Board[®] Securities
- Fixed Income Pricing SystemSM - Trade Reporting and Participant and Quotation Obligations
- Limit Order Display Rule
- Limit Order Protection Rule
- Locked/Crossed Market
- Options Exercise and Positions Limits
- Options Positions Reporting - Late Reporting and Failing to Report
- Order Audit Trail System (NASD Rules 6950-6957)
- Passive Market Making
- SelectNetSM Text Messages
- Short Sale Violations
- SOESSM Rules
- Trade or Move Rule - NASD Rule 4613(b)(2)
- Trades Executed During a Trading Halt
- Trade Reporting - Late Reporting; Failing to Report; Inaccurate Reporting
- 1 % Rule - SEC Rule 11Ac1-1(c)(1)

Qualification and Membership violations

- Continuing Education - Firm Element
- Continuing Education - Regulatory Element
- Registration Violations

Reporting/Provision of Information violations

- FOCUS Reports - Late Filing
- Form BD-Y2K Reports - Late Filing
- Forms U-4/U-5 - Late Filing; Failure to File; Inaccurate Forms or Amendments
- MSRB Rule G-36 - Untimely Filing of Offering Documents With MSRB; Late Filing; Failure to File
- MSRB Rule G-37/G-38 Reporting - Late Filing; Failing to File
- Regulation M Reports - Late Filing; Failing to File
- Request for Automated Transmission of Trading Data (Blue Sheets) - Failure to Respond in a Timely and Accurate Manner

Financial and Operational Practices violations

- Customer Protection Rule violations
- Net Capital violations
- Recordkeeping violations
- Violations of SEC Rule 17a-11 (Notification Provisions for Broker/Dealers)

Supervision violations

- Supervisory Procedures - Deficient Written Supervisory Procedures²

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Censures will be imposed, however, when fines above \$5,000 are reduced or eliminated due to a respondent's demonstrated inability to pay or bankruptcy.

NASD adjudicators (Hearing Panels, the NAC, and other adjudicators) will apply this new policy in a manner consistent with the advisory nature of the *NASD Sanction Guidelines*.³ NASD adjudicators may therefore order the imposition of censures in certain extraordinary cases even though a censure would not be required under the new censure policy.⁴

The NASD also has determined that censures should not be imposed when bars or suspensions are imposed, regardless of the nature of the violation. Although the NASD has in the past routinely imposed censures whenever bars or suspensions were imposed, the new censure policy revised this practice in recognition of the fact that bars and suspensions are severe sanctions that already signify the Association's official disapproval of a respondent's conduct. Accordingly, a censure is

not an appropriate additional sanction when a respondent is barred or suspended, and the NASD will not impose censures in those cases.

The new policy applies to all Letters of Acceptance, Waiver, and Consent and Offers of Settlement executed by respondents beginning on June 11, 1999, and to all NAC and Office of Hearing Officer decisions decided and issued on or after June 11, 1999.

Endnotes

¹This list largely consists of violations as found in the *NASD Sanction Guidelines*. The *NASD Sanction Guidelines* provide recommendations on sanctions for most typical securities-industry violations. When violations do not have guidelines that specifically apply to them, adjudicators may refer to guidelines for analogous violations to determine appropriate sanctions. In cases where the violations at issue are not listed in this *Notice to Members*, but where adjudicators refer to guidelines for analogous violations that are listed in this *Notice to Members*, adjudicators generally will not impose censures for those violations when monetary sanctions of \$5,000 or less are imposed.

²In addition, censures will not be imposed for violations disposed of under the Minor Rule Violation Plan pursuant to NASD Rule 9216(b) and IM-9216.

³The *NASD Sanction Guidelines* are advisory and are intended to provide direction to NASD adjudicators in determining appropriate sanctions consistently and fairly.

⁴With respect to settled matters (e.g., Letters of Acceptance, Waiver, and Consent; Offers of Settlement; and other settlements), however, NASD staff will negotiate censures in accordance with the new policy and will not impose censures when total monetary sanctions are \$5,000 or less for those violations listed in this *Notice to Members*. When fines are above \$5,000, NASD staff will require the imposition of censures in settlements. Censures will not be imposed in any settled or adjudicated matter when a bar or suspension is imposed.

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INFORMATIONAL

**Risk
Management
Practices**

SEC, NASD Regulation,
And NYSE Issue Joint
Statement On
Broker/Dealer Risk
Management Practices

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

- Risk Management Practices

Executive Summary

The Securities and Exchange Commission, NASD Regulation, Inc. (NASD RegulationSM), and the New York Stock Exchange recently issued a joint statement regarding broker/dealer risk management practices. The examination staffs from these organizations formed a task force several years ago to assess such practices. The task force issued this statement (see Exhibit I) to emphasize the importance of maintaining an appropriate risk management system. The statement also provides examples of weaknesses and strengths in various broker/dealers' risk management policies and practices.

Questions/Further Information

Questions regarding this *Notice to Members* should be directed to Samuel Luque, Jr., Associate Director, Member Regulation, NASD Regulation, at (202) 728-8472.

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**Office of Compliance Inspections and Examinations
Securities and Exchange Commission**

New York Stock Exchange

NASD Regulation, Inc.

**Broker-Dealer Risk Management Practices
Joint Statement**

July 29, 1999

BACKGROUND

The examination staffs of the Securities and Exchange Commission ("SEC"), the New York Stock Exchange ("NYSE") and the NASD Regulation, Inc. ("NASDR") convened a task force several years ago to assess risk management practices at registered broker-dealers. The task force was formed in response to changes in the industry and several instances where poor systems of internal controls resulted in substantial losses at certain firms. Among the goals of the task force was to assess the industry's awareness of the need for stringent risk management supervisory systems, and compile a compendium of sound practices and weaknesses noted during task force members' review of risk management systems.

Risk management is the identification, management, measurement and oversight of various business risks and is part of a firm's internal control structure. These risks typically arise in such areas as proprietary trading, credit, liquidity and new products. The elements of a comprehensive risk management system are highly dependent on the nature of the broker-dealer's business and its structure. The task force also considered important aspects of the control environment, such as senior management's involvement and oversight of the process, the internal audit function and other elements of an internal control system.

The task force has concluded that senior management must play a significant role in the adoption and maintenance of a comprehensive system of internal controls and risk management practices. This role should include the recognition of risk management as an essential part of the business process, management's willingness to fund the necessary elements of a risk management system, including personnel and information technology costs, and recognition that risk management is a dynamic function that must be modified and improved as a firm's business changes and improved processes and procedures become available.

Members of the task force conducted on site inspections of mid-sized and large broker-dealers, and held several meetings with industry groups to assess the adequacy of the industry's internal control and risk management systems. These inspections focused on the risk management areas noted above. The examinations revealed certain material weaknesses in the policies and practices employed by certain broker-dealers to manage risk, some of which are listed below, followed by examples of sound practices also noted during these reviews.

WEAKNESSES IN PRACTICES

Some firms failed to adequately monitor trading risk due to poor supervisory structures, the inconsistent use of data, and employment of inappropriate risk measurement tools. For example, one inspection noted a broker-dealer that had assigned the head of the fixed income trading desk to oversee all trading risk management functions, including the risk monitoring of fixed income trading. Several broker-dealers were found to have failed to monitor the consistency of information contained in the firm's trade processing, financial reporting and risk management systems, resulting in the omission of certain accounts and activity from the risk monitoring function. Additionally, certain broker-dealers utilized risk measures, such as notional values, that were not commensurate with the complexity of products traded.

The inspections also identified numerous weaknesses in the manner by which broker-dealers manage credit risk. Numerous broker-dealers conducted trading with counterparties for whom no credit limit had been established, and in some cases credit reviews of approved counterparties were not completed within prescribed time frames. Further, many of these reviews were not adequately documented. Reports used to monitor credit exposure were frequently inaccurate. For instance, many of the reports failed to capture fully the entire population of trades within each category of trading activity and failed to aggregate total credit exposures across all product lines on a system wide basis. Additionally, computerized system limitations yielded credit reports identifying false violations of credit guidelines due to an inability to recognize collateral or the failure to adjust credit lines. Other credit reports calculated exposure in a contradictory manner to what was intended, such as by treating credit exposure from the overcollateralization of repurchase agreements as reduction in risk.

The inspections also identified instances where broker-dealers maintained understaffed and inexperienced internal audit departments. Also, many of these internal audit departments failed to include key revenue producing and functional areas, such as trading risk management and credit risk management, in the internal audit plans. Occasionally, internal audit failed to follow up on its findings, which contributed to the deficiencies which were identified remaining unremedied.

SOUND PRACTICES

Among the practices the staff observed as appropriate elements of a risk management system were the following:¹

The inspections identified instances where a firm's Board of Directors adopted guidelines defining authorized activities, the limits of these activities and the methodology for measuring the risks of these activities. Frequently, the firm's senior management had substantial experience in the firm's major business areas and, accordingly, was cognizant of risks inherent in specific business lines. Also, at certain firms, the risk profile of a product or venture was considered in senior management's allocation of capital and measurement of performance.

At several firms, traders and trading personnel were expected to play an active role in risk management. Many firms employed an independent (i.e., from revenue production) risk manager who was appropriately experienced and reported to a sufficiently high level of authority (e.g., Board of Directors, or Chief Executive Officer) that his challenges to a trader's pricing of a position were taken seriously and were implemented without requiring the concurrence of the revenue side of the business.

¹The items discussed here are not intended to be an exhaustive list but, rather, to serve as an example of some of the appropriate risk management practices that were identified during the inspection process.

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The inspections identified several instances where pricing, P&L and adherence to position limits were monitored by an independent (i.e., from revenue production) and appropriately experienced group, such as product controllers. On a daily basis, this group compared each trading desk's P&L to possible earnings volatility at certain confidence levels (i.e., value or earnings at risk measurements), in order to assess the reasonableness of the firm's trading results.

At many firms where data flowing into risk measurement systems was consistent with trade and financial information, the firm would periodically reconcile the categories of data input into the various informational systems. At some firms, daily reconciliations would be performed at each point of systems interface to ensure data integrity.

Many firms maintained an independent (i.e. from revenue production) and centralized credit department which administered the establishment and documentation of credit lines and monitored the usage of these lines. Many firms have adopted a system of internal credit rating of counterparties. These ratings are updated as needed but no less often than annually. Some firms' credit monitoring systems have integrated the monitoring of credit risk over all products and operations of the firm and consider future potential exposure in monitoring credit utilization.

The inspections identified several firms with internal audit groups performing an annual risk assessment and ascribing various levels of risk, and a related audit cycle, to all segments of the firms' operations. At one firm, internal audit maintained an automated tracking system that tracked audit findings and the resolution of these findings. Audit findings that were not resolved within established time frames were reported to senior management. In those areas where audit findings were of significance, internal audit verified that policy and procedural changes had been implemented. Another internal audit group performed special reviews in reaction to news events or reported developments in the industry (cause audits).

CONCLUSION

With the increased volume of transactions, new financial products, global marketplaces and expanding use of the internet, the nature of the securities business is constantly changing and becoming more complex. As a result, a dynamic risk management function must play an essential role in assuring investor protection and the integrity of a firm's financial condition. The task force found that broker-dealers need to devote adequate time and resources to assess risk management procedures and controls, and modify such systems to reflect today's market conditions. The extent and cost of the system needed should be determined by the size of the firm and the nature of its business activities.

Over the years, we have seen increased recognition in the broker-dealer community of the importance of the risk management function, and the need for continued adjustments to that function to address market and regulatory changes. Most recently, the Counterparty Risk Management Policy Group joined the list of industry and regulatory groups that have evaluated risk management practices and recommended actions. All of these initiatives contribute to the potential development of improved risk management systems.

As regulators, we want to reemphasize to management throughout the broker-dealer community the importance of maintaining an appropriate risk management system geared to a firm's business activities. In recognition of the increased importance of this function, examination staffs of the SEC, NYSE and NASDR will increase their emphasis on the review of risk management controls during regulatory examinations.

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INFORMATIONAL

FIPS Changes

Fixed Income Pricing
System Additions,
Changes, And Deletions
As Of September 22,
1999

SUGGESTED ROUTING

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

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

KEY TOPIC

- FIPS

As of September 22, 1999, the following bonds were added to the Fixed Income Pricing SystemSM (FIPS[®]).

Symbol	Name	Coupon	Maturity
ACF.GC	Americredit Corp.	9.875	04/15/06
AVI.GA	Avis Rent A Car Inc.	11.000	05/01/09
AZR.GA	Aztar Corp.	8.875	05/15/07
BLUI.GB	Blount Intl Inc.	13.000	08/01/09
CDIG.GJ	CSC Holdings Inc. Series B	8.125	07/15/09
CDMS.GA	Cadmus Comm Corp.	9.750	06/01/09
CHCG.GA	Charter Communication Hldgs Cap Corp.	8.250	04/01/07
CHCG.GB	Charter Communication Hldgs Cap Corp.	8.625	04/01/09
CHCG.GC	Charter Communication Hldgs Cap Corp.	9.920	04/01/11
CMS.II	CMS Energy Corp.	8.000	07/01/01
CMS.IJ	CMS Energy Corp.	8.375	07/01/03
CRK.GA	Comstock Resources Inc.	11.250	05/01/07
CTUO.GA	Centennial Cellulair Oper Co. LLC	10.750	12/15/08
DGX.GB	Quest Diagnostics Inc.	9.875	07/01/09
DUOC.GA	Dura Operating Corp. Series B	9.000	05/01/09
ENQ.GC	American Media Operation Inc.	10.250	05/01/09
EOTT.GA	EOTT Energy Partners LP	11.000	10/01/09
ESRX.GA	Express Scripts Inc.	9.625	06/15/09
FCNP.GA	Falcon Products Inc. Series B	11.375	06/15/09
FEDD.GB	Fedders No. America Inc.	9.375	08/15/07
FMO.GH	Federal-Mogul Co.	7.375	01/15/06
FMO.GI	Federal-Mogul Co.	7.500	01/15/09
GISX.GA	Global Imaging System Inc.	10.750	02/15/07
GMRP.GA	Generac Portable Products LLC/GPPW	11.250	07/01/06
HMRL.GA	Host Marriot LP Series E	8.375	02/15/06
HWCC.GB	Hollywood Casino Corp.	11.250	05/01/07
KOGC.GD	Kelly Oil & Gas Corp.	14.000	04/15/03
LYO.GC	Lyondell Chemical Co.	9.875	05/01/07
MCUM.GA	Michael Petroleum Corp.	11.500	04/01/05
MNP.GB	Mariner Post-Acute Network Inc.	9.500	11/01/07
MNRH.GA	Mariner Post-Acute Network Inc.	9.500	04/01/06
MTLM.GB	Metal Management Inc.	12.750	06/15/04
MVL.GB	Marvel Enterprises Inc.	12.000	06/15/09
NWPS.GA	New World Pasta Co.	9.250	02/15/09
NXPS.GA	Nextel Partners Inc.	14.000	02/01/09
OCMC.GA	Onepoint Comm Corp. Series B	14.500	06/01/08
OMPT.GC	Omnipoint Corp.	11.500	09/15/09
PBCU.GA	Pebo Capital Trust I Series B	8.620	05/01/09
PCSA.GA	Airgate PCS Inc.	13.500	10/01/09
PKCA.GA	Packaging Corp. Amer	9.625	04/01/09
PKOH.GB	Park-Ohio Industries Inc.	9.250	12/01/07
PWCM.GA	Pac-West Telecomm Inc.	13.500	02/01/09
RUST.GA	Russell-Stanley Holding Inc.	10.875	02/15/09
SIMC.GA	Simmons Co. Series B	10.250	03/15/09
SITE.GA	Spectrasite Holdings Inc.	12.000	07/15/08

