

# Notices to Members

## June 1999

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*Notices to Members* (December 1996 to current) are also available on the Internet at [www.nasdr.com](http://www.nasdr.com).

# NASD Notice to Members 99-41

## NASD Announces New Electronic Filing System For Corporate Financing Filings

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary Introduction of an Electronic Filing System

NASD Regulation, Inc. (NASD Regulation®) is announcing that it will deploy an electronic filing system that will permit National Association of Securities Dealers, Inc. (NASD®) members, their counsel, or vendors to file information electronically with the Corporate Financing Department (Department). NASD Conduct Rule 2710 (the Corporate Financing Rule or Rule) requires members to file most proposed public offerings with the Department. The Department reviews these filings prior to the commencement of an offering in order to determine whether the underwriting terms and arrangements meet the requirements of applicable NASD rules.

The new electronic filing system consists of two components: COBRA (the "Corporate Offerings Business Regulatory Analysis System") and COBRADesk. COBRA is a client-server software application and communication system, including a database, that will receive and process electronic filings of critical distribution-related information transmitted to the Department from a related external system, COBRADesk. COBRADesk is a client software application that will reside in the offices of member firms, their counsel, or vendors (filers), which they can use to transmit offering information.

Questions about this *Notