



Notices to Members

Notices

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Notice to Members

MARCH 2003

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Senior Management

KEY TOPICS

MSRB Rules G-12
MSRB Rules G-14
Transaction Reporting

MSRB Rules G-12 and G-14

NASD Reminds Firms about Transaction Reporting Requirements and Announces Enforcement Actions Against Firms for Violations of MSRB Transaction Reporting Rules G-12 and G-14

Executive Summary

NASD reminds member firms about the obligations imposed by Municipal Securities Rulemaking Board (MSRB) Rules G-12 and G-14, particularly the requirement that member firms report their municipal securities transactions to the MSRB accurately and on time. Accurate and timely automated comparison and reporting of municipal securities transaction information is critical to a member firm's trade processing function, the accurate dissemination of transaction information, price transparency, and efficient and effective regulatory oversight of municipal securities trading and sales practices.

Questions/Further Information

Questions about this *Notice* may be directed to Malcolm Northam, Director, Fixed Income Securities, at (202) 728-8085, or Cynthia Friedlander, Regulatory Specialist, at (202) 728-8133, in the Department of Member Regulation.

Background and Discussion

The MSRB disseminates, on a daily basis, municipal transaction price data reported by firms. An increasing number of investment-related Web sites are republishing this data for viewing by the public. Ensuring the timely and accurate reporting of municipal transactions has therefore become the subject of increased

regulatory focus. Importantly, MSRB Rule G-14 is a frequently cited rule violation in examinations of NASD member firms.¹ Among other things, member firm conduct that interferes with the fundamental integrity of MSRB transaction data and results in the dissemination of inaccurate or incomplete information to multiple media sources creates investor protection and regulatory concerns.

NASD staff have observed that non-compliance with municipal transaction reporting requirements is often symptomatic of systemic problems with both the clearing firm's and the correspondent's transaction reporting processes and procedures. When a clearing firm repeatedly receives inaccurate or untimely municipal transaction information from a correspondent or contra party, the clearing firm has a responsibility to communicate with that correspondent or contra party in an effort to correct the problem. Such efforts will help clearing firms avoid being subject to regulatory inquiry or discipline stemming from problems of their correspondents. A firm's failure to follow up on chronic transaction-related problems may be considered inadequate supervision of the municipal transaction reporting function by the clearing firm, the introducing firm, or both.

NASD has recently instituted and settled formal disciplinary proceedings against several member firms for failing to provide accurate and timely information regarding their inter-dealer municipal securities transactions during 2000 and 2001. Each of these firms attained National Securities Clearing Corporation (NSCC) T-input percentages significantly below the industry average. The fines

ranged from \$1,500 to \$7,500 for each firm. NASD continues to monitor both municipal inter-dealer and customer transaction submissions for compliance with MSRB Rules G-12 and G-14 and will be seeking sanctions in appropriate instances. We encourage firms to monitor the timeliness and accuracy of transaction reporting and take appropriate steps to ensure compliance.

Until recently, two information sources allowed firms to monitor their compliance with MSRB transaction reporting requirements: the NSCC Participant Information and Efficiency Report (PIER) and MSRB's Dealer Feedback System (DFS). Until February 1, 2003, the PIER, which is provided to firms that are direct correspondents of NSCC, included among other information, a firm's T-input percentage, which was one measure of compliance with MSRB *inter-dealer* transaction reporting requirements. The NSCC discontinued distribution of its Municipal Bond Report Card and T-input percentages on this date.²

The DFS allows all firms that are registered with the MSRB and that report transactions in municipal securities to access statistics that measure their compliance with *inter-dealer and/or customer* transaction reporting requirements.³ These statistics are provided to regulators for use in firm compliance examinations. Since the T-input statistic is no longer available, it is now even more important for firms that clear or effect transactions in municipal securities to access the information available to them from the MSRB's DFS on a regular basis as part of a comprehensive municipal compliance program.

This *Notice to Members* contains a memorandum developed and issued jointly by NASD and MSRB that provides a description of the requirements for compliance with Rules G-12 and G-14, and describes each of the statistics made available via DFS and what compliance problems may be indicated by those statistics.

Endnotes

- 1 See *"Improving Examination Results"* on the NASD Web Site.
- 2 See *NSCC Important Notice* dated December 20, 2002.
- 3 For more information about the DFS, please see the MSRB's Web Site, www.msrb.org, and "Municipal Transaction Reporting Compliance Information," *Regulatory & Compliance Alert* (Summer 2002).

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MEMORANDUM

TO: NASD Member Municipal Securities Brokers or Dealers

DATE: March 3, 2003

SUBJECT: MSRB Rule G-14 Transaction Reporting

The Municipal Securities Rulemaking Board ("MSRB") and NASD would like to remind brokers, dealers and municipal securities dealers (collectively "dealers") about the requirements of MSRB Rule G-14, on transaction reporting. This document also describes services provided by the MSRB designed to assist dealers in complying with Rule G-14.

Transactions reported to the MSRB under Rule G-14 are made available to the NASD and other regulators for their market surveillance and enforcement activities. The MSRB also makes public price information on municipal securities transactions using data reported by dealers. One product is the Daily Report of Frequently Traded Securities ("Daily Report") that is made available to subscribers each morning by 7:00 am. Currently, it includes details of transactions in municipal securities issues that were "frequently traded" the previous business day.¹ The Daily Report is one of the primary public sources of municipal securities price information and is used by a variety of industry participants to evaluate municipal securities.²

Dealers can monitor their municipal transaction reporting compliance in several ways. For customer and inter-dealer transaction reporting, the MSRB Dealer Feedback System ("DFS") provides monthly statistical information on transactions reported by a dealer to the MSRB and information about individual transactions reported by a dealer to the MSRB. For daily feedback on customer trades reported, the MSRB provides dealers a "customer report edit register" on the day after trades were submitted. This product indicates trades successfully submitted and those that contained errors or possible errors.³ For inter-dealer transactions, National Securities Clearing Corporation ("NSCC") provides to its members daily files, sometimes called "contract sheets," that can be used to check the content and status of the transactions the member has submitted.

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- ¹ The Daily Report is available by subscription at no cost. Currently, "frequently traded" securities are those that traded two or more times during a trading day. As noted below, inter-dealer transactions must be compared on trade date to be eligible for this report.
 - ² The MSRB also publishes a "Daily Comprehensive Report," providing details of all municipal securities transactions that were effected during the trading day one week earlier. The Daily Comprehensive Report is available by subscription for \$2,000 per year. Along with trades in issues that are not "frequently traded," this report includes transactions reported to the MSRB late, inter-dealer trades compared after trade date, and transaction data corrected by dealers after trade date.
 - ³ A dealer may call the MSRB at (703) 797-6600 and ask to speak with a Transaction Reporting Assistant who can check to see if its firm is signed up for this free service.

Inter-Dealer Transactions

Even before Rule G-14 imposed requirements for transaction reporting, MSRB Rule G-12(f), on use of automated comparison, clearance and settlement systems, required dealers to submit data on their inter-dealer transactions in municipal securities to a registered clearing agency for automated comparison on trade date ("T"). NSCC provides the automated comparison services for transactions in municipal securities. The same inter-dealer trade record dealers submit to NSCC for comparison also is used to satisfy the requirements of MSRB Rule G-14 to report inter-dealer transactions to the MSRB. NSCC forwards the transaction data it receives from dealers to the MSRB so that dealers do not have to send a separate record to the MSRB. However, satisfying the requirements for successful trade comparison under Rule G-12(f) does not, by itself, necessarily satisfy a dealer's Rule G-14 transaction reporting requirements. In addition to the trade information necessary for a successful trade comparison, Rule G-14 requires dealers to submit accrued interest, time of trade (in military format) and the effecting brokers' (both buy and sell side) four-letter identifiers, also known as executing broker symbols ("EBS"). Failure to include accrued interest, time of trade and EBS when submitting transaction information to NSCC's automated comparison system is a violation of MSRB Rule G-14 on transaction reporting even though the trade may compare on T.

As noted above, the MSRB provides dealers with statistical measures of compliance with some important aspects of MSRB Rules G-12 and G-14 through its Dealer Feedback System.⁴ The statistics available for inter-dealer trades include:

Late or Stamped – The frequency with which a dealer causes an inter-dealer trade not to compare on trade date is reflected in the "late or stamped" statistic. Trades that do not compare on trade date are ineligible for the Daily Report. The statistic is an indication of how often a dealer submits a trade late or stamps its contra-party's advisory, and is expressed as a percentage of the dealer's total compared trades. Because this statistic includes both "when, as and if issued" and regular-way trades, it provides a comprehensive analysis of the timeliness with which a dealer reports its trades.

Invalid Time of Trade – This statistic reflects the total number of trade records submitted by a dealer in which the time of trade is null or not within the hours of 0600 to 2100. Accurate times of trade are essential to regulatory surveillance because they provide an audit trail of trading activity.

⁴ A complete description of the service is available at www.msrb.org in the Municipal Price Reporting / Transaction Reporting System section. NASD also has informed dealers of this service in "Municipal Transaction Reporting Compliance Information," *Regulatory & Compliance Alert* (Summer 2002).

Uncompared Input – A high percentage of uncompared trades may indicate that a dealer is submitting duplicative trade information, inaccurate information, or is erroneously submitting buy-side reports against syndicate takedowns.⁵ The uncompared input statistic reflects trade records that a dealer inputs for comparison that never compare and are expressed as a percentage of a dealer's total number of compared trades.

It is a violation of Rule G-14 to submit trade reports that do not accurately represent trades. Moreover, Rule G-12(f) requires that dealers follow-up on inter-dealer trade submissions that do not compare in the initial trade cycle by using the post-original comparison procedures at NSCC. Trade reports made to MSRB and NSCC that never compare are a concern because they either represent inaccurate trade input or indicate that the dealer is not following-up on uncompared trades using the post-original comparison procedures provided by NSCC.

Compared but Deleted or Withheld – This statistic represents deleted or withheld trade records and is a percentage of all compared trade records. Compared trade records that are subsequently deleted or withheld are a concern because these trades may have previously appeared on the Daily Report. While it is sometimes necessary to correct erroneous trade submissions using delete or withhold procedures, this will be an infrequent occurrence if proper attention is paid to transaction reporting procedures. Dealers that have a high percentage of such trades should review their procedures to determine why transaction data is being entered inaccurately.

Executing Broker Symbol (EBS) Statistics – These statistics indicate the percentage of trade submissions for which the field identifying the dealer that effected the trade is either empty or contains an invalid entry. These statistics are compiled for every member of NSCC.⁶ It provides information on three types of EBS errors: 1) null EBS, where a dealer left the EBS field blank; 2) numeric EBS, where a dealer entered a number in the EBS field; and 3) unknown EBS, where a dealer populated the EBS field with a symbol that is not a valid NASD-assigned EBS. A large number of EBS errors may indicate that both clearing firm and correspondent dealer reporting procedures and/or software need to be reviewed to ensure that the EBS is entered correctly and does not “drop out” of the data during the submission process. The compatibility of correspondent dealer and clearing broker reporting systems also may need to be examined.

5 Under NSCC procedures, no buy-side trade report should be submitted for comparison against a syndicate “takedown” trade submitted by the syndicate manager. Syndicate transactions are “one-sided submissions” and compare automatically after being submitted by the syndicate manager. Paragraph (a) (ii) of Rule G-14 procedures thus requires that only the syndicate manager submit the trade.

6 The EBS statistics reflect the aggregate number of such errors found in transaction data submitted by a particular NSCC member firm for itself and/or for its correspondents. This statistic cannot be generated individually for each correspondent because the EBS needed to identify the correspondent is itself missing or invalid. EBS statistics only measure the validity of the input the submitter provides to identify its own side of the trade and do not measure the accuracy with which a dealer uses EBSs to identify its contra-parties.

Note on Stamped Advisories

Firms often stamp advisories on T+1 after failing to submit accurate inter-dealer transaction information on trade date. A stamped advisory essentially is a message sent through the NSCC comparison system by the clearing firm on one side of a trade indicating that it agrees with the trade details submitted by the contra party.

A significant percentage of stamped advisories is a concern for two reasons. First, trades compared via a stamped advisory cannot be published in the Daily Report because they do not compare on trade date. Second, unless the dealer stamping the advisory verifies every data element submitted by the contra party (including accrued interest, time of trade and EBS) stamping the advisory may effectively confirm erroneous data about the trade, which will be included in the surveillance data provided to market regulators. With particular respect to EBS, both the MSRB and the NASD have observed that dealers do not always include accurate contra parties' EBSs in transaction reports. As a result, when a firm "stamps" a contra party's submission, its own EBS may not be correctly included in the transaction report sent to the MSRB.

In lieu of stamping an advisory, it is possible for a dealer to submit an "as of" trade record to match an advisory pending against it. This serves the same purpose as stamping an advisory but in addition allows the dealer to input its own EBS (and other data elements) and thus ensure the accuracy of the information about its side of the trade. While the trade will still be reported late, the data about the trade will be more likely to be correct.

Note on Clearing Broker-Correspondent Issues

While Rule G-14 notes that accurate and timely transaction reporting is primarily a responsibility of the firm that effected a trade, it also notes that a firm may use an agent or intermediary to submit trade information on its behalf. For inter-dealer trades, a direct member of NSCC must be used to input transaction data if the dealer effecting the transaction is not itself a direct member. This Rule G-14 requirement that a clearing broker and correspondent work together to submit transaction reporting data in a timely and accurate manner is the same as exists in Rule G-12(f) on inter-dealer comparison.

Where there is a clearing-correspondent relationship between dealers, timely and accurate submission of trade data to NSCC generally requires specific action by both the direct member of NSCC (who clears the trade) as well as the correspondent firm. The MSRB has noted that the responsibility for proper trade submission is shared between the correspondent and its clearing broker.⁷ Clearing brokers, their

7 In 1994, the MSRB stated that, "introducing brokers share the responsibility for complying with [Rule G-12(f)] with their clearing brokers. Introducing brokers who fail to submit transaction information in a timely and accurate manner could subject either or both parties to enforcement action for violating [Rule G-12(f)]." See "Enforcement Initiative," *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 35. NASD has since reiterated this policy; see the following articles in *Regulatory & Compliance Alert*: "Introducing Firm Responsibility When Reporting Municipal Trades Through Service Bureaus and Clearing Firms" (Winter 2000) and "Municipal Securities Transaction Reporting Compliance Information" (Spring 2001).

correspondents and their contra-parties all have a responsibility to work together to resolve inaccurate or untimely information on transactions in municipal securities. A clearing firm's use of a large number of stamped advisories may indicate systemic problems with the clearing broker's procedures, the correspondents' procedures, or both.⁸

Customer Transactions

Dealers that engage in municipal securities transactions with customers also are required to submit accurate and complete trade information to the MSRB by midnight of trade date under Rule G-14. MSRB customer transaction reporting requirements include the reporting of time of trade and the dealer's EBS for each trade.

Dealers have flexibility in the way they report customer transactions to the MSRB Transaction Reporting System. The three options available allow dealers to: 1) transmit customer transaction data directly to NSCC, which, using its communications line with MSRB, forwards trade data to the MSRB the evening on which it is received; 2) send the data via an intermediary, such as a clearing broker or service bureau, to NSCC, which forwards the data to the MSRB; or 3) submit the data directly to the MSRB using a PC dial-up connection and software provided by the MSRB.

The MSRB Dealer Feedback System also provides dealers with performance statistics for customer trade reporting. These statistics include:

Ineligible – This statistic reflects the percentage of a dealer's initial customer trade records that were ineligible for the Daily Report, because either the trade reports were submitted after trade date or they contained some other dealer error that caused it to be rejected by the MSRB Transaction Reporting System.

Late – Initial customer trade records that were submitted after trade date are indicated in this statistic and are a subset of ineligible trades. This percentage is reported separately because late reporting is the most common reason for trade records to be ineligible for the Daily Report.

Cancelled – This is the percentage of a dealer's initial customer trade records that were cancelled by the dealer after initial submission. Cancelled trades are a cause for concern because the data in the trade record submitted prior to cancellation may have already been included in the Daily Report.

⁸ As explained above, one of the problems often associated with stamped advisories is that the EBS on transaction records may be missing or inaccurate. Since a clearing broker may have many correspondents, stamping an advisory can make it impossible for market regulators to know which correspondent actually effected the trade.

Amended – This is the percentage of a dealer’s initial customer trade records that were amended by the dealer after initial submission. Amended trades are a cause for concern because the data in the trade record may have already been included in the Daily Report. While it is important that customer trades be immediately amended if any of the required information was incorrectly reported, dealers sometimes amend customer trade records unnecessarily. If trade details solely for internal dealer recordkeeping or delivery are changed, the dealer should ensure that its processing systems do not automatically send MSRB an “amend” record. For example, if a transaction is reported correctly to the MSRB on trade date, the dealer should not amend the transaction (or cancel and resubmit another transaction record to the MSRB) simply because customer account numbers or allocation and delivery information is added or changed in the dealer’s own records.⁹

Amendments to change settlement dates for when-issued transaction also are generally unnecessary. Since MSRB monitors settlement dates for new issues through other sources, dealers should not send amended trade records merely because the settlement date becomes known. Dealers may find that their automated systems are sending amended trade records to the MSRB in these cases, even though amendments are unneeded.

Attention to these areas could greatly reduce the number of amendments sent to MSRB by some dealers.

Invalid Time of Trade – This statistic reflects the total number of trade records submitted by a dealer in which the time of trade is null or not within the hours of 0600 to 2100. Accurate times of trade are essential to regulatory surveillance as they provide an audit trail of trading activity.

Questions / Further Information

Questions about this notice may be directed to staff at either MSRB or NASD. At MSRB, contact P. John Baughman, Senior Data Analyst, or Justin R. Pica, Uniform Practice Specialist, at (703) 797-6600. At NASD’s Department of Member Regulation, contact Malcolm Northam, Director, Fixed Income Securities, at (202) 728-8085, or Cynthia Friedlander, Regulatory Specialist, at (202) 728-8133. For more information on transaction reporting, including questions and answers and the customer transaction reporting system user guide, or to sign up for the Dealer Feedback System, we encourage dealers to visit the MSRB Web site at www.msrb.org, particularly the Municipal Price Reporting / Transaction Reporting System section.

⁹ Of course, if the initial information reported to the MSRB, such as total par value, is changed, the trade record must be amended to make it correct.

Notice to Members

MARCH 2003

SUGGESTED ROUTING

Legal & Compliance
Operations
Registered Representatives
Registration
Senior Management
Training

KEY TOPICS

Web EFT

INFORMATIONAL

Introducing Web EFT and Fee Schedule for Registration Batch Filing and Data Download via Web EFT

NASD Announces Implementation of Web EFT and Amends Section 9 of Schedule A to the NASD By-Laws Establishing an Annual Subscription Charge for NASD Members That Use Web EFT; **Implementation Date: March 24, 2003**

Executive Summary

NASD announces the implementation of Web EFT, a new, secure Web-based electronic file transfer application that members can use to submit "batch filings," such as multiple Form U-4 and Form U-5 filings, in a single transaction to the Central Registration Depository (CRD®) or Investment Advisor Registration Depository (IARDSM) system; or to download member firm data and processing results from these systems. NASD has amended Section 9 of Schedule A to the NASD By-Laws (Section 9) to establish an annual subscription charge for NASD members that elect to use Web EFT, to submit/download registration-related data.

The rule change to amend Section 9 was filed with the Securities and Exchange Commission (SEC) on February 11, 2003. Pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and SEC Rule 19b-4(f)(1) thereunder, the rule change became immediately effective upon filing.

Included with this *Notice* is Attachment A, the text of amended Section 9.

Questions/Further Information

Questions concerning this *Notice* may be directed to NASD's Gateway Call Center at (301) 590-6500.

Background and Discussion

Web EFT is a state-of-the-art electronic file transfer application that will replace the current Legacy Electronic File Transfer (Legacy EFT) system.¹ Web EFT will give firms increased functionality over the current Legacy EFT application. The Web EFT application and accompanying infrastructure will give members a more secure interface to NASD systems. Web EFT will allow members that elect to subscribe to the service to interface directly with the CRD and IARD systems in an automated manner and transfer registration data across the Internet. This functionality will give these firms the ability to upload "batched" registration-related data to NASD and receive reports containing the results of processed filings. In addition, firms that use the registration batch filing service will be able to submit additional filing types in the "batch" mode that currently are not available through the Legacy EFT system. The new application also will enable firms to download more reports than are currently available to firms through Legacy EFT, including download of their registration and accounting activities. Web-based form filing (on a single transaction basis) will remain available through CRD and IARD; therefore, member firms will not be required to use Web EFT.

Web EFT should be especially attractive to larger member firms that process high volumes of filings (e.g., office of employment address changes for numerous registered individuals when

there is a branch relocation), or that wish to download from Web CRD or IARD large amounts of data on their registered persons (e.g., to obtain a download of exam results for registered persons at the firm for a specified period) to populate their own internal systems.

Member firms that use the new Web EFT application will be charged an annual Subscription Fee (see below) based on whether they choose to subscribe to the data download or form filing functionalities, or both.

Fee Schedule

\$1,800.00	per year for data download
\$3,600.00	per year for form filing
\$4,800.00	per year for data download and form filing (discounted rate for both functions)

The fees will be prorated based on when member firms begin using the Web EFT application. Member firms that elect to participate in Web EFT will have an opportunity to use a test environment before submitting filings and downloading information using "live" data in the production environment. Participating firms will be assessed the applicable Subscription Fee when the firm begins using the "live" or "production" environment. The Web EFT production environment is scheduled to be available Monday through Friday, from 7 a.m. to 11 p.m., Eastern Time, beginning Monday, March 31, 2003. (Availability is subject to change and updates will be communicated via the Broadcast Message in Web CRD.)

Information on how firms can sign up for Web EFT is available on NASD's Web Site at http://www.nasdr.com/3400_eft.asp.

The Web Site link also includes a User Guide, information on how to get started, and details of the filing and data download functions available in Web EFT (as compared to Legacy EFT). Member firms should periodically check NASD's Web Site for updated information on Web EFT.

Endnote

- 1 Currently, the Legacy EFT application gives participating firms the ability to interface electronically with the CRD system to (1) submit "batch" filings and (2) download registration data and accounting reports on a regular basis. Legacy EFT, which is based on older technology that provides limited batch filing and data download capabilities, is available to NASD members that elect to submit form filings and download data via a dedicated (modem) line established by the firm. NASD plans to retire Legacy EFT in the third quarter of 2003, after providing participating firms sufficient time to test and convert to Web EFT.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

Schedule A To The NASD By-Laws

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

* * * * *

Section 9 - Subscription Charges for [Firm Access Query System (FAQS)] Registration Batch Filing/Data Download Via the Web CRD Electronic File Transfer (EFT) System

Each firm electing to subscribe to the [Firm Access Query System (FAQS)] Web CRD Electronic File Transfer (EFT) System for registration batch filing and/or data download will be assessed [a user fee consisting of three components (1) a monthly data base access charge, (2) an hourly usage fee, and (3) a charge per 1,000 characters ("kilocharacter") of information sent or received.] an annual subscription fee based on the type of service that the firm uses. The fee schedule to be paid by each firm is as follows:

- (1) [Monthly Data Base Access Charge — \$70.00] Data Download — \$1,800.00
- (2) [Hourly Usage Charge — \$70.00 per hour; and] Form Filing — \$3,600.00
- (3) [Kilocharacter Transmission Charge — \$0.70] Data Download and Form Filing — \$4,800.00

[Each firm which subscribes to the service will provide its own terminal and modem.]

* * * * *

Notice to Members

MARCH 2003

SUGGESTED ROUTING

Legal & Compliance
Senior Management

KEY TOPICS

IM-2260
Proxy Reimbursement Rates

INFORMATIONAL

Proxy Reimbursement Rates

NASD Adopts Amendments to IM-2260 Regarding Rates of Reimbursement for Expenses Incurred in Forwarding Proxy and Other Material; **Effective Immediately**

Executive Summary

NASD has adopted amendments to IM-2260 regarding rates of reimbursement for expenses incurred in forwarding proxy materials, annual reports, information statements, and other materials. The amendments establish approved rates of reimbursement that conform to proxy reimbursement rates already adopted by the New York Stock Exchange (NYSE) and the American Stock Exchange (Amex) and approved by the Securities and Exchange Commission (SEC). The amendments became effective immediately upon filing with the SEC on February 12, 2003.

Included with this *Notice* is Attachment A, the text of amended IM-2260.

Questions/Further Information

Questions concerning this *Notice* may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8844.

Background and Discussion

The SEC's proxy rules, Rules 14a-13, 14b-1, and 14b-2 under the Securities Exchange Act of 1934, do not specify the fees that nominees can charge issuers for distributing proxy materials; rather, they state that issuers must reimburse nominees for "reasonable expenses" incurred. NASD IM-2260 governs the reimbursement of members for costs incurred in forwarding proxy materials, annual reports, information statements, and other materials.¹

03-15

The amendments to IM-2260 conform NASD's fee structure to that of the New York Stock Exchange (NYSE) and the American Stock Exchange (Amex), as approved by the SEC. IM-2260, as amended, also permits members to request reimbursement of expenses at less than the rates set forth in IM-2260, but it requires members to notify and obtain consent from the person soliciting proxies or the company for reimbursement at rates higher than the approved rates or for items or services not specifically referenced in IM-2260. IM-2260, as amended, further advises members that they are not required to transmit more than one annual report, interim report, proxy statement, or other material to beneficial owners with more than one account (including trust accounts); and that they may eliminate multiple transmissions of reports, statements, or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules. IM-2260 continues to provide that a member providing materials under Rule 2260 may not charge for envelopes that are furnished by the issuer, the trustee, or a person soliciting proxies.