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Symbol	Name	Coupon	Maturity
SITE.GB	Spectrasite Holdings Inc.	11.250	04/15/09
SK.GA	Safety-Kleen Corp.	9.250	05/15/09
SNT.GA	Sonat Inc.	6.875	06/01/05
VYTL.GC	Viatel Inc.	11.500	03/15/09
WGWI.GA	Weight Watchers Intl. Inc.	13.000	10/01/09
WLGP.GA	Williams Comm Group Inc.	10.700	10/01/07
WLGP.GB	Williams Comm Group	10.875	10/01/09

As of September 22, 1999, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
ATEL.GA	American Telecastings Inc.	14.500	06/15/04
ATEL.GB	American Telecastings Inc.	14.500	08/15/05
BDKB.GA	Benedek Broadcasting Corp.	11.875	03/01/05
CFTR.GA	Conseco Finl Trust III	8.796	04/01/27
CNC.GA	Conseco Inc.	8.125	02/15/03
CNC.GB	Conseco Inc.	10.500	12/15/04
COSE.GA	Costilla Energy Inc.	10.250	10/01/06
COSE.GB	Costilla Energy Inc.	10.250	10/01/06
COT.CD	Coltec Industries Inc.	10.250	04/01/00
COT.GA	Coltec Industries Inc.	9.750	04/01/00
COT.GC	Coltec Industries Inc.	9.750	11/01/99
COT.GE	Coltec Industries Inc.	7.500	04/05/08
CTUO.GA	Centennial Cellular Oper Co. LLC	10.750	12/15/08
DSIO.GA	Decisionone Corp.	9.750	08/01/07
FGGI.GA	Figgie Intl Inc. Del	9.875	10/01/99
FTL.GB	Fruit/Loom Inc.	7.875	10/15/99
IHK.GA	Imperial Holly Corp.	8.375	10/15/99
MCAB.GB	Marcus Cable Oper Co./Corp. II	13.500	08/01/04
MCUM.GA	Michael Petroleum Corp. Ser B	11.500	04/01/05
MNRH.GA	Mariner Health Group Inc.	9.500	04/01/06
MPN.GB	Mariner Post-Acute Network Inc.	9.500	11/01/06
PAMI.GA	Pamida Inc. Del	11.750	03/15/03
PCTV.GA	Peoples Choice TV Corp.	13.125	06/01/04
PFT.GA	Proffits Inc.	8.125	05/15/04
PTRY.GA	Pantry, Inc.	12.00	11/15/00
RADL.GA	Randall's Food Market Inc.	9.375	07/01/07
RICE.GA	American Rice Inc.	13.000	07/31/02
SNT.GA	Sonat Inc.	6.875	06/01/05
SQA.GB	Sequa Corp.	9.625	10/15/99
WS.GA	Werton Steel Corp.	10.875	10/15/99

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As of September 22, 1999, changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	Name	Coupon	Maturity
AAM.GA	AAMS.GA	AAMES Financial Corp.	10.500	02/01/02
AAM.GB	AAMS.GB	AAMES Financial Corp.	9.125	11/01/03
DOCI.GA	DOC.GA	Decisionone Holdings Corp.	11.500	08/01/08
FED.GA	FFCL.GA	First Federal Financial Corp.	11.750	10/01/04
HWD.GA	HWCC.GA	Hollywood Casino Corp.	12.750	11/01/03
HWD.GB	HWCC.GB	Hollywood Casino Corp.	11.250	05/01/07
PTRY.GA	PANR.GA	Pantry Inc.	12.000	11/05/00
PTRY.GB	PANR.GB	Pantry Inc.	10.250	10/15/07
WCG.GA	WLGP.GA	Williams Comm Group Inc.	10.700	10/01/07
WCG.GB	WLGP.GB	Williams Comm Group Inc.	10.875	10/01/09

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

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

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INFORMATIONAL

**Trade Date—
Settlement Date**

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

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

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

KEY TOPIC

- Holiday Trade Date—Settlement Date Schedule

Christmas Day: Trade Date—Settlement Date Schedule

The Nasdaq Stock Market® and the securities exchanges will be closed on Friday, December 24, 1999, in observance of Christmas Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
Dec. 20	Dec. 23	Dec. 28
21	27	29
22	28	30
23	29	31
24	Markets Closed	—
27	30	Jan. 3, 2000

Note: The Nasdaq Stock Market and the securities exchanges will be open on December 31, 1999, and January 3, 2000.

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

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INFORMATIONAL

**NASD By-Laws
Amendments**

NASD Announces
Changes To The
By-Laws Associated
Person Definition;
**Effective Date:
December 1, 1999**

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

- Associated Person Definition

Executive Summary

Effective December 1, 1999, the definition of "person associated with a member" contained in the By-Laws of National Association of Securities Dealers, Inc. (NASD®), NASD Regulation, Inc. (NASD RegulationSM) and The Nasdaq Stock Market, Inc. (collectively, the "By-Laws") will be amended to expand the current definition to encompass those who hold a five percent or greater interest in the member firm and to include explicitly a person who has applied for registration on Form U-4. The amendments are included in Exhibit I.

Questions/Further Information

Questions concerning this *Notice to Members* may be directed to Mary Dunbar, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8252.

Description Of Rule Change

The first amendment expands the definition of "person associated with a member" specifically for the purposes of NASD Rule 8210. This Rule authorizes the NASD to require a member or associated person to provide information or testimony with respect to an investigation, complaint, examination, or proceeding by the NASD. The current definition of

"person associated with a member" includes only owners who are natural persons engaged in the member's investment banking or securities business and who have a direct or indirect control relationship with the member. The amendment to the definition gives the staff the authority to require information and testimony under Rule 8210 from any person - including a natural person or corporate or other entity - who holds a five percent or greater interest in a member firm, regardless of whether they "control" the member firm or are actively engaged in its securities or investment banking business.

The second amendment clarifies that any person who signs and submits a Form U-4 is an associated person. This is consistent with Form U-4, which provides that by signing the Form, a person is subject to the jurisdiction of the NASD.

Finally, the amendments insert the word "other" into subsection 2 of the definition of "person associated with a member" to clarify that the subsection describes only natural persons.

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NASD Notice to Members 99-95

Exhibit I

Text Of Amendments

(Note: New text is underlined; deletions are in brackets.)

By-Laws Of The NASD, Article 1

(a) - (dd) No Change

(ee) "person associated with a member" or "associated person of a member" means: (1) a natural person who is registered or has applied for registration under the Rules of the Association; [or] (2) a

sole proprietor, partner, officer, director, or branch manager of a member, or [a] other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member.

(ff) - (mm) No Change

Conforming changes will also be made to Article I(y) of the NASD Regulation By-Laws and Article I(r) of the Nasdaq[®] By-Laws, respectively.

Disciplinary Actions

Disciplinary Actions Reported For November

NASD Regulation, Inc. (NASD RegulationSM) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD[®]) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, November 15, 1999. The information relating to matters contained in this *Notice* is current as of the end of October 21, 1999.

Firm And Individual Fined

ACAP Financial, Inc. (CRD #7731, Salt Lake City, Utah) and Kirk Lynn Ferguson (CRD #1307741, Registered Principal, Centerville, Utah) submitted an Offer of Settlement pursuant to which they were censured, fined \$24,000, jointly and severally, and required to pay \$800, jointly and severally, in restitution to a public customer. The firm was fined \$5,000 individually and Ferguson was fined \$2,000 individually. The firm and Ferguson were also required to retain an independent consultant acceptable to the NASD to review the firm's supervisory and compliance procedures and to provide written recommendations for modifications and additions to its procedures. The consultant's written recommendations shall be provided to the NASD with the procedures the firm and Ferguson have modified or adopted as a result of the recommendations. Without admitting or denying the allegations, the firm and Ferguson consented to the described sanctions and to the entry of findings that the firm, acting through Ferguson, reported transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) as

agency transactions when they should have been reported as principal transactions, reported short-sale transactions with the incorrect short-sale modifier, and executed an order for the sale of securities in a principal capacity at a price that was unfair when taking into account all relevant circumstances. The findings also stated that the firm, acting through Ferguson, bid for the common stock of the issuer for which it was a distribution participant; failed to file any reports of customer complaints with the NASD; and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with all applicable laws, rules, and regulations. In addition, Ferguson functioned in the capacity of a registered principal while his Continuing Education status was inactive. **(NASD Case #C3A990044)**

Firms Fined

Bear, Stearns Securities Corp. (CRD #28432, Whippany, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that on occasions where Bear, Stearns & Co. acted as principal for its own account, Bear, Stearns Securities Corp. produced customer confirmations that failed to comply with the Securities and Exchange Commission (SEC) rule concerning the use of average price confirmation disclosures. The findings also stated that institutional Depository Trust Company confirmations produced by Bear, Stearns, Securities Corp. for Bear, Stearns & Co. did not state that

each of these transactions was, in fact, an average price transaction. **(NASD Case #CMS990116)**

Correspondent Services Corporation (CRD #25927, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to prevent its parent member firm from entering orders into the Small Order Execution SystemSM (SOESSM) on behalf of non-public customers. The findings also stated that Correspondent Services Corp. failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to the use of SOES. **(NASD Case #CMS990124)**

TD Securities (USA) Inc. (CRD #18476, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to 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 the firm executed short-sale transactions at or below the inside bid when the current inside bid was below the preceding inside bid in the security, failed to create and maintain a written record of the affirmative determination for short-sale orders, and failed to report short-sale transactions to ACT with a short-sale indicator. The findings also stated that the firm failed to properly mark the order tickets as short for short-sale orders. In addition, the firm failed to establish, maintain, and enforce

written supervisory procedures reasonably designed to achieve compliance with the short-sale rule. **(NASD Case #CMS990122)**

Individuals Barred Or Suspended

Andrew Antonucci (CRD #2418788, Registered Principal, Hilton, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$3,400 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Antonucci consented to the described sanctions and to the entry of findings that he sold shares of a security to public customers, received compensation from the sales, and failed to provide prior written notice to his member firm detailing the proposed transactions and his role therein. Antonucci also failed to receive written approval from his member firm to participate in the transactions. **(NASD Case #C8B990031)**

Jeffrey Lee Barber (CRD #1912907, Registered Representative, Casper, Wyoming) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$265,000, barred from association with any NASD member in any capacity, and required to pay \$13,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Barber consented to the described sanctions and to the entry of findings that he received \$48,000 from a public customer for investment, failed to invest the funds, and used the funds instead for his own benefit. The findings also stated that Barber failed to provide prompt notification to his member firm of his involvement in

an outside business activity. **(NASD Case #C3A990056)**

Jeffrey Joseph Barron (CRD #2108213, Registered Principal, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$55,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barron consented to the described sanctions and to the entry of findings that he executed the purchase of shares and warrants in the accounts of public customers without their prior knowledge, authorization, or consent and failed to report transactions to ACT in ACT eligible securities. The findings also stated that Barron failed to testify accurately and truthfully during an NASD on-the-record interview. **(NASD Case #C10990171)**

Matthew John Beaulieu (CRD #2233143, Registered Principal, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$2,626 and suspended from association with any NASD member in any capacity for three business days. Without admitting or denying the allegations, Beaulieu consented to the described sanctions and to the entry of findings that he sold shares of a security to public customers, received compensation from the sales, and failed to provide prior written notice to his member firm detailing the proposed transactions and his role therein. Beaulieu also failed to receive written approval from his member firm to participate in the transactions. **(NASD Case #C8B990032)**

William Daniel Brett, Jr. (CRD #30090, Registered Principal, Hattiesburg, Mississippi)

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$214,169.98, plus interest, in restitution to public customers. Without admitting or denying the allegations, Brett consented to the described sanctions and to the entry of findings that he received funds totaling \$214,169.98 from public customers intended for the purchase of securities and converted the funds to his own use and benefit without the customers' knowledge or consent. **(NASD Case #C05990044)**

Stephen Glenn Buxton (CRD #2291322, Registered Representative, Fort Lee, New Jersey) was fined \$65,000, suspended from association with any NASD member in any capacity for two years for effecting unauthorized trades, barred from association with any NASD member in any capacity for failing to execute customer orders, ordered to pay \$750, plus interest, in restitution to a public customer, and ordered to requalify by exam as a general securities representative prior to association with any member firm. The sanctions were based on findings that Buxton effected unauthorized trades in the accounts of public customers and failed to execute customer orders to sell securities. **(NASD Case #CAF970002)**