The SEC approved the NYSE's current fee structure on March 25, 2002,² following numerous meetings of the Proxy Voting Review Committee (the "Committee"), a private initiative that was established to review the NYSE's pilot fee program and the proxy process in general.³ The SEC found that "the Committee's

recommended fee reductions [for "large issuers"] were reasonable and should help to alleviate the burden and cost that large issuers currently bear in the proxy distribution process and more fairly allocate the cost among large issuers and small issuers."⁴ The SEC concluded that the NYSE's proposed fee changes were reasonable and fairly allocated, did not discriminate among issuers, and did not impose any unnecessary burdens on competition. On June 3, 2002, the Amex amended its proxy reimbursement fees to conform to those of the NYSE.⁵

By conforming its proxy reimbursement guidelines to those adopted by the NYSE and Amex, NASD is adopting reimbursement rates that the Commission has already determined are reasonable and fairly allocated, do not discriminate among issuers, and do not impose any unnecessary burdens on competition.

Effective Date

The amendments to IM-2260 are effective immediately.

Endnotes

- 1 Members should note that Rule 2260(c)(2) provides that a member may give a proxy to vote any stock pursuant to the rules of any national securities exchange to which the member is also responsible provided that the member's records clearly indicate which procedure it is following. In such case, the member would also change the rates of reimbursement approved by that exchange.
- 2 Exchange Act Rel. No. 45644 (March 25, 2002). The SEC emphasized that permanent approval of the NYSE's pilot program did not end the discussion of proxy fee reform. The SEC urged the NYSE and the Committee to continue discussing proxy fee reform with the eventual goal that the marketplace, rather than self-regulatory organizations, will establish reasonable and competitive proxy reimbursement fees. The SEC also stated that it expected the NYSE to continue to monitor its fees "to ensure they are related to 'reasonable expenses' of the NYSE's member brokers in accordance with the Act, and propose changes where appropriate."
- 3 The Committee concluded that the NYSE's Proxy Reimbursement Guidelines, which had been established in a pilot program and approved by the SEC on March 14, 1997, had been instrumental in setting the costs that issuers incurred in having broker/dealers and intermediaries transmit proxy and other materials to security holders at fair and reasonable levels. On that basis, the Committee voted, with NASD abstaining, to seek permanent approval of the pilot program guidelines, with some modifications to reflect the economies of scale of large issuers, defined by the Committee as companies that have in excess of 200,000 street name shareholders (approximately 200 companies). The Committee voted to reduce the basic mailing fee from 50 cents to 40 cents; increase the suggested per-nominee fee for

intermediaries that coordinate the proxy and mailing activities of multiple nominees to \$20.10 per set of material required for "small issuers" and \$20.05 per set of material required for "large issuers"; and reduce from 50 cents to 25 cents the incentive fee for initial mailings of the materials of large issuers.

4 *Id.*

5 Exchange Act Rel. No. 46146 (June 28, 2002).

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ATTACHMENT A

New language is underlined; deletions are in brackets.

IM-2260. [Suggested] Approved Rates of Reimbursement

(a) The [Board of Governors has determined that the] following [suggested] approved rates of reimbursement for expenses incurred in forwarding proxy material, annual reports, information statements and other material [are to be used as a guide by members:] shall be considered reasonable rates of reimbursement. In addition to the charges specified in this schedule, members also are entitled to receive reimbursement for: (1) actual postage costs (including return postage at the lowest available rate); (2) the actual cost of envelopes (provided they are not furnished by the issuer, the trustee, or a person soliciting proxies); and (3) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

(1) Charges for Initial Proxy and/or Annual Report Mailings

(A) [60] 40 cents for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to securities holders, [plus postage,] with a minimum of \$5.00 for all sets mailed;

(B) [20] 15 cents for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies with a minimum of \$3.00 for all sets mailed[.];

(C) \$1.00 for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

(D) NASD has approved, as fair and reasonable, the following supplemental proxy fees for intermediaries that coordinate multiple nominees: \$20.00 per nominee plus (i) 10 cents for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5 cents for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

(2) Charges for Proxy Follow-Up Mailings

[(A)] 40 cents for each set of follow-up material, plus postage[, when the follow-up material is mailed to all beneficial owners;].

[(B)] 60 cents for each set of follow-up material, plus postage, when the follow-up material is mailed only to beneficial owners who have not responded to the initial mailing.]

[(3)] Surcharge for Proxy Solicitation

Eighteen and one-half cents for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for the period from April 1, 1986 to March 31, 1987 as a surcharge in addition to the appropriate charges specified herein.]

[(4)] (3) [Additional Fee for Proxy Solicitation] Charge for Providing Beneficial Ownership Information

Six and one-half cents per [shareholder] name of non-objecting beneficial owner provided to the issuer pursuant to the issuer's request. Where the non-objecting beneficial ownership information is not furnished directly to the issuer by the member, but is furnished through an agent designated by the member, the issuer will be expected to pay the reasonable expenses of the agent in providing such information, in addition to the rate described above. (See SEC Rules 14a-13(b) and 14c-7(b) under the Securities Exchange Act of 1934 and notes thereto.)

Any member that designates an agent for the purpose of furnishing requesting issuers with beneficial ownership information pursuant to SEC Rule 14b-1(c) and thereafter cancels that designation or appoints a new agent for such purpose should promptly inform interested issuers.

[(5)] (4) Charges for Interim Report, Post Meeting Report and Other Material Mailings

[30] 15 cents for each copy, plus postage, for interim reports, post meeting reports, or other material with a minimum of \$2.00 for all sets mailed.

[(6)] (5) Incentive Fees

An "incentive fee" (as defined below) for proxy material mailings, including the annual report, and 10 cents for interim report mailings, with respect to each account where the member has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically) shall be: (i) 25 cents with respect to issuers whose shares are held in at least 200,000 nominee accounts; and (ii) 50 cents with respect to issuers whose shares are held in fewer than 200,000 nominee accounts.

[(b) Members may charge for envelopes, provided that they are not furnished by the issuer, the trustee, or a person soliciting proxies.]

[(c)] (b) Members are reminded that Rule 2430 requires that any such charges must be reasonable. Members may request reimbursement of expenses at less than the approved rates; however, no member may seek reimbursement at rates higher than the approved rates or for items or services not specifically listed above without the prior notification to and consent of the person soliciting proxies or the company. [Accordingly, this is a guide and a member may request reimbursement of expenses at other rates after taking into consideration all relevant factors.]

(c) Rule 2260 requires members to forward promptly issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Members are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, member organizations may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b-1 under the Act).

* * * * *

Notice to Members

MARCH 2003

SUGGESTED ROUTING

Legal & Compliance
Operations
Registered Representatives
Senior Management
Trading

INFORMATIONAL

Alternative Trading Systems that Trade Security Futures

SEC Approves New Rule and Rule Amendments Concerning Audit Trail and Trading Halt Requirements for ATs that Trade Security Futures; **Effective Date: March 31, 2003**

KEY TOPICS

Alternative Trading Systems (ATs)
Security Futures

Executive Summary

On January 27, 2003, the Securities and Exchange Commission (SEC) approved rule changes by NASD pertaining to coordinated surveillance, audit trails, and trading halts for Alternative Trading Systems (ATs) that trade security futures. Specifically, these rule changes: (1) create new Rule 3115 to establish recordkeeping requirements for ATs that trade security futures; and (2) amend NASD Rule 3340 to prohibit members (including ATs) and associated persons from effecting any transaction or publishing a bid and/or unpriced indication of interest for a security future when there is a regulatory trade halt in effect. The rules are set forth in Attachment A. They become effective on March 31, 2003.

Questions/Further Information

Questions concerning this *Notice* may be directed to the Office of General Counsel, NASD Regulatory Policy and Oversight: Gary L. Goldsholle, Associate General Counsel, (202) 728-8104; or Patricia Albrecht, Assistant General Counsel, (202) 728-8026; or NASD Market Regulation Department, Futures Policy, De'Ana Dow, Director and Chief Counsel, (240) 386-5120.

03-16

Discussion

The Commodity Futures Modernization Act of 2000 (CFMA)¹ requires NASD, as a registered securities association, to meet several requirements with respect to preparing for the trading of security futures² by ATs.³ Specifically, the CFMA requires NASD to have rules in place that require ATs to: (1) have audit trails necessary to facilitate coordinated surveillance; and (2) coordinate trading halts with markets trading the underlying securities and markets trading related securities.⁴

Audit Trail Information

To meet the requirements of the CFMA with respect to audit trails, NASD has created new NASD Rule 3115, which requires ATs to record and report audit trail information on security futures on a T+1 basis in the form in which NASD prescribes. Because there are no ATs currently trading security futures, NASD has not yet prescribed the particular manner by which an AT should report the audit trail information. An AT that intends to trade security futures should contact the NASD Market Regulation Department, Futures Policy, for specific information on the format and means to report information. The reports will be designed to facilitate NASD's sharing of the information with members of the Intermarket Surveillance Group, an organization whose purpose is to coordinate surveillance among financial markets.

The requirements under new Rule 3115 are based upon the required elements of the audit trail rule under Regulation ATS Rule 302, the SEC's recordkeeping rule for ATs, which requires ATs to report and record similar information for other securities transactions.⁵ The

similarity between these rules should allow ATs to use their existing reporting templates, with few necessary adjustments, to record and report the audit trail information on security futures transactions. Rule 3115 requires that ATs record and report, at a minimum, the following information:

- ◆ the date and time that the order was received;
- ◆ the security futures product name and symbol;
- ◆ the number of share contracts to which the order applies;
- ◆ an identification of the order as related to a program trade or an index arbitrage trade as defined in New York Stock Exchange Rule 80A;
- ◆ if the order is a buy or sell order;
- ◆ if the order is a market order, limit order, stop order, stop limit order, or other type of order;
- ◆ any limit or stop price prescribed by the order;
- ◆ the date on which the order expires and, if the time in force is less than one day, the time when the order expires;
- ◆ the time limit during which the order is in force;
- ◆ any instructions to modify or cancel the order;
- ◆ the date and time that the order was executed;
- ◆ unit price at which the order was executed; excluding commissions, mark-ups, or mark-downs;
- ◆ the size of the executed order;

- ♦ the identity of the ATS's subscribers that were intermediaries or parties in the transaction; and
- ♦ an account identifier that relates the order back to the account owner.

Rule 3115 also requires ATSs to preserve the records required by Rule 3115 in accordance with SEC Rule 17a-4(b), which requires preservation of records for at least three years, the first two years in an easily accessible place.⁶

Trading Halts

With respect to coordinated trading halts, NASD has amended Rule 3340, its trading halt rule. Currently, NASD Rule 3340 prohibits broker/dealers and associated persons from effecting a transaction or publishing a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect. NASD has amended this rule by adding paragraph (b), which places on member firms (including ATSs) and associated persons the same restrictions regarding: (a) any future on a single stock when the underlying stock is subject to a regulatory trading halt; and (b) any future on a narrow-based securities index when one or more underlying securities that constitute 50 percent or more of the market capitalization of the index are subject to a regulatory trading halt. By limiting application of new NASD Rule 3340(b) to regulatory trading halts, NASD is excluding halts resulting from events such as an order imbalance or a systems failure.

Effective Date

These rule changes become effective on March 31, 2003.

Endnotes

- 1 The CFMA was signed into law on December 21, 2000, Pub. L. No. 106-554, 114 Stat. 2763 (2000).
- 2 Section 3(a)(55) of the Securities Exchange Act of 1934 ("Exchange Act") defines a "security future" as a contract of sale for future delivery of a single security or of a narrow-based security index. Security futures are defined as "securities under the Exchange Act, thus making the federal securities laws generally applicable to them." See Exchange Act Section 3(a)(10); 15 U.S.C. 78c(a)(10).
- 3 ATSs generally are systems that maintain a marketplace for bringing together purchasers and sellers of securities or otherwise perform the functions commonly performed by a securities exchange and do not perform self-regulatory functions. See Regulation ATS Rule 300(a), 17 CFR 242.300(a); Exchange Act Rel. No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998).
- 4 Exchange Act Section 6(h)(5); 15 U.S.C. 78f(h)(5).
- 5 17 CFR 242.302(c).
- 6 17 CFR 240.17a-4(b).

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ATTACHMENT A

New language is underlined; deletions are in brackets.

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

* * * * *

3115. Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures

(a) Alternative Trading Systems' Recording Requirements

(1) Each alternative trading system that accepts orders for security futures (as defined in section 3(a)(55) of the Act) shall record each item of information described in paragraph (b) of this Rule. For purposes of this Rule, the term "order" includes a broker/dealer's proprietary quotes that are transmitted to an alternative trading system.