James William Byrd (CRD #1702339, Registered Representative, Lynn, Indiana) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay restitution to appropriate parties. Without

admitting or denying the allegations, Byrd consented to the described sanctions and to the entry of findings that he failed to negotiate a \$50,000 check from a public customer intended for the purchase of a mutual fund, and, instead, cashed the check, and used the funds for purposes other than for the benefit of the customer. **(NASD Case #C8A990068)**

Tsuihua Cathy Chen (CRD #2034887, Registered Representative, Cotati, California) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chen consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests to provide information and documentation concerning her termination by a member firm. **(NASD Case #C01990021)**

Thomas John Cox, Jr. (CRD #2235172, Registered Representative, Staten Island, New York) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cox consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning a public customer's allegations that he had engaged in violative conduct. **(NASD Case #C10990077)**

Delio Pereira Da Silva (CRD #1726594, Registered Representative, San Francisco, California) submitted an Offer of Settlement pursuant to which he

was fined \$14,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Da Silva consented to the described sanctions and to the entry of findings that he effected an \$11,813.75 sale and an \$11,813.95 purchase of funds in the account of public customers without their knowledge and consent, thereby misusing \$11,813.95 belonging to the customers. The findings also stated that Da Silva provided a business card to another public customer that falsely represented himself as a principal in a member firm. In addition, Da Silva failed to respond to NASD requests for documentation. **(NASD Case #C01980014)**

John Mike Dabal (CRD #1585467, Registered Principal, Smithtown, New York) submitted an Offer of Settlement pursuant to which he was fined \$30,000, suspended from association with any NASD member in any capacity for five months, required to pay \$32,500 in restitution to a public customer, and required to requalify by passing the Series 7 exam before functioning in that capacity with any NASD member following his suspension. Without admitting or denying the allegations, Dabal consented to the described sanctions and to the entry of findings that he made recommendations to public customers when he did not have reasonable grounds to believe that his recommendations were suitable. The findings also stated that Dabal made materially false or misleading statements to customers for which there was no reasonable basis in fact including statements which, in substance and effect, constituted unwarranted predictions or assurances that purchases would quickly result in substantial profits and failed to disclose material facts

including the risks associated with purchases. In addition, Dabal effected purchases in the accounts of the customers without their knowledge or authorization. **(NASD Case #C10990028)**

Richard David Dearcop (CRD #2397152, Registered Principal, Rochester, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$2,806 and suspended from association with any NASD member in any capacity for four business days. Without admitting or denying the allegations, Dearcop consented to the described sanctions and to the entry of findings that he engaged in private securities transactions for compensation and failed to provide prior written notice to his member firm detailing the proposed transactions and his role therein. The findings also stated that Dearcop failed to receive written approval from his firm to participate in the transactions. **(NASD Case #C8B990030)**

James David DeLong (CRD #1962282, Registered Representative, Freeland, Michigan) submitted an Offer of Settlement pursuant to which he was fined \$30,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeLong consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give written notice of his intention to engage in such activities to his member firm or to receive written approval from the firm prior to engaging in such activities. The findings also stated that DeLong failed to respond to NASD requests for documents and information. **(NASD Case #C8A990040)**

William Max DeMarco (CRD #2986374, Registered Representative, Flushing, New York) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, DeMarco consented to the described sanctions and to the entry of findings that he failed to disclose on a Form U-4 his recent conviction in Illinois for arson involving damage to personal property, a felony offense under state law. **(NASD Case #C9B990023)**

Oscar Conrad Dotson (CRD #2585430, Registered Representative, Providence, Rhode Island) was fined \$37,783 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dotson received a check for \$556.70 from a public customer to reinstate an insurance policy, failed to apply the funds to the policy, and deposited the check into his personal account. Dotson also failed to respond to NASD requests for information concerning his termination from a member firm. **(NASD Case #C11990020)**

Teri Annette Dupre (CRD #2396791, Associated Person, North Branch, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$206,750 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dupre consented to the described sanctions and to the entry of findings that she converted \$41,350 to her own use and benefit without the knowledge or consent of her member firm. **(NASD Case #C04990041)**

Harold Richard Eighme (CRD #1073737, Registered Representative, St. Clairsville, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eighme consented to the described sanctions and to the entry of findings that he misrepresented to public customers that a new variable life insurance policy could be acquired for little or no additional cash payments by using cash values and/or future dividends from existing life insurance policies when, in fact, the customers were required to make payments to maintain the insurance coverage. The findings also stated that Eighme misrepresented to an employer that variable life insurance was solely a retirement plan and failed to disclose the life insurance elements of the product. In addition, Eighme sold variable life insurance to customers for whom the purchases were not suitable, misrepresented that variable life insurance was solely an investment product, and failed to disclose the life insurance elements of the product. **(NASD Case #CAF990021)**

David Scott Eli (CRD #1717625, Registered Representative, Clarksburg, West Virginia) submitted an Offer of Settlement pursuant to which he was fined \$325,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eli consented to the described sanctions and to the entry of findings that he received \$53,259.16 from public customers for payments on variable and non-variable life insurance policies and for investment in interest-bearing investments, negotiated the checks,

and failed to remit the proceeds for their intended purposes. Eli also failed to respond to NASD requests for information concerning matters disclosed in an amended Form U-5. **(NASD Case #C9A990035)**

Steven Fishman (CRD #2428781, Registered Principal, Brooklyn, New York) submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member as a general securities principal for six months, and ordered to requalify by exam as a general securities principal. If Fishman fails to requalify, he will be suspended in such capacity until the exam is successfully completed. The National Adjudicatory Council (NAC) accepted the Offer following Fishman's appeal of a New York District Business Conduct Committee (DBCC) decision. Without admitting or denying the allegations, Fishman consented to the described sanctions and to the entry of findings that a member firm, acting through Fishman, operated a securities business without a financial and operations limited principal and conducted a securities business while it failed to maintain the minimum net capital requirement. The findings also stated that the member firm, acting through Fishman, failed to establish, maintain, and enforce written supervisory procedures addressing the receipt of customer checks made payable to the firm. **(NASD Case #C10960032)**

Michael Ray Floyd (CRD #210276, Registered Principal, Issaquah, Washington) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Floyd failed to respond to NASD requests for information. **(NASD Case #C3B980025)**

Edward Michael Gabbert (CRD #2798883, Registered Representative, Wilmington, Delaware) was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Gabbert failed to respond to NASD requests for information. **(NASD Case #C9A980044)**

Constantine Theodore Georgiades (CRD #1567476, Associated Person, Cranberry Township, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$160,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Georgiades consented to the described sanctions and to the entry of findings that he improperly caused a total of \$29,948.83 to be transferred from proprietary accounts of his member firm to his own account at the firm. **(NASD Case #C9A990049)**

Stephen Jay Gluckman (CRD #1139571, Registered Representative, Los Angeles, California) was censured, fined \$55,000, and barred from association with any NASD member in any capacity. The SEC sustained the sanctions following appeal of a January 1998 NAC decision. The findings stated that Gluckman engaged in private securities transactions without providing prior written notice to his member firm. **(NASD Case #C02960042)**

Katherine Joan Grady (CRD #2218371, Registered Representative, Carrollton, Texas) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined \$100,000 and barred from association with any NASD member

in any capacity. Without admitting or denying the allegations, Grady consented to the described sanctions and to the entry of findings that she participated in private securities transactions and failed to provide written notice to her member firm describing the proposed transactions, her role therein, and whether she had received, or might receive, selling compensation in connection with the transactions. **(NASD Case #C06990015)**

Keith Taylor Hamilton (CRD #1281968, Registered Representative, Tallahassee, Florida) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Hamilton consented to the described sanctions and to the entry of findings that he caused \$14,033.97 in proceeds to be withdrawn from a public customer's IRA account without her knowledge or consent, misrepresented to the customer that these funds would be deposited in an IRA rollover account, and neglected to effect the rollover, thereby misusing the \$14,033.97. The findings also stated that Hamilton received \$31,352.27 from other public customers to establish, and later to contribute to, individual IRA rollover accounts. Hamilton neglected to either establish the accounts on behalf of the customers or to deposit the funds appropriately, thereby misusing funds totaling \$31,352.27. **(NASD Case #C05990017)**

Mary Ann Hampton (CRD #2753505, Registered Representative, Harlan, Kentucky) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was fined

\$260,000, barred from association with any NASD member in any capacity, and required to pay \$52,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Hampton consented to the described sanctions and to the entry of findings that she received a \$52,000 check from a public customer to purchase a fixed annuity policy, neglected to purchase the policy on the customer's behalf, and, instead, converted the funds to her own use and benefit without the customer's knowledge or consent. **(NASD Case #C05990046)**

James Orval Holton (CRD #2589553, Registered Representative, Gravois Mills, Missouri) was fined \$445,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Holton redeemed income fund and mutual fund shares totaling \$74,000 from the account of public customers and deposited proceeds into an account that he co-owned, thereby converting the customers' funds to his own use. Holton also failed to respond to NASD requests for information. **(NASD Case #C04990016)**

Musbah A. Kammourie (CRD #2526085, Registered Representative, Broadview Heights, Ohio) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kammourie consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documents. **(NASD Case #C8B990023)**

Rhett Howard Kirchhoff, Sr. (CRD #1693172, Registered Principal, Beesleys Point, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kirchhoff consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information concerning a customer complaint. **(NASD Case #C9A990045)**

Robert Newton Koch, II (CRD #2379707, Registered Principal, New Tripoli, Pennsylvania) submitted an Offer of Settlement pursuant to which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Koch consented to the described sanctions and to the entry of findings that he failed to amend his Form U-4 in a timely manner to disclose his indictment on felony counts. The findings also stated that he failed to reasonably supervise an individual in that he failed to cause her to file amendments to her Form U-4 to disclose her indictment and subsequently, her felony conviction within 10 calendar days after the date of conviction. **(NASD Case #C9A990041)**

Edwin Leslie Lawrence, Jr. (CRD #2282684, Registered Representative, Dix Hills, New York) was censured, fined \$75,000, barred from association with any NASD member in any capacity, and ordered to pay restitution of \$76,639.75, plus interest, to public customers. The sanctions were based on findings that Lawrence executed 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. **(NASD Case #C10980088)**

Ronald David Luczak, Jr. (CRD #2626188, Registered Representative, West Caldwell, New Jersey) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Luczak consented to the described sanctions and to the entry of findings that he testified untruthfully and evasively during an NASD interview. The findings also stated that he failed to respond to further NASD requests for on-the-record interviews. **(NASD Case #C10990097)**

Fred Richard Luthy (CRD #727391, Registered Principal, Basking Ridge, New Jersey) submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 15 business days and suspended from association with any NASD member in any principal capacity for one year during which time he shall not directly or indirectly supervise any registered persons. The two suspensions shall run consecutively, starting with the 15 business-day suspension in all capacities. In addition, Luthy is required to demonstrate, in writing, to the NASD that he has successfully completed at least 20 hours of Continuing Education course work covering compliance, broker/dealer supervision, underwriting, and/or Regulation M before he can seek to become registered, or to act in a principal or supervisory capacity, following his

suspensions. Without admitting or denying the allegations, Luthy consented to the described sanctions and to the entry of findings that he failed to remedy fraudulent sales practices in connection with his firm's sale of low-priced, highly speculative securities. The findings also stated that Luthy failed to undertake an investigation concerning the inordinate number of purchase transaction cancellations, failed to determine what, if any, remedial measures were needed, and failed to undertake an investigation to determine the adequacy of the firm's supervisory infrastructure and written supervisory procedures to effectively address issues raised in customer complaints. In addition, Luthy took no disciplinary action and failed to disclose possible wrongdoing to regulatory authorities. **(NASD Case #C10970143)**

Mark Gene McKernan (CRD #3102326, Associated Person, Denver, Colorado) submitted a Letter of Authorization, Waiver, and Consent pursuant to which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, McKernan consented to the described sanctions and to the entry of findings that he failed to disclose on a Form U-4 that he had been charged with second degree burglary and theft. **(NASD Case #C3A990052)**

Richard Case Miller (CRD #2067123, Registered Representative, Oklahoma City, Oklahoma) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$250,000, barred from association with any NASD member in any capacity, and required to pay

\$273,532.26 in restitution to public customers. Without admitting or denying the allegations, Miller consented to the described sanctions and to the entry of findings that he diverted funds totaling approximately \$440,000 from public customers intended for the purchase of securities, failed and neglected to execute the purchases of securities on the customers' behalf, and, instead, converted the funds to his own use and benefit, without the customers' knowledge or consent. The findings also stated that Miller failed to respond to NASD requests for information. **(NASD Case #C05990045)**

Michael Ray Pope (CRD #871535, Registered Representative, Des Moines, Iowa) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pope consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information relating to his conduct while associated with a member firm. **(NASD Case #C04990040)**

John Richard Russell (CRD #1320693, Registered Representative, Albuquerque, New Mexico) submitted an Offer of Settlement pursuant to which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Russell consented to the described sanctions and to the entry of findings that he failed to promptly invest the proceeds that he received from the liquidation of a public customer's mutual funds or to place the proceeds in an account in the name of the customer, and retained possession and control of the funds until a later date. The

findings also stated that Russell failed to respond completely to NASD requests for information and documentation. **(NASD Case #C3A990039)**

James Curtiss Sammis (CRD #2433652, Registered Representative, Beacon Falls, Connecticut) was fined \$25,000 and barred from association with any NASD member in any capacity. The findings stated that Sammis failed to respond to NASD requests for information concerning the circumstances of his termination by a member firm. **(NASD Case #C11990025)**

Bret Lee Sander (CRD #2187325, Registered Principal, Middletown, Ohio) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$51,136.65 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sander consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide written notice to his member firms detailing the private transactions and his role therein and failed to receive written approval from his firms to participate in the transactions. The findings also stated that Sander failed to promptly amend his Form U-4 to disclose an Ohio investigation of his sales activity while registered with a member firm. In addition, Sander failed to respond truthfully and/or completely to NASD requests for information. **(NASD Case #C8B990034)**

Ronald Franklin Sivak (CRD #2778560, Registered Representative, Mobile, Alabama) was fined \$75,000 and barred from association with any NASD member in any capacity. The

sanctions were based on findings that Sivak misused customer funds by effecting an unauthorized transfer of funds. Sivak forged a public customer's signature on an Authorization to Journal Securities or Funds and transferred \$9,000 from the customer's account to the account of other customers. Sivak also failed to respond to NASD requests for information. **(NASD Case #C05990003)**