(2) Alternative trading systems shall record each item of information required to be recorded under this Rule in such form as is prescribed by the Association from time to time.

(3) Maintaining and Preserving Records

(A) Each alternative trading system shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a-4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and may be maintained and preserved for the required time in that form.

(b) Information to be Recorded. The records required pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every order:

(1) Date and time (expressed in terms of hours, minutes, and seconds) that the order was received;

-
- (2) Security future product name and symbol;
 - (3) Number of [share] contracts to which the order applies;
 - (4) An identification of the order as related to a program trade or an index arbitrage trade as defined in New York Stock Exchange Rule 80A;
 - (5) The designation of the order as a buy or sell order;
 - (6) The designation of the order as a market order, limit order, stop order, stop limit order, or other type of order;
 - (7) Any limit or stop price prescribed by the order;
 - (8) The date on which the order expires and, if the time in force is less than one day, the time when the order expires;
 - (9) The time limit during which the order is in force;
 - (10) Any instructions to modify or cancel the order;
 - (11) Date and time (expressed in terms of hours, minutes, and seconds) that the order was executed;
 - (12) Unit price at which the order was executed; excluding commissions, mark-ups or mark-downs;
 - (13) Size of the order executed;
 - (14) Identity of the alternative trading system's subscribers that were intermediaries or parties in the transaction; and
 - 15 An account identifier that relates the order back to the account owner(s).

(c) Reporting Requirements

(1) General Requirement

Alternative trading systems shall report information required to be recorded under this Rule to the Association on the next business day following the date the alternative trading system accepted the order or executed the trade, or at such other time period as the Association shall specify.

(2) Method of Transmitting Data

Alternative trading systems shall transmit this information in such form as prescribed by the Association.

* * * * *

3300. TRADING

* * * * *

3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

(a) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect. If ADF closes trading in Nasdaq securities pursuant to its authority under Rule 4120A(a)(2), members would not be prohibited from trading through other markets for which trading is not halted.

(b) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest, in:

(1) a future for a single security when the underlying security has a regulatory trading halt that is currently in effect; and

(2) a future on a narrow-based security index when one or more underlying securities that constitute 50% or more of the market capitalization of the index has a regulatory trading halt that is currently in effect.

Disciplinary and Other NASD Actions

REPORTED FOR MARCH

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

Firms Fined, Individuals Sanctioned

Absolute Return Advisors, Ltd. (CRD #42938, Manchester, Vermont) and Nicholas Louis Ihasz (CRD #254665, Registered Representative, Danby, Vermont) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$125,000, jointly and severally. Ihasz was barred from association with any NASD member in any capacity, and the firm was censured and required to revise its written supervisory procedures and to establish a supervisory system to address deficiencies within 60 days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Ihasz, executed transactions in active client accounts in which Ihasz exercised investment discretion over those accounts, including accounts for Ihasz and his family members, through a trading account. The findings stated that trades were executed in the trading account prior to being allocated to a particular customer account, and that Ihasz improperly allocated a disproportionate share of the favorable day trades resulting from those transactions to proprietary accounts. NASD also determined that the firm, acting through Ihasz, failed to establish an adequate supervisory system reasonably designed to prevent and detect the above violations. In addition, the findings stated that the firm also failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations concerning trading practices and customer accounts. (NASD Case #C11030002)

Intra Network Securities, Inc. (CRD #41119, Rancho Santa Fe, California), and Dennis Alvin Pearson, Jr. (CRD #2041779, Registered Principal, San Diego, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$30,000 jointly and severally with Pearson, required to offer rescission to all investors in an offering, and required for two years to file all advertisements and literature with NASD's Advertising Regulation Department at least 10 days prior to use and obtain a no objection response prior to use. Pearson was also suspended from association with any NASD member in any principal or supervisory capacity for seven months. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Pearson, participated in a contingency offering and issued a memorandum stating that investors' funds would be returned by the escrow agent if the minimum offering amount was not raised by a certain date; that proceeds from the sale of the initial 100,000 shares in the offering would be placed in escrow; and that the firm would receive commissions totaling

10% of the proceeds raised in the offering. NASD found that investor funds raised in the offering were not transmitted to an escrow account as required, funds were withdrawn from the bank account into which they were deposited before the minimum offering amount was raised, and the memorandum failed to disclose the consulting relationship between the offering firm and a company owned and controlled by Pearson and the consulting fees paid to the firm. In addition, the findings stated that the firm received commissions that materially exceeded the maximum amount to which it was entitled, and the firm, acting through Pearson, sold shares of the offerings after the terminating date. The findings also stated that the firm, acting through Pearson, placed electronic communications on the World Wide Web that contained false and misleading information, omitted material facts, failed to file the Web site until directed to do so by NASD, and sometime later filed an incomplete copy of the Web site with NASD.

Pearson's suspension began February 18, 2003, and will conclude at the close of business September 17, 2003. (NASD Case #C02030001)

Marsco Investment Corporation (CRD #18483, Roseland, New Jersey) and Mark E. Kadison (CRD #1607723, Registered Principal, Livingston, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$10,000, jointly and severally, including disgorgement of \$4,793.40. Also, Kadison was suspended from association with any NASD member in any principal capacity for 20 days, and the firm was required to offer to customers the opportunity to exchange Class B shares of stock they held at the price at which Class A shares could have been purchased at the time the customers purchased Class B shares. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Kadison, failed to reasonably supervise a registered representative so as to prevent violations of the securities laws, regulations, and NASD rules. The findings also stated that the firm, acting through Kadison, failed to adequately and properly supervise a registered representative's trading activities.

Kadison's suspension began February 18, 2003, and will conclude at the close of business March 17, 2003. (NASD Case #C9B030001)

Prospera Financial Services, Inc. (CRD #10740, Dallas, Texas) and Michael Allen Lovett (CRD #2203338, Registered Principal, Rowlett, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, and the firm and Lovett were fined \$15,000, jointly and severally. Lovett was also suspended from association with any NASD member in any principal capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Lovett, failed to timely report to NASD statistical

and summary information concerning customer complaints, complaints alleging forgery, settlements in excess of \$15,000 with customers, and a finding that the firm had violated NASD rules. The findings also stated that the firm, acting through Lovett, failed to keep current the applications for registration for registered persons who were the subject of customer complaints, because they failed to timely file amendments to such applications disclosing the customer complaints.

Lovett's suspension began March 3, 2003, and concluded at the close of business March 14, 2003. (NASD Case #C06030001)

The Sachs Company (CRD #13310, Louisville, Kentucky), Jennifer Ellen Dobbins (CRD #1078611, Registered Principal, Louisville, Kentucky), and Edward Thomas Kennedy (CRD #267735, Punta Gorda, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the respondents were censured, Kennedy was fined \$10,000 and the firm and Dobbins were fined \$10,000, jointly and severally. Kennedy was also suspended from association with any NASD member in any capacity for 10 business days, and Dobbins was suspended from association with any NASD member in any principal capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Kennedy sold short shares of stock in the cash account of public customers when the shares of stock were not held in the accounts of the customers and when Kennedy had no representation from the customers that the shares would be promptly deposited into the accounts. The findings also stated that Kennedy exercised discretion in transactions in the accounts of a public customer without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The findings also stated that the firm, acting through Dobbins, failed to establish and maintain a supervisory system reasonably designed to achieve compliance with SEC Regulation T 220.8.

Dobbins' suspension began March 17, 2003, and concluded at the close of business March 28, 2003. Kennedy's suspension began March 3, 2003, and concluded at the close of business March 14, 2003. (NASD Case #C05030004)

Sterling Financial Investment Group, Inc. (CRD #41506, Boca Raton, Florida), Alexis Casimir Korybut (CRD #2361771, Registered Principal, West Palm Beach, Florida), and Bernard Lewis Golembe (CRD #864450, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$131,000, of which \$45,000 is jointly and severally with Korybut and Golembe, and includes disgorgement of \$66,000 of profits from an underwriting. The firm was also required to retain an outside consultant to review and make recommendations concerning the adequacy of the firm's current policies and procedures as they relate to its underwriting and

investment banking activities. Korybut was fined \$35,000, jointly and severally with the firm, and suspended from association with any NASD member in any capacity for 20 business days. Golembe was fined \$10,000, jointly and severally with the firm, and suspended from association with any NASD member in any capacity for 20 business days.

Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm underwrote a private placement mini/max offering and, acting through Korybut, failed to disclose to investors and prospects that persons affiliated with the firm and its parent company would purchase units of the offering counting towards the minimum contingency amount and failed to disclose that the firm's parent company had loaned \$309,000 to the issuer. The findings also stated that the firm, acting through Korybut, failed to disclose to investors and prospects that the firm's parent company would use a portion of the funds owed it by the issuer as a subscription for units in the offering to reach the minimum contingency needed to close the offering. NASD also found that the firm failed immediately to display or execute customer limit orders. In addition, NASD found that the firm and Golembe violated NASD Membership and Registration Rule 1021 in that Golembe functioned as a principal without proper registration. Moreover, the findings stated that the firm failed to maintain evidence of internal inspections for two years; failed to conduct branch and non-branch office inspections as required in its procedures; failed to adopt, implement, and enforce adequate written supervisory procedures reasonably designed to achieve compliance with responding to freeriding and withholding questionnaires; and failed to adopt procedures for its underwriting activities.

Korybut's suspension began March 3, 2003, and will conclude at the close of business March 28, 2003. Golembe's suspension will begin April 21, 2003, and will conclude at the close of business May 16, 2003. (NASD Case #C07030004)

Firms and Individuals Fined

Krieger-Campbell, Inc. (CRD #8256, Oakland, California), Royal Gene Krieger (CRD #275568, Registered Principal, Oakland, California), and Richard Michael Campbell (CRD #39335, Registered Principal, Alameda, California) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$11,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Krieger and Campbell, participated in contingency offerings in which the investor funds raised in the offerings were not transmitted to separate bank escrow accounts meeting the requirements of SEC Rule 15c2-4. NASD found that, instead, the funds were transmitted to escrow accounts at a bank that was controlled by the firm as the escrow agent. The findings also stated that the initial

contingency offering deadline dates were extended, but a reconfirmation offer was not sent to investors who invested the initial \$25,000 until NASD informed the firm of this deficiency. (NASD Case #C01030001)

U.S. Trading Corp. (CRD #37426, Garden City, New York), Vincent Ralph Landano (CRD #1113603, Registered Principal, Port Washington, New York), and William Anthony Mancusi (CRD #2720418, Registered Principal, Baldwin Harbor, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Landano and Mancusi, failed to supervise adequately the inter-customer lending practices of the firm by permitting the use of cash journal forms containing photocopied signatures of the borrowing and/or lending customer and/or photocopied notarizations to facilitate inter-customer loans to meet day trading margin requirements or calls. The findings also stated that the firm, acting through Landano and Mancusi, maintained the general securities representative registrations of individuals no longer in the firm's investment banking or securities business, and who were no longer functioning as representatives and/or where the sole purpose was to avoid the qualification exam for the representatives. (NASD Case #CLI030001)

Firms Fined

A.B. Watley, Inc. (CRD #797, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it ran a one-page advertisement containing statements that were exaggerated, misleading, unwarranted, and without a basis. The findings also stated that the firm ran a radio advertisement making claims related to direct access to exchanges and system capabilities that were exaggerated and without support, and made a comparison to other firms with no basis provided for the comparison. NASD also found that the firm's Web site contained claims related to direct access to exchanges, speed of execution, and system capabilities that were exaggerated, without support, and contained comparisons with no basis for the comparisons and without support for the conclusions. In addition, NASD found that the firm's Web site made comparisons to other online brokerage firms' execution times or order entry abilities without a basis for the comparisons, and promoted day trading without sufficiently disclosing the risks of that type of trading strategy. Moreover, the firm's Web site promoted before- and after-hours trading without any disclosures of the risks and contained references to specific investment company products and sections pertaining to options that had not been filed with NASD's Advertising Regulation Department. Furthermore, NASD found that the firm failed to have in place an adequate supervisory

system regarding advertisements, and ran a radio advertisement without a principal's prior approval. (NASD Case #CAF030002)

Amroc Securities, LLC (CRD #35957, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$618,375, including the disgorgement of \$568,375 in excessive markups. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it charged excessive markups to its institutional customers in riskless principal transactions in distressed corporate bonds, earning excess profits of \$568,375, resulting from the excessive markups it charged its customers. (NASD Case #CAF030004)

Banc of America Securities LLC (CRD #26091, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$80,000, and required to revise its supervisory procedures concerning the reporting of short interest positions to NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in Automated Confirmation Transaction ServiceSM (ACTSM) transactions in eligible securities within 20 minutes after execution during the review period. The findings also stated that the firm failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities. NASD also found that the firm, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market participants whose quotations would be locked or crossed, entered bid or ask quotations in The NASDAQ Stock Market, Inc., which caused a locked or crossed market condition to occur in each instance.

In addition, NASD found that the firm locked/crossed the market during the pre-opening period and failed immediately thereafter to send a Trade-or-Move message through SelectNet to the market participant whose quote it locked or crossed that was priced at the receiving market participant's quoted price, and failed to send a Trade-or-Move message through SelectNet with an aggregate size of at least 5,000 shares to all market participants whose quotes it locked/crossed. Furthermore, the findings stated that the firm was a party to a locked or crossed market condition prior to the market opening; received a Trade-or-Move message in each instance through SelectNet but, within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market; and failed to report accurately its short interest positions to NASD. NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the reporting of short interest positions to NASD. (NASD Case #CMS030021)

C.E. Unterberg, Towbin (CRD #24790, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$14,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it sold shares of initial public offerings (IPOs) to investment partnerships or corporations when the shares traded at a premium in the immediate secondary market and failed, prior to the execution of the transactions, to obtain the required documentation concerning persons having any beneficial interests in the accounts. The findings also stated that the firm failed to indicate on customer order tickets whether the orders were long or short, and failed to include on customer order tickets the time of entry and/or execution in terms of hours, minutes, and seconds. NASD also found that the firm failed to mark tickets "solicited" or "unsolicited," and failed to mark customer order tickets with legible time stamps. (NASD Case #C10030008)

IF Distributor, Inc. (CRD #36461, Scottsdale, Arizona) and VESTAX Securities Corporation (CRD #10332, Hudson, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured. In addition, IF Distributor was fined \$125,000 and VESTAX was fined \$25,000. Without admitting or denying the allegations, the firms consented to the described sanctions and to the entry of findings that IF Distributor, Inc. (IFD) paid bonuses on sales of mutual funds shares to various broker/dealers. NASD found that pursuant to special compensation arrangements, IFD paid additional bonuses to a certain group of registered representatives, which was associated with one of IFD's affiliates, VESTAX. The findings stated that IFD and VESTAX failed to ensure that the special cash compensation arrangements were disclosed to public customers as required by NASD rules. (NASD Case #C8A030001)

McDonald Investments, Inc. (CRD #566, Cleveland, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it issued confirmations for transactions involving sales of investment company shares subject to a sales charge upon the redemption of shares, and failed to include the disclosure language required by NASD. (NASD Case #C3B030005)

Miller Johnson Steichen Kinnard, Inc. (CRD #694, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that as a market maker in securities, it was a party to a locked or crossed market condition prior to the market opening and received a Trade-or-Move message in each instance through SelectNet, but within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a

quotation increment that would have unlocked/uncrossed the market. (NASD Case #CMS030017)

Pershing Trading Company, L.P. (CRD #36671, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that as a market maker in securities, it caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation that locked or crossed another market maker's quotations without immediately thereafter sending through SelectNet to the market maker(s) whose quotes it locked or crossed a Trade-or-Move message that was at the receiving market maker's quoted price and whose aggregate size was at least 5000 shares. (NASD Case #CMS030013)

Pruco Securities, Corp. (CRD #5685, Newark, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$100,000, and required to provide semi-annual training on NASD Rule 3070 and the firm's internal procedure for Rule 3070 reporting to its broker dealer unit, policyholders relations department, and customer service organization; provide such 3070 training on an annual basis to its other units that serve as a source area for 3070 reports; maintain records documenting the contents of this training and evidencing completion of the same by its employees for five years; and shall designate, in writing, the name and title of the registered securities principal with primary responsibility for Rule 3070 reporting within 30 days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file Rule 3070 Reports with NASD in a timely manner. (NASD Case #C9B030004)

RBC Dain Rauscher, Inc. (CRD #31194, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to report to the Fixed Income Pricing SystemSM (FIPSSM) transactions in FIPS securities within five minutes after execution. (NASD Case #CMS030008)

Schwab Capital Markets L.P. (CRD #2692, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$57,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, it entered bid or ask quotations in The NASDAQ Stock Market that caused a locked or crossed market condition to occur in each instance. The findings also stated that the firm

caused a locked/crossed market condition prior to the market opening by entering a bid (ask) quotation that locked/crossed another market maker's quotations without immediately thereafter sending through SelectNet to the market maker(s) whose quotes it locked or crossed a Trade-or-Move message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. NASD found that the firm, upon receipt of an offer to buy or sell from another member of NASD that was for an amount at least one normal unit of trading greater than its published quotation size as disseminated in NASDAQ at the time of receipt of any such offer, executed a transaction in an amount of shares less than the size of the offer, and after such execution, failed to display immediately a revised quotation at a price that was inferior to its previous published quotation. (NASD Case #CMS030023)

SG Cowen Securities Corporation (CRD #7616, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$80,000, required to revise its written supervisory procedures with respect to applicable securities laws and regulations concerning firm quote rules, and required to pay \$24,364.03, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions.

The findings stated that the firm, a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, entered bid or ask quotations in The NASDAQ Stock Market, which caused a locked or crossed market condition to occur in each instance. In addition, NASD found that the firm locked/crossed the market during the pre-opening period and failed to immediately thereafter send a Trade-or-Move message through SelectNet to the market participant whose quote it locked or crossed that was priced at the receiving market participant's quoted price, and failed to send a Trade-or-Move message through SelectNet with an aggregate size of at least 5,000 shares to all market participants whose quotes it locked/crossed. NASD also found that an order was presented to the firm at the firm's published bid or offer in an amount up to its published quotation size. Furthermore, the findings stated that the firm failed to execute the orders upon presentment and thereby failed to honor its published quotation. The findings also included that the firm failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in Consolidated Quotation Service (CQS) securities. The findings stated that the firm reported to ACT last-sale reports of transactions in CQS securities on an "as of" basis when electronic submission on the trade dates of such transactions

was possible through ACT. In addition, NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning firm quote rules. (NASD Case #CMS030011)

Individuals Barred or Suspended

Louis Patrick Arena (CRD #826440, Registered Representative, Freehold, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Arena consented to the described sanction and to the entry of findings that he engaged in outside business activities and accepted compensation without providing prompt written notification to his member firm. The findings also stated that Arena converted approximately \$24,992 from the checking account of a company with which he was employed, and used the funds for his own use and benefit without the knowledge or consent of the company. (NASD Case #C9B030003)

Jonathan Matthew Aschoff (CRD #4220184, Registered Representative, South Orange, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Aschoff consented to the described sanctions and to the entry of findings that he misrepresented himself as a medical doctor under an assumed name in conversations with members of the medical profession to obtain confidential information about the effect of a drug that was being developed by a public company for which his member firm was an issuer. The findings also stated that Aschoff was attempting to obtain the information so that he could issue a report on behalf of his member firm regarding the company that was developing the experimental drug. Aschoff obtained the confidential information but never used it in a report after being confronted about his deception.

Aschoff's suspension began March 3, 2003, and will conclude March 16, 2003. (NASD Case #CAF030003)

Adrian Everardo Balboa (CRD #2941162, Registered Representative, Coral Springs, Florida) submitted an Offer of Settlement in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 60 days, and ordered to pay \$5,000, plus interest, in partial restitution to a public customer. The fine and restitution must be paid before Balboa reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Balboa consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in the accounts of public customers.

Balboa's suspension began February 18, 2003, and will conclude at the close of business April 18, 2003. (NASD Case #C07020026)

Robert Ira Ballon (CRD #1652114, Registered Representative, Escondido, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ballon consented to the described sanction and to the entry of findings that he obtained a cashier's check totaling \$75,593.21 from a public customer for investment purposes, and without the customer's knowledge or consent, Ballon deposited the check into a securities account that he controlled and subsequently used the funds for his personal benefit to the exclusion of the customer. (NASD Case #C02030004)

Jay Behnke (CRD #4498555, Associated Person, Eugene, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Behnke reassociates with any NASD member in any capacity following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Behnke consented to the described sanctions and to the entry of findings that he willfully misrepresented material information on his Form U-4 (Uniform Application for Securities Industry Registration or Transfer).

Behnke's suspension began March 3, 2003, and will conclude at the close of business March 2, 2005. (NASD Case #C3B030004)

John Michael Black, Jr. (CRD #1256859, Registered Representative, Jamesburg, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Black failed to respond to NASD requests to appear and testify. (NASD Case #CMS020144)

Orlan Kenneth Boyd, Jr. (CRD #1591818, Registered Representative, Seward, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$80,974.42, plus interest, in disgorgement of unjust profits to NASD. Satisfactory proof of payment of disgorgement must be made before Boyd reassociates with any NASD member. Without admitting or denying the allegations, Boyd consented to the described sanctions and to the entry of findings that he participated in private securities transactions outside the scope of his member firm, and failed to provide his firm with detailed written notice of the transactions, his role therein, and to receive permission from the firm to engage in the transactions. The findings also stated that Boyd sold securities without being properly registered with NASD, and engaged in transactions outside the scope of his member firm without providing prompt written notice to his member firm. (NASD Case #C04030002)

William Gerard Brown (CRD #33153, Registered Representative, Staten Island, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brown consented to the described sanction and to the entry of findings that he, acting intentionally or at a minimum, recklessly, made material, misleading, and false representations to public customers that were without a reasonable basis and failed to disclose material information. The findings also stated that Brown effected securities transactions in the accounts of public customers without their prior knowledge, authorization, or consent. NASD also found that Brown failed to respond to NASD requests to appear to provide on-the-record testimony. **(NASD Case #C10020041)**

Eric Kristian Brunsvold (CRD #3242404, Registered Representative, Eugene, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Brunsvold consented to the described sanction and to the entry of findings that he converted variable annuity contracts issued by his member firm to fixed annuity contracts for the accounts of public customers, and opened a money market fund in the names of the customers into which payments from the fixed annuity contracts were to be deposited without the knowledge or consent of the customers, and in the absence of written or oral authorization to exercise discretion in their accounts. The findings also stated that, in order to effect the conversion of the variable annuity contracts to fixed annuity contracts and the opening of the money market fund account, Brunsvold signed the names of the customers to various documents without the consent or knowledge of the customers.

NASD also found that Brunsvold agreed to effect the liquidation of a variable annuity contract at the request of a public customer and to distribute the proceeds to a relative of the customer, but instead of distributing the \$43,128.29 from the liquidation, he caused the funds to be paid by his member firm to a bank account that he had opened in the name of the customer and was controlled by Brunsvold. In addition, the findings state that Brunsvold caused a portion of the funds to be paid into a money market account that he opened in the name of the customer and was controlled by Brunsvold, thereby converting \$43,128.29 to his own use and benefit. Moreover, NASD found that, in order to effect the conversion of funds, Brunsvold signed the name of the public customer to various documents without the consent or knowledge of the customer. **(NASD Case #C3B030001)**

James Richard Buschle, Jr. (CRD #2328294, Registered Representative, East Patchogue, New York), Richard Alan Mika (CRD #2557222, Registered Representative, New York, New York), and Michael John Monahan (CRD #2266382, Registered Principal, Wantagh, New York) submitted Offers of Settlement in which each was suspended from association

with any NASD member in any capacity for two years. Without admitting or denying the allegations, Buschle, Mika, and Monahan consented to the described sanction and to the entry of findings that each failed to testify truthfully, accurately, non-deceptively, and/or completely during an NASD on-the-record interview. The findings also stated that Buschle and Mika failed to update their Forms U-4 to reflect the fact that they were the subject of an NASD investigation and that they may be named in an NASD disciplinary action.

Monahan's suspension began February 18, 2003, and will conclude at the close of business February 17, 2005. Buschle's and Mika's suspensions began March 3, 2003, and will conclude at the close of business March 2, 2005. **(NASD Case #C10990158)**

Randal Lee Cade (CRD #2331153, Registered Representative, Lake Jackson, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$53,400, including the disgorgement of commissions earned in the amount of \$43,400, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Cade reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cade consented to the described sanctions and to the entry of findings that he participated in business activities for which he received compensation, without providing prior written notice to his member firm.

Cade's suspension began March 17, 2003, and will conclude at the close of business September 16, 2003. **(NASD Case #C05030006)**

Francisco Carrasquillo (CRD #4290797, Associated Person, Brooklyn, New York) submitted an Offer of Settlement in which he was censured, fined \$25,000, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Carrasquillo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Carrasquillo consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for information and documentation or to appear for an on-the-record interview.

Carrasquillo's suspension began February 18, 2003, and will conclude at the close of business February 17, 2005. **(NASD Case #C10020071)**

Joseph Donald Carter (CRD #4228459, Registered Representative, Weber City, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Carter consented to the described sanction and to the entry of findings that he received checks totaling \$210,203.35 with instructions that they be

deposited into accounts of public customers, but that he failed to deposit the checks and instead converted the funds for his own use and benefit. The findings also stated that Carter, in an effort to conceal his conversion of funds, provided fictitious documents to a customer reflecting that the funds had been deposited and used to purchase securities on behalf of the customer. (NASD Case #C07030005)

Roger John Cawiezell (CRD #43630, Registered Representative, Raleigh, North Carolina) submitted an Offer of Settlement in which he was fined \$45,000, including the disgorgement of \$39,900 in commissions received to public customers, and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Cawiezell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cawiezell consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed to submit an amended outside business activities form to his member firm disclosing his activities.