Darrin Patrick Sullivan (CRD #2629796, Registered Representative, Holbrook, New York) was fined \$127,500, barred from association with any NASD member in any capacity, and ordered to pay \$373,068.57, plus interest, in restitution to public customers. The sanctions were based on findings that Sullivan made material misrepresentations and omissions of fact to induce public customers to purchase securities. The findings also stated that Sullivan made baseless price predictions in his sale of securities. In addition, Sullivan engaged in abusive conduct directed towards a customer and failed to respond to an NASD request for an on-the-record interview. **(NASD Case #C3A980050)**

Serdrick Lee Thomas (CRD #2054286, Registered Representative, Rochester, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Thomas failed to respond to NASD requests for information concerning a customer complaint. **(NASD Case #C8B990005)**

Luis Rafael Torres (CRD #1253590, Registered Representative, Miami, Florida) was fined \$442,250, barred from association with any NASD member in any capacity, and

ordered to pay \$3,500, plus interest, in restitution to a public customer. The sanctions were based on findings that Torres converted \$63,450 of public customer funds for his own use and failed to respond to NASD requests for information. **(NASD Case #C07980043)**

Noble Bradford Trenham (CRD #449157, Registered Principal, Pasadena, California) and **George Edward Hall (CRD #2876326, Registered Principal, Alhambra, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were fined \$2,000, jointly and severally, with a member firm. Trenham was fined an additional \$3,000, jointly and severally, with the firm and suspended from association with any NASD member in any principal capacity for 10 business days. Hall was fined an additional \$1,000 and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Hall and Trenham consented to the described sanctions and to the entry of findings that a member firm, acting through Trenham, failed to have and maintain sufficient minimum net capital as required by the SEC. The deficiencies were variously attributable to a misclassification of a significant portion of a \$94,955 concessions receivable as an allowable asset and inaccurate haircut deductions on certain of the firm's proprietary positions. The findings also stated that the firm, acting through Trenham, failed to designate a qualified financial and operations principal to carry out the firm's financial and operational responsibilities and permitted Hall to function as the firm's financial and operations principal without the benefit of proper registration. **(NASD Case #C02990054)**

Rickie Owen Troxel (CRD #1266232, Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$100,000, barred from association with any NASD member in any capacity, and required to pay \$15,000, plus interest, in restitution to a public customer. Without admitting or denying the allegations, Troxel consented to the described sanctions and to the entry of findings that he obtained \$15,000 from a public customer by representing that the funds would be used in connection with a purchase of real estate to be jointly owned by the customer and Troxel. Contrary to his representations, Troxel used the funds for personal expenses and in partial payment of an obligation to a third party. **(NASD Case #C3A990053)**

Wei John Wang (CRD #2549111, Registered Representative, Nashville, Tennessee) submitted an Offer of Settlement pursuant to which he was fined \$45,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Wang consented to the described sanctions and to the entry of findings that he forged the signature of a public customer to a form which effected a change of broker/dealer for the customer's account, without the customer's knowledge or consent. The findings also stated that Wang provided the NASD with a copy of a letter purportedly written and signed by the customer representing that he was satisfied with the manner in which his account had been handled by Wang. Wang knew, or should have known, that the letter was not written by the customer and that the purported signature was a forgery. In addition, the findings stated that Wang exercised

discretion in another public customer's account without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. Wang also provided the NASD with a copy of a letter purportedly written and signed by the customer retracting a complaint against Wang when Wang knew, or should have known, that the letter was not written by the customer and the purported signature was a forgery. **(NASD Case #C05990014)**

Willis White, III (CRD #1854757, Registered Representative, Hempstead, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that White failed to respond to NASD requests for information. **(NASD Case #C10980138)**

Michael Ashby Willis (CRD #2268680, Registered Representative, Elkin, North Carolina) was fined \$280,730 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Willis deceived a public customer into withdrawing a total of \$42,959 from his account and converted \$30,146 of the funds to his own use and benefit. The findings also stated that Willis provided false responses to an NASD request for information. **(NASD Case #C07990020)**

Walter Mark Wolff (CRD #1579100, Registered Representative, Wilmington, Delaware) submitted an Offer of Settlement pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Wolff

consented to the described sanctions and to the entry of findings that he effected the sale and purchase of shares in a public customer's IRA securities account without her prior authorization. **(NASD Case #C9A990038)**

Christopher William Yoder (CRD #2095608, Registered Representative, Islip, New York) was fined \$25,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Yoder failed to respond to NASD requests for information. **(NASD Case #C10990049)**

Benjamin Michael Zabriski (CRD #1163856, Registered Representative, Hudson, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was fined \$35,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zabriski consented to the described allegations and to the entry of findings that he received \$9,500 from public customers for the purpose of purchasing life insurance policies, failed to use all of the funds to purchase the policies, and instead converted \$4,700 to his own use and benefit without the customers' knowledge or consent. **(NASD Case #C9A990051)**

Jason Eric Zwilling (CRD #2473750, Registered Representative, Queens, New York) submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zwilling consented to the described sanctions and to the entry of findings that he failed to respond to

NASD requests for information concerning a customer complaint. **(NASD Case #C10990101)**

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of October 8, 1999. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

James Oakley Baxter, Jr. (CRD #1176297, Registered Representative, Norfolk, Virginia) was fined \$45,000 and suspended from association with any NASD member in any capacity for 90 business days for unauthorized transactions, sharing in a customer account, and engaging in private securities transactions. Baxter was barred from association with any NASD member in any capacity for failing to respond to NASD requests for information. The sanctions were based on findings that Baxter effected unauthorized transactions for public customers, shared in a customer's account without the prior written approval of his member firm, and engaged in private securities transactions without prior written notice to his firm describing in detail the proposed transactions, his proposed role therein, and without receiving prior approval from his firm. The findings also stated that Baxter failed to respond to NASD requests for information.

Baxter has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C07990016)**

Timothy Joseph Rieu (CRD #1535954, Registered Representative, West Friendship, Maryland) was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Rieu gave false or misleading testimony in an NASD investigation.

Rieu has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C9A980032)**

Jonathan Hudson Webb (CRD #1408674, Registered Principal, Evanston, Illinois) and **Nicholas Thomas Avello (CRD #1488144, Registered Principal, Addison, Illinois)**. Webb was fined \$250,000, barred from association with any NASD member in any principal or owner capacity, suspended from association with any NASD member in any capacity for two years, and required to requalify as a general securities representative. Avello was fined \$5,000 and suspended from association with any NASD member in any financial and operations principal capacity for 30 days. The findings stated that a member firm, acting through Webb and Avello failed to maintain the minimum required net capital while effecting securities transactions, prepared inaccurate general ledgers, trial balances, and net capital computations, and filed inaccurate FOCUS IIA reports as a result. In addition, the firm, acting through Webb, conducted a municipal securities business while failing to employ a properly qualified and registered municipal securities principal and financial and operations principal and properly qualified and registered general securities principals. The findings also stated that Webb violated his firm's Restrictive Agreement that required the firm to maintain minimum net capital,

acted in the capacity of a municipal securities principal even though he was not properly qualified and registered, and failed to respond completely to NASD requests for information and documents. Webb also failed to disclose on Forms U-5 and U-4 that he was the subject of an NASD investigation.