Cawiezell's suspension began March 3, 2003, and will conclude May 31, 2003. (NASD Case #C07020083)

Eric Anthony Cename (CRD #2207772, Registered Representative, Marlboro, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cename consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear and provide testimony. (NASD Case #CMS030014)

Paul Francis Clarke (CRD #3153031, Registered Representative, Jersey City, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Clarke failed to disclose material information on his Form U-4 and to respond to NASD requests for information. (NASD Case #C10020064)

Andrew Savvas Constantinou (CRD #2915862, Registered Representative, Old Lyme, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity, required to pay \$297,250 in disgorgement of commissions, and pay partial restitution, plus interest, to public customers. The restitution amount must be paid before Constantinou reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Constantinou consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, without providing prior written notice to, and receiving prior written approval from, his member firms. (NASD Case #C11030004)

Chris B. Cornett (CRD #3083909, Registered Representative, Waco, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to pay \$28,423.73, plus interest, in restitution to a public customer. Satisfactory proof of payment of restitution must be made before Boyd reassociates with any NASD member. Without admitting or denying the allegations, Cornett consented to the described sanctions and to the entry of findings that he received a \$28,423.73 check from a public customer, and, instead of forwarding the check to the customer, he signed the customer's name on the back of the check, cashed it, and used the funds for his personal benefit without the customer's authorization, knowledge, or consent. (NASD Case #C06020023)

Richard Vincent Coyer (CRD #1086173, Registered Representative, Las Vegas, Nevada) was barred from association with any NASD member in any capacity. The sanction was based on findings that Coyer participated in private securities transactions for compensation and failed to provide prior written notice to, and receive prior written approval from, his member firm. The findings also stated that Coyer failed to respond to NASD requests for information. (NASD Case #C02020039)

Andy Cracchiolo (CRD #4233882, Registered Representative, Phoenix, Arizona) submitted an Offer of Settlement in which he was fined \$16,284.38, including the disgorgement of unlawful profits of \$1,284.38, and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, Cracchiolo consented to the described sanctions and to the entry of findings that he engaged in a course of conduct whereby he would enter a small buy (sell) order into an Electronic Communications Network (ECN) at a price that affected the national best bid (offer) for the purpose of facilitating the automatic execution of his larger sell (buy) order on the opposite side of the market at the price by a market maker that guaranteed that it would provide an execution at the inside market. NASD found that by engaging in such conduct, Cracchiolo was able to buy (sell) shares of a NASDAQ security at a price that otherwise would not have been available in the market.

Cracchiolo's suspension began March 17, 2003, and will conclude June 14, 2003. (NASD Case #CMS020089)

Steven Edward Culbertson (CRD #1534733, Registered Principal, Montevallo, Alabama) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member as a financial and operations principal. Without admitting or denying the allegations, Culbertson consented to the described sanction and to the entry of findings that he caused his member firm to engage in a securities business when the firm's net capital was below the required minimum. (NASD Case #C05030003)

David Eugene Emmitt (CRD #4364813, Registered Representative, Louisville, Kentucky) was barred from association with any NASD member in any capacity. The sanction was based on findings that Emmitt willfully failed to disclose a material fact on his Form U-4. The findings also stated that Emmitt failed to respond to NASD requests for information. **(NASD Case #C05020033)**

Joseph Alphonso Engerman, Jr. (CRD #2707877, Registered Representative, Upper Marlboro, Maryland) was barred from association with any NASD member in any capacity and ordered to pay \$79,850, plus interest, in restitution to public customers. The sanctions were based on findings that Engerman received \$25,000 from a public customer to establish a trading account and to purchase a money market fund and/or municipal securities, deposited the check into a business checking account bearing his name, and caused \$10,000 to be deposited with his member firm in the name of the customer while retaining the \$15,000 balance and converting it to his own use and purposes. The findings also stated that Engerman received \$64,850 from a public customer for investment purposes, pursuant to a recommended asset allocation plan that Engerman had developed for the customer, and retained all of the funds and converted them to his own use and purposes. NASD also found that Engerman failed to respond to NASD requests for information and to appear for an interview. **(NASD Case #C9A020039)**

Dwight Alexander Foster (CRD #2163592, Registered Representative, Canton, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Foster consented to the described sanction and to the entry of findings that he engaged in outside business activities without providing prompt written notice to his member firm. The findings also stated that Foster failed to respond to an NASD request to appear for testimony. **(NASD Case #C8A030008)**

Connie Fox, Jr. (CRD #1843462, Registered Representative, Navasota, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Fox received a \$3,000 check from a public customer which, at Fox's direction, the customer made payable to a trust account for investment purposes. Fox deposited the check into a bank account he controlled, withdrew the funds from that account, and used the funds to purchase a Certificate of Deposit in his own name without the customer's authorization, knowledge, or consent. The findings also stated that Fox failed to respond to NASD requests for information. **(NASD Case #C06020011)**

David Gordon Fried (CRD #2525013, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which Fried was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fried consented

to the described sanction and to the entry of findings that he engaged in a practice whereby he entered his personal trades and customer trades into a holding account for execution at his member firm without designating customer account numbers, and then allocated the trades among these accounts at or around the end of the trading day, thereby having information concerning the intra-day performance of securities underlying these trades at the time of allocation. The findings also stated that Fried exercised discretionary authority over the accounts of public customers by causing securities transactions to be effected in the accounts without the customers' prior written authorization, and without his member firm's written acceptance of the accounts as discretionary. **(NASD Case #C10030001)**

Edward Paul Galvan (CRD #2124116, Registered Principal, Addison, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Galvan failed to respond to NASD requests for information. In addition, Galvan executed an unauthorized transaction in the account of a public customer in the amount of \$5,393.75 without the customer's knowledge or prior authorization. The findings also stated that after the customer complained to Galvan about the transaction, he liquidated the position creating a loss of \$3,950, and, without the customer's knowledge or prior authorization, he settled the complaint away from his member firm by depositing \$2,000 in the customer's account in partial reimbursement of the customer's loss, without the knowledge or consent of his member firm. **(NASD Case #C05020032)**

Robert Battey Graham (CRD #2975022, Registered Representative, Rome, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Graham consented to the described sanction and to the entry of findings that he obtained funds totaling at least \$477,729 from the accounts of public customers without authorization and converted the funds to his own benefit. **(NASD Case #C07030007)**

James Oscar Green, III (CRD #2281096, Registered Representative, Tupelo, Mississippi) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for eight months. In light of the financial status of Green, no monetary sanction has been imposed. Without admitting or denying the allegations, Green consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Green recommended and effected the surrender of variable annuity contracts to purchase unregistered securities by public customers without having reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers on the basis of their financial situations and needs.

Green's suspension began March 3, 2003, and will conclude November 2, 2003. (NASD Case #C05030002)

Thomas Andrew Hagar (CRD #2135235, Registered Principal, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in a principal or supervisory capacity, and suspended from association with any NASD member in any other capacity for two years. In light of the financial status of Hagar, no monetary sanctions have been imposed. Without admitting or denying the allegations, Hagar consented to the described sanctions and to the entry of findings that, by and through his member firm, he conducted private placement offerings of preferred stock when his firm's membership agreement with NASD prohibited such activity. The findings also stated that Hagar failed to maintain copies of customer documents relating to the private placement offerings, including subscription agreements signed by the customers. NASD also found that Hagar failed to ensure that the offering transactions were reflected on the firm's purchase and sales blotters, and that the receipt and disbursement of investor subscriptions were reflected on the firm's cash received and delivered blotter.

Hagar's suspension began February 3, 2003, and will conclude at the close of business February 2, 2005. (NASD Case #C07030003)

Azizollah Halimi a/k/a Aziz O. Halimi (CRD #801307, Registered Representative, Forest Hills, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Halimi consented to the described sanction and to the entry of findings that he engaged in outside business activities without providing prompt written notice, or any notice, to his member firm. The findings also stated that Halimi failed to respond to NASD requests for information. (NASD Case #C10020107)

Len Ray Holliday (CRD #1330462, Registered Representative, Taylors, South Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Holliday reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Holliday consented to the described sanctions and to the entry of findings that he made investment recommendations to a public customer that were unsuitable based on the facts disclosed by the customer to Holliday regarding her financial situation, needs, and objectives.

Holliday's suspension began February 18, 2003, and will conclude at the close of business May 16, 2003. (NASD Case #C07030002)

Robert James Hudson, Jr. (CRD #1715001, Registered Representative, Underhill, Vermont) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for five months, and required to pay \$90,000 in disgorgement, which includes partial restitution to customers. Without admitting or denying the allegations, Hudson consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written approval from his member firm.

Hudson's suspension began February 3, 2003, and will conclude at the close of business July 3, 2003. (NASD Case #C11030001)

Shawn Ronald Johns (CRD #4156300, Associated Person, Philadelphia, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Johns converted to his own use and benefit \$6,991 belonging to a bank affiliated with his member firm. (NASD Case #C9A020045)

James William Jonen (CRD #704727, Registered Representative, Hoffman Estates, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Jonen consented to the described sanction and to the entry of findings that, without having authority, he received a check made payable to his member firm, endorsed the check to himself, and deposited the check into his personal investment account. The findings also stated that Jonen endorsed and deposited misdirected commission checks totaling \$20,559.99 into his personal investment account. (NASD Case #C8A030007)

Malcolm Elliott Katt (CRD #851332, Registered Principal, Millwood, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Katt reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Katt consented to the described sanctions and to the entry of findings that he sold federal agency debentures to public customers and, in effecting the sales, misrepresented the call features of the debentures by not adequately explaining them.

Katt's suspension began March 3, 2003, and will conclude at the close of business June 2, 2003. (NASD Case #C10030006)

Barry Alan Kaufman (CRD #2774898, Registered Representative, Boca Raton, Florida) submitted an Offer of Settlement in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for six

months. The fine must be paid before Kaufman reassociates with any NASD member in any capacity following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kaufman consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information.

Kaufman's suspension began March 17, 2003, and will conclude at the close of business September 16, 2003. (NASD Case #C07020078)

Jason Lee Kibbee (CRD #2724277, Registered Representative, Kellogg, Iowa) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kibbee consented to the described sanction and to the entry of findings that he participated in outside business activities and failed to provide prompt written notice to his member firms. The findings also stated that Kibbee failed to respond to NASD requests for information. (NASD Case #C04030004)

Young Min Kim (CRD #1087988, Registered Principal, Rossmoor, California) was fined \$113,687.50, suspended from association with any NASD member in any capacity for seven months, and required to requalify as a general securities representative and a general securities principal. The sanctions were based on findings that Kim participated in private securities transactions and failed to provide prior written notice to, and receive approval from, his member firm.

Kim's suspension began February 3, 2003, and will conclude at the close of business September 3, 2003. (NASD Case #C02020014)

Jerry Stephan Lund (CRD #2201043, Registered Representative, Longmont, Colorado) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Lund reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lund consented to the described sanctions and to the entry of findings that he caused the execution of sell transactions in public customer accounts without the authorization of the customers.

Lund's suspension began March 3, 2003, and will conclude at the close of business December 2, 2003. (NASD Case #C3A020036)

Alonso Martin Martinez (CRD #2587981, Registered Representative, Houston, Texas) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for four months and fined \$60,000, which includes the disgorgement of commissions

earned in the amount of \$55,316.88. The fine must be paid before Martinez reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Martinez consented to the described sanctions and to the entry of findings that he participated in outside business activities, for compensation, and failed to provide prior written notice to his member firm.

Martinez's suspension began February 18, 2003, and will conclude at the close of business June 17, 2003. (NASD Case #C05020052)

Edward Lee McCafferty (CRD #2683447, Registered Representative, Crown Point, Indiana) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McCafferty consented to the described sanction and to the entry of findings that he created a document on his computer designed to imitate an "account value screen" for the account of a public customer. The findings stated that McCafferty then falsely represented to the customer the "account value screen" document was printed from his member firm's back office records and contained an accurate and complete statement of the holdings and the value of the account of the customer, when in fact the document overstated the value of the customer account by approximately \$100,000. (NASD Case #C8A030009)

Stephen Nicholas McConnell (CRD #2689307, Registered Representative, West Orange, New Jersey) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McConnell consented to the described sanction and to the entry of findings that he effected a purchase transaction in the account of a deceased public customer without the prior knowledge, authorization, or consent of any person authorized to act on behalf of the decedent's estate. The findings also stated that McConnell effected purchase transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. NASD also found that McConnell failed to maintain sufficient funds to cover the cost of purchase transactions effected in his firm account, therefore willfully causing the firm to make an extension of credit to him in violation of Regulation T. In addition, NASD found that McConnell failed to respond to NASD requests for information. (NASD Case #C10020082)

Evalyn Elaine McKinney (CRD #3233865, Associated Person, New Eagle, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McKinney consented to the described sanction and to the entry of findings that she converted approximately \$475,000 from public customers and employees of her member firm by forging endorsements on checks and

depositing them into her personal bank account, and by falsifying documents used to credit customer accounts. The findings also stated that McKinney failed to respond to NASD requests for information. (NASD Case #C9A030002)

Shawn Gregory McPherson (CRD #2858459, Registered Representative, Thornton, Colorado) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for five months. The fine must be paid before McPherson reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McPherson consented to the described sanctions and to the entry of findings that he failed to inform his member firm that he opened an individual securities account at another firm, and failed to inform the firm he opened the account with that he was associated with a member firm. The findings also stated that McPherson provided his member firm with a falsified authorization letter to a brokerage firm to open an employee account.