Webb has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. The decision has been called for review as to Avello. The sanctions are not in effect pending consideration of the review. **(NASD Case #C8A980059)**

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.

Charles Michael Lee, III (CRD #2320124, Registered Representative, Closter, New Jersey) was named as a respondent in an NASD complaint alleging that he guaranteed a customer against loss in a securities account and made a false statement to the customer in the solicitation of a purchase of a security. The complaint also alleges that Lee falsified customer account records in order to sell securities not registered for sale under the laws of the state in which the public customer lived. **(NASD Case #C10990138)**

Stephen Roger Lennox, Jr. (CRD #2613210, Registered Representative, Smyrna, Georgia) was named as a respondent in an NASD complaint alleging that he effected transactions in a public customer's account without the customer's knowledge or consent. The complaint also alleges that Lennox made unsuitable recommendations that were contrary to the customer's stated investment objectives, were too speculative, and involved too high a degree of risk given the customer's financial situation, investment objectives, experience, and employment situation. **(NASD Case #C07990063)**

Paul Anthony Romero (CRD #2817671, Registered Representative, Littleton, Colorado) was named as a respondent in an NASD complaint alleging that he intercepted a \$4,600 refund check issued to a public customer for cancellation of a life insurance policy application, forged the signature of the customer, endorsed the check over to himself, and converted the \$4,600 to his own use. **(NASD Case #C3A990058)**

Frank Joseph Santoli (CRD #2732828, Registered Representative, Staten Island, New York) was named as a respondent in an NASD complaint alleging that he opened an account for public customers and entered false information on a New Account Form regarding the customers' net worth, security holdings, and investment objectives. The complaint also alleges that Santoli executed transactions in the customers' account without the customers' prior knowledge, authorization, or consent. The complaint also alleges that Santoli failed to respond to NASD requests to provide documents and

information. (NASD Case #C10990177)

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

Del Mar Financial Services, Incorporated, Irvine, California (October 8, 1999)

Firms Canceled

The following firms were canceled 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 cancellations commenced is listed after the entry.

A.S. Goldman & Co., Inc., Red Bank, New Jersey (October 1, 1999)

Mystic Global Capital Inc., Orange, California (October 1, 1999)

Spectrum Securities, Inc., Agoura Hills, California (October 1, 1999)

Firms Suspended

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions 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.

CI Investments, Inc., Lawrenceville, Georgia (October 5, 1999)

Global Merchant Group, Inc., Cambridge, Massachusetts (October 5, 1999)

JNR Securities, Inc., Oakland, California (October 5, 1999 - October 14, 1999)

Remington Securities Corp., New York, New York (October 19, 1999)

Tiffany Capital Corp., Hialeah, Florida (October 12, 1999)

Tiger Investment Group, Inc., Waltham, Massachusetts (October 5, 1999 - October 25, 1999)

Firm Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Awards

Argent Securities, Inc., Atlanta, Georgia (October 13, 1999)

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

Angiuli, Brian D., Port Washington, New York (October 8, 1999)

Landis, Eric T., Weston, Connecticut (October 8, 1999)

Meyers, Stacy, Staten Island, New York (October 8, 1999)

Salberg, Adam, Rockway, New Jersey (October 8, 1999)

Stricklin, Kevin H., Cranston, Rhode Island (October 8, 1999)

Individual Suspended Pursuant To NASD Rule Series 9510 For Failure To Pay Arbitration Awards

Parker, Curtiss Brian, Highland Beach, Florida (October 11, 1999)

NASD Regulation Files Complaint Against Renaissance Financial Securities Corp. And AJC Equities, Inc. For Obstructing An NASD Regulation Investigation

NASD Regulation announced that it has issued a complaint charging Renaissance Financial Securities Corp., Professional Concepts and Planning, Inc., known as AJC Equities, and 10 current and former employees of the two firms for, among other things, obstructing or attempting to obstruct an NASD Regulation investigation. The investigation focused on the firm's employment of Stanley Cohen, who had been barred from the securities industry by the Securities and Exchange Commission (SEC) in 1973, and as a result, is a "statutorily disqualified person." Named in the complaint, in addition to Stanley Cohen, are his son and daughter, Adam Cohen and Jamie K.C. Scher, respectively.

Renaissance and a number of the individuals named in the complaint have been charged with violations relating to improper or impermissible association with Stanley Cohen, as a disqualified person, and failure to properly register him with the firm.

According to the complaint, in late 1997 NASD Regulation staff in the New York District Office initiated an investigation into Stanley Cohen's role at Renaissance. In connection

with that investigation, the individuals named in the complaint are alleged to have provided false, misleading, inaccurate, or incomplete information to NASD Regulation staff concealing the fact that Stanley Cohen was acting as a trader and manager at the firm, and that the firm allowed him considerable control over the firm's retail operation. In addition, the complaint alleges that, at various times, Adam Cohen and Jamie Scher attempted to influence others to provide untruthful testimony to NASD Regulation.

The complaint names:

1. **Adam Cohen:** former President of Renaissance, current owner and Chief Executive Officer of AJC Equities, and son of Stanley Cohen;
2. **Jamie K.C. Scher:** former in-house counsel to Renaissance, current in-house counsel to AJC Equities, registered representative for Renaissance and AJC Equities, and daughter of Stanley Cohen;
3. **Stanley H. Cohen:** formerly associated with Renaissance, and currently unemployed. In 1973, Cohen was barred from the securities industry by the SEC, with a right to reapply after two years, for engaging in fraudulent and manipulative activities in connection with the initial public offering and immediate aftermarket trading

of stock. As a result of the SEC bar, Cohen is considered a "statutorily disqualified person," and may not associate, in any capacity, with any NASD member firm without the approval of the NASD and the SEC;

4. **Todd Spehler:** former Chief Executive Officer and Chief Financial Officer of Renaissance;
5. **David Hausch:** a former registered broker and principal of Renaissance and AJC Equities;
6. **Michael Monahan:** former registered broker and principal of Renaissance and AJC Equities;
7. **James Jay Christiano:** a former broker with Renaissance, currently registered with AJC Equities as a principal;
8. **Eileen Torrillo:** a former principal of Renaissance and currently registered as a principal with AJC Equities;
9. **James R. Buschle:** a former broker with Renaissance, currently registered as a broker with AJC Equities;
10. **Richard Mika:** a former broker with Renaissance, currently registered as a broker with AJC Equities;

11. Renaissance: a broker/dealer formerly located in Mineola, New York, which withdrew from NASD membership in the spring of 1998; and

12. AJC Equities: a registered broker/dealer, which commenced operations in the spring of 1998. The firm is also based in Mineola, New York.

The issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD Regulation 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 this complaint is adjudicated, the respondents should be contacted before drawing any conclusion regarding the allegations in the complaint.

Under NASD Regulation rules, the individuals and the firms named in the complaint can file a response and request a hearing before an NASD Regulation disciplinary panel. Possible sanctions include a fine, suspension, bar, or expulsion from the NASD.

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