McPherson's suspension began March 3, 2003, and will conclude August 3, 2003. (NASD Case #C3A020049)

Edmund Joseph Menden (CRD #600939, Registered Representative, Shakopee, Minnesota) was barred from association with any NASD member in any capacity. The sanction was based on findings that Menden failed to respond to NASD requests for information and failed to appear for an on-the-record interview. The findings also stated that Menden participated in private securities transactions and failed to provide prior written notice to, and to receive permission from, his member firm to engage in the transactions. (NASD Case #C04020025)

Glen Scott Monroe (CRD #1478053, Registered Representative, Denville, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Monroe consented to the described sanction and to the entry of findings that he settled a customer complaint regarding an unauthorized transaction without the knowledge or approval of his member firm. The findings also stated that Monroe refused to respond to an NASD request to appear for an on-the-record interview. (NASD Case #C11030005)

Theresa A. Muir (CRD #4509614, Registered Representative, Wallingford, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Muir consented to the described sanction and to the entry of findings that she willfully failed to disclose material facts on her Form U-4. (NASD Case #C11030003)

C. Mark Ostrowski (CRD #1874199, Registered Representative, Yeagertown, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 15 business days, and ordered to disgorge \$2,900.85, plus interest, in commissions in partial restitution to public customers. Without admitting or denying the allegations, Ostrowski consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Ostrowski's suspension began February 18, 2003, and concluded at the close of business March 10, 2003. (NASD Case #C9A030001)

Michael Christopher Palmieri (CRD #2744741, Registered Representative, Staten Island, New York) submitted an Offer of Settlement in which he was fined \$17,500 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Palmieri reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Palmieri consented to the described sanctions and to the entry of findings that he made material misrepresentations, baseless short-term price predictions, and omitted material facts regarding securities in inducing public customers to purchase the securities. The findings also stated that Palmieri executed unauthorized transactions in the accounts of public customers.

Palmieri's suspension began February 18, 2003, and will conclude at the close of business February 17, 2004. (NASD Case #C10020045)

Stephen Earl Prout (CRD #857060, Registered Principal, Clovis, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Prout failed to respond to NASD requests for information and documents. The findings also stated that Prout engaged in private securities transactions without prior written notice to his member firm. (NASD Case #C07020061)

Ryan Mark Reynolds (CRD #2716545, Registered Representative, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Reynolds consented to the described sanction and to the entry of findings that he recommended to a public customer purchase and sale transactions of securities that were unsuitable because he failed to take into account the customer's investment experience, objectives, and ability to accept risk. The findings also stated that Reynolds failed to respond to an NASD request to appear and provide testimony. (NASD Case #C06030002)

Kristen Marie Riegle (CRD #3244234, Registered Representative, Virginia Beach, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Riegle consented to the described sanction and to the entry of findings that she completed forms to initiate financial advisory services for individuals and knowingly provided her member firm with false information on the forms. The findings also stated that Riegle forged the signatures of the individuals on the forms. (NASD Case #C07030006)

Larry Wayne Rudawsky (CRD #1121341, Registered Representative, Wooster, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Rudawsky reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rudawsky consented to the described sanctions and to the entry of findings that he received approximately \$30,055.81 in checks from public customers, and failed to apply the funds as intended or in any other manner for the benefit of the customers.

Rudawsky's suspension began March 3, 2003, and will conclude at the close of business March 2, 2004. (NASD Case #C8B030004)

James Milton Seltzer (CRD #418665, Registered Principal, Emmett, Idaho) submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for three months. In light of the financial status of Seltzer, no monetary sanction has been imposed. Without admitting or denying the allegations, Seltzer consented to the described sanction and to the entry of findings that he engaged in outside business activities, for compensation, without prior written notice to, or approval from, his member firm.

Seltzer's suspension began March 3, 2003, and will conclude at the close of business June 2, 2003. (NASD Case #C3B030003)

Dennis Leyman Siers (CRD #1053922, Registered Representative, Middleburg Heights, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$65,500 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Siers reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Siers consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed to provide his member firm with prompt written notice.

Siers' suspension began February 3, 2003, and will conclude at the close of business February 2, 2004. (NASD Case #C8B030002)

Lee Matthew Solomon, Jr. (CRD #2166403, Registered Principal, Roselle, New Jersey) was fined \$30,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify by exam before he re-enters the securities industry. The fine must be paid before Solomon re-enters the securities industry. The sanctions were based on findings that Solomon participated in a scheme to create the false impression that his member firm had placed a registered representative under enhanced supervision. The findings also state that Solomon allowed his member firm to put his identifying number on the representative's accounts even though Solomon knew that the representative would continue to execute transactions in the accounts.

Solomon's suspension began January 20, 2003, and will conclude at the close of business January 20, 2004. (NASD Case #C10020083)

Dennis Jay Sturm (CRD #1407180, Registered Principal, Coral Springs, Florida) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sturm consented to the described sanction and to the entry of findings that he participated in sales of unregistered securities of multiple issuers when these sales were not subject to any exemption from registration. The findings also stated that Sturm participated in a series of matched trades involving unregistered securities that created the false appearance of trading volume. NASD also found that Sturm filed Form 211 applications for Bulletin Board trading that falsely certified that no one associated with his member firm was directly or indirectly affiliated with the issuer, when at least nine of the issuers were under the control of individuals related to a principal or other associated person of the firm. In addition, NASD found that Sturm filed amended Form 211 applications that falsely represented that the initial prices were based on arm's-length trading when they were not. Moreover, NASD found that Sturm failed to provide written notice to his member firm of his ownership or interest in securities accounts at other member firms, and failed to provide written notice to his member firm of his participation in outside business activities. (NASD Case #CAF020055)

Nima Taherian (CRD #3258193, Registered Principal, Ferndale, Michigan) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Taherian consented to the described sanction and to the entry of findings that he engaged in a scheme to purchase and sell securities in the form of put and call options in his cash and margin accounts at his member firm without having the ability or intent to pay for the purchases. The findings also stated that Taherian made a practice of effecting transactions in his cash account whereby

the cost of the securities purchased was met by the sale of the same securities and caused his member firm to defer the deposit of cash and securities beyond the time when such transactions would normally be settled, or to meet the margin requirements by the liquidation of securities in his margin account. The findings further stated that Taherian intentionally or recklessly misrepresented or omitted to disclose the material facts to his member firm that he could not, or did not intend, to pay for the securities transactions, thereby causing his firm to unwittingly assume the risk of his trading activities. (NASD Case #C06020019)

Anthony Taylor (CRD #2263468, Associated Person, Burlington, Massachusetts) was barred from association with any NASD member in any capacity. The sanction was based on findings that Taylor willfully submitted false information on his Form U-4. (NASD Case #C11020039)

Curtis William Triggs, Jr. (CRD #3184470, Registered Representative, St. Louis, Missouri) was barred from association with any NASD member in any capacity. The sanction was based on findings that Triggs misused customer funds in that he submitted a check request, sold positions from a public customer's account to fund the requested check, obtained a \$68,249.09 cashier's check from his member firm reflecting funds drawn against a customer's account, and attempted to use these funds to pay his mortgage indebtedness without the customer's authorization, knowledge, or consent. NASD also found that Triggs failed to respond to NASD requests for information. (NASD Case #C04020006)

Bradley Payton Turner (CRD #2954719, Registered Representative, Forrest City, Arkansas) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Turner consented to the described sanction and to the entry of findings that he received \$14,015.98 in cash from public customers for the purchase of securities, neglected to purchase the securities, and held the funds until some time later when he deposited them into the customer's account at his member firm. (NASD Case #C05030001)

Peter Uran (CRD #4093727, Registered Representative, Silver Spring, Maryland) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Uran reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Uran consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U-4.

Uran's suspension began March 3, 2003, and will conclude at the close of business September 2, 2004. (NASD Case #C10030010)

Kevin Dacosta Worrell (CRD #2884901, Registered Representative, Queens Village, New York) was fined \$5,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Worrell effected an unauthorized transaction in the account of a public customer.

Worrell's suspension began February 3, 2003, and concluded at the close of business February 14, 2003. (NASD Case #C10020074)

Steven Paul Zaicek (CRD #2247292, Registered Principal, Sleepy Hollow, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for nine months. The fine must be paid before Zaicek reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Zaicek consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U-4.

Zaicek's suspension began February 18, 2003, and will conclude at the close of business November 17, 2003. (NASD Case #C10030004)

Complaints Filed

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

Berry-Shino Securities, Inc. (CRD #38098, Scottsdale, Arizona) and Ralph Matthew Shino (CRD #1380293, Registered Principal, Scottsdale, Arizona) were named as respondents in an NASD complaint alleging that the firm, acting through Shino, charged public customers excessive and unfair commissions on listed option transactions. The complaint also alleges that the commissions were greater than the amount of commission warranted by market conditions, the cost of executing the transactions, the value of services rendered to the customer by the firm, and other pertinent factors. The complaint further alleges that the firm, acting through Shino, accepted and executed, or caused the execution of, orders to purchase listed options in customer accounts without having obtained information and option agreements for customer accounts required by NASD Conduct Rule 2860(B)(16)(A). In addition, the complaint alleges that the firm, acting through Shino, failed to return investor funds when an offering failed to meet minimum sales contingency. (NASD Case #C3A030001)

John Robert Bingham (CRD #1917145, Registered Representative, Keller, Texas) was named as a respondent in an NASD complaint alleging that he effected \$2,007,833.61 in securities transactions for the account of public customers without their prior knowledge or consent. The complaint also alleges that Bingham failed to respond to NASD requests for information. (NASD Case #C05020060)

James Joseph Crew (CRD #2102428, Registered Representative, Wantagh, New York) was named as a respondent in an NASD complaint alleging that he engaged in excessive trading activity in the account of a public customer by repeatedly buying and selling the same securities and through the excessive use of margin. The complaint also alleges that Crew executed the transactions in the customer's account without reasonable grounds for believing that the level of activity represented by such transactions was suitable for the customer on the basis of his financial situation, investment objectives, and needs. The complaint further alleges that Crew, by the use of any means or instrumentality of interstate commerce or of the mails, intentionally or recklessly engaged in manipulative or deceptive devices in connection with the purchase or sale of securities, and intentionally or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive, or fraudulent devices or contrivances. In addition, the complaint alleges that Crew settled a public customer complaint for an amount exceeding \$15,000 away from his member firm without the knowledge or consent of his firm. Furthermore, the complaint alleges that Crew arranged, under false pretenses, to have his member firm effect a trade cancellation in the account of a public customer. (NASD Case #C10030007)

Luis Felipe Diaz, Jr. (CRD #2539595, Registered Representative, Setauket, New York) was named as a respondent in an NASD complaint alleging that he recommended to public customers that they invest in a variable annuity contract, and represented to the customers that the variable annuity contract provided for a guaranteed return on investment when, in fact, it did not. The variable annuity contract provided instead that the customers' investments would be transferred, in monthly installments, into equity mutual funds, without any overall guaranteed return and were subject to risk of loss. (NASD Case #CLI030002)

Brian A. Duffy (CRD #3002253, Registered Representative, Rockville Centre, New York) was named as a respondent in an NASD complaint alleging that he recommended stock investments to public customers and instructed the customers to wire him the funds at an account held by his wife at a member firm and failed to inform the customers of this fact. The complaint also alleges that the public customers transferred \$11,225 into the account and Duffy improperly used and

converted these funds for his own benefit. In addition, the complaint alleges that Duffy failed to respond to NASD requests for information. (NASD Case #C10020135)

John Douglas Parsons (CRD #2038288, Registered Representative, Madisonville, Louisiana) was named as a respondent in an NASD complaint alleging that, without the knowledge or consent of public customers, he requested his member firm to issue checks totaling \$893,700 from the accounts of the public customers and converted these funds to his own use and benefit by endorsing the checks and depositing them into a bank account he controlled. The complaint also alleges that Parsons failed to respond to NASD requests for information. (NASD Case #C05030005)

Jeffrey Scott Piek (CRD #3207495, Registered Representative, Loveland, Ohio) was named as a respondent in an NASD complaint alleging that he completed financial advisory service agreements in the names of existing clients and forged their signatures to the agreements for comprehensive financial planning services without their knowledge, consent, or authorization. The complaint also alleges that Piek completed and forged the signatures of the customers on Mutual Fund and Certificate Redemption, Exchange and/or Transfer of Investment forms to effect the withdrawal of the fees to pay for the unauthorized financial planning services without the knowledge, consent, or authorization of the customers. (NASD Case #C8B030003)

John Battista Sacco (CRD #2410017, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that, in connection with the sale of securities, he directly or indirectly, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, employed artifices, devices, or schemes to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements not misleading; or engaged in acts, practices, or courses of business which operated, or would operate, as a fraud or deceit; and effected transactions in securities by means of manipulative, deceptive, or another fraudulent device or contrivance. The complaint also alleges that Sacco provided documents to a public customer regarding a security that was fraudulent and contained material misrepresentations. In addition, the complaint alleges that Sacco engaged in private securities transactions and failed to provide prior written notice to his member firm describing in detail the proposed transaction, his roles therein, and stating whether he had received, or might receive, selling compensation in connection with the transaction. Moreover, the complaint alleges that Sacco failed to respond to NASD requests for information. (NASD Case #C10030005)

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

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

Day International Securities
San Jose, California
(January 17, 2003)

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

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

Allen, Terrisa Marie
Citrus Heights, California
(January 30, 2003)

Bagwill, Jeremy B.
New Port Richey, Florida
(January 30, 2003)

DeMuth, Jean L.
Harrisburg, Pennsylvania
(January 30, 2003)

Feldman, Wendy P.
Rancho Santa Fe, California
(February 5, 2003)

Fiesta, Lorenzo E.
Honolulu, Hawaii
(January 30, 2003)

Gray, Russell E.
Chapel Hill, North Carolina
(January 13, 2003)

Luu, Trong H.
Santa Ana, California
(January 21, 2003)

Peterson, James
St. Louis, Missouri
(January 21, 2003)

Rau, Neal F.
San Diego, California
(January 21, 2003)

Rice, Kenneth P.
San Jose, California
(January 30, 2003)

Rosen, Jerome Edward
Miami, Florida
(January 13, 2003)

Rosen has appealed this action to the SEC, and the bar has not been stayed pending consideration of the appeal.
(NASD Case #8210-EN020002)

Subhan, Philip J.
Lawrenceville, New Jersey
(January 17, 2003)

Techera, Daniel M.
Miami, Florida
(January 21, 2003)

Walder, Hanspeter A.
Tarrytown, New York
(January 24, 2003)

Weigand, Dale
Florence, Kentucky
(February 5, 2003)

Weis, Andrew P.
Golden, Colorado
(January 13, 2003)

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

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

Carrasquillo, Marcus
Oceanside, New York
(January 9, 2003)

Figat, Brian Christopher
East Patchogue, New York
(January 9, 2003)

Gibbs, James P.
Chicago, Illinois
(January 23, 2003)

Marsh, Jr., Willie T.
Buffalo, New York
(February 3, 2003)

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

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

Briggs, Lucius G.
Fairfield, Connecticut
(January 10, 2003 – January 16, 2003)

Day, Douglas C.
San Jose, California
(January 17, 2003)

NASD Fines J.P. Morgan for Sharing in Profits from Hot IPOs; Firm to Pay \$6 Million to NASD

NASD censured, fined, and ordered J.P. Morgan Securities, Inc., to pay \$6 million for unlawful profit-sharing activities that took place at Hambrecht & Quist LLC prior to its acquisition in 2000.

NASD found that Hambrecht & Quist received millions of dollars in inflated commissions from more than 90 customers who sought and received allocations of "hot" initial public offerings (IPOs) from the firm. Customers paid the inflated commissions on agency transactions in highly liquid securities, with commissions as high as \$1.25 per share when an ordinary charge on these trades would have been 6 cents per share.

From November 1999 to March 2000, Hambrecht & Quist was the lead manager of 12 IPOs, and was responsible for allocating the vast majority of shares offered. Most of these IPOs showed gains of over 60 percent on the first day of trading, with one hot IPO trading at 215 percent over its offering price. The immediate increase in aftermarket price provided substantial first-day profits to customers who received the allocations. Hambrecht & Quist profited by receiving inflated commissions from IPO customers on unrelated agency trades. For example, the firm's commission revenue increased from \$590,000 on the day before one IPO to \$2.2 million on the day of the IPO.

"Managers of hot IPOs are not entitled to capitalize on the immediate increase in the market price of those shares by receiving inflated commissions and sharing in their customers' profits. Our rules prohibit profit-sharing, and engaging in the practice seriously undermines the integrity of the capital raising process," said Mary L. Schapiro, NASD's Vice Chairman and President of Regulatory Policy Operations. "NASD will continue to look at all aspects of the IPO allocation process to ensure that it is both efficient and fair to all market participants."

NASD found that the profit sharing was shown by the pattern of trading in the customer accounts. For example, one customer paid over \$685,000 in inflated commissions in two trades after receiving IPO shares that were worth \$2.9 million in potential first-day profits. Another account paid inflated commissions with rates as high as 80 cents per share, to generate more than \$575,000 to the firm, when commissions would have been less than \$85,000, had the customer paid the typical 6 cents per share commission. While the large majority of profit-sharing accounts were serviced by Hambrecht & Quist's Institutional Sales Department, the firm also shared profits with accounts serviced by the high net worth retail Executive Financial Services Department.

The institutional sales traders and sales brokers were aware of the payment of inflated commissions on the same day hot IPO allocations occurred.

One sales broker wrote to a senior syndicate manager:

"[Customer has] a consistent pattern of rewarding the firm with commissions when they are given [IPO] stock and I anticipate they will do the same here."

In another instance, a sales assistant listed two trades with commission rates of 50 cents per share and noted to her supervisor,

"Can you tell I'm smiling...[Customer] has done it again!! My baby's going to college!"

Evidence of profit sharing was also shown through offsetting trades done by at least 20 accounts. In these situations, a customer purchased a highly liquid security through Hambrecht & Quist and paid an inflated commission. At another brokerage firm, the customer sold the security at an ordinary commission rate. These purchase and sale trades resulted in an immediate loss to the customer, but generated high profit-sharing commissions for the firm. In fact, the firm's Compliance Department was concerned about the possibility of this type of trading occurring at Hambrecht and Quist and noted in an internal e-mail:

"The concern is that these accounts may appear to have trading volume that justifies hot issue allocations in each account, but what if they have many such accounts all over the street, and their 'trades' are really washes, where they buy here, sell elsewhere, and never assume any market exposure."

J.P. Morgan neither admitted nor denied the allegations, but consented to the entry of findings.

For Your Information

New Series 51 Examination

On September 30, 2002, the Municipal Securities Rulemaking Board (MSRB) filed a proposed rule change with the Securities and Exchange Commission for the MSRB's new Municipal Fund Securities Limited Principal Qualification Examination (Series 51), as well as an amendment to Rule G-3, on professional qualifications. Administration of the new Series 51 examination began on January 2, 2003. The amendment to Rule G-3 will extend to March 31, 2003, the transition period during which Series 24 and Series 26 principals may continue to supervise municipal fund securities activities without further qualification. This extension will provide a three-month period during which candidates can take and pass the Series 51 examination. **Under the amendment, all municipal fund securities limited principals will be required to have taken and passed the Series 51 examination by April 1, 2003.** This new exam requirement will not apply to individuals who are functioning as municipal securities principals or general securities sales supervisors, and who have passed either the Municipal Securities Principal Examination (Series 53) or the General Securities Sales Supervisors Examination (Series 8 or Series 9/10).

The New Series 51 Study Outline

A study outline, located at <http://www1.msrb.org/msrb1/PQweb/pdf/Series51StudyOutline.pdf>, has been prepared to serve as a guide to the subject matter tested by the Municipal Fund Securities Limited Principal Examination (Series 51). It lists the topics covered by the examination and provides sample questions similar to the type used in the examination.



Registration Procedures

An application must be submitted to NASD in order to register an individual as a Municipal Fund Securities Limited Principal. For persons already registered in one of the prerequisite categories (Series 24 or Series 26), the member need only submit page one of Form U-4 requesting Municipal Fund Securities Principal (FP) registration. For new employees, a member must submit a full Form U-4 application requesting all necessary registrations and any other documents required for registration. The Series 51 Exam fee is \$75 and the registration fee for new applicants is \$85.

For more information on this new examination requirement, contact Carole Hartzog, Assistant Director, NASD Testing and Continuing Education Department, at (240) 386-4678. This information is also available on the MSRB Web Site (<http://www.msrb.org>).

Special Notice to Members

MARCH 2003

SUGGESTED ROUTING

Executive Representatives
Institutional
Legal & Compliance
Options
Senior Management

KEY TOPICS

Investment Companies
Municipal Fund Securities/529 Plans
Sales Material

INFORMATIONAL

Municipal Fund Securities

Sales Material for Municipal Fund Securities

Executive Summary

NASD recognizes that the market for municipal fund securities, particularly Section 529 college savings plan securities, continues to evolve rapidly. Many NASD members active in the municipal fund securities market have no other experience effecting municipal securities transactions and therefore may not be familiar with the regulatory treatment of these securities. Further, even when a broker/dealer or municipal securities dealer has a sound understanding derived from its other municipal securities activities relating to traditional debt securities, the unique nature of municipal fund securities may result in these otherwise familiar rules being applied in unfamiliar ways.

NASD is committed to providing interpretive guidance regarding the application of our rules to dealers effecting transactions in municipal fund securities as we become aware of issues in which such guidance would be beneficial. Consequently, NASD is issuing this *Special Notice to Members* to clarify the treatment of sales material for municipal fund securities.

Question/Further Information

Any questions concerning this *Special Notice* may be directed to Thomas A. Pappas, Associate Vice President, Advertising Regulation, at (240) 386-4500.

03-17

Discussion

1. NASD Rules Apply to Certain Sales Material for Municipal Fund Securities

Municipal fund securities represent investments in pools of securities, such as securities issued by registered investment companies. Therefore, certain sales materials for municipal fund securities must comply with the advertising rules of the Securities and Exchange Commission (SEC) and NASD, including NASD Rule 2210.

This requirement covers any sales material prepared or used by an NASD member that refers to (1) the performance of the investment company securities or investment company families that underlie a municipal fund security, (2) the investment objectives or investment strategies of such an investment company, (3) the experience or capabilities of the investment adviser or portfolio manager of such an investment company, (4) the potential benefits or risks associated with investing in such an investment company and with any service provided to investors in the investment company, or (5) the fees and expenses associated with investing in such an investment company.

2. Filing of Sales Material with NASD

NASD recognizes that some NASD members may have already distributed sales material that refers to underlying investment company securities as described in the preceding paragraph, without having filed it with NASD. Members have until 30 days from the issuance of

this *Special Notice to Members* (March 25, 2003) to file with the NASD Advertising Regulation Department any such material that the member is currently using. Members need not file sales material that is no longer in use. Members must comply with the normal filing requirements with respect to sales material that they intend to use in the future.

3. MSRB Rules Apply to Sales Material for Municipal Fund Securities

Because municipal fund securities also represent municipal securities regulated by the Municipal Securities Rulemaking Board, sales material for municipal fund securities must comply with MSRB Rules G-17 and G-21, as well as all other applicable MSRB rules. MSRB Rules G-17 and G-21 establish a general ethical standard for dealer advertisements that prohibits a dealer from distributing any sales material concerning its facilities, services, or skills with respect to municipal securities that is materially false or misleading. In addition, a dealer may not distribute any sales material concerning municipal securities that it knows or has reason to know is materially false or misleading. Rule G-21 imposes a registered principal pre-use approval requirement and a three-year record-keeping requirement on sales material for municipal securities. The MSRB has provided guidance with respect to municipal fund security advertisements that include information regarding an underlying investment company security in its Rule G-21 Interpretation – Application of Fair Practice and Advertising Rules to Municipal Fund Securities, May 14,

2002. Generally, MSRB, SEC, and NASD rules are consistent. However, to the extent that SEC or NASD advertising rules impose additional specific requirements, members must adhere to them.

NASD has no authority to regulate the content, preparation, or use of sales material by issuers of municipal fund securities and this *Notice to Members* is not intended to do so. However, in order for NASD members to use such sales material, they must comply with SEC and NASD advertising rules. In order to avoid indirectly regulating issuers, NASD review of such sales material will be limited to matters relevant to the investment company securities or investment company families that underlie a municipal fund security. In particular, portions of sales materials that describe the issuer or its municipal fund securities program as a whole will not be reviewed. At the request of any member, NASD also will review any such sales material for compliance with MSRB advertising requirements applicable to municipal fund securities.

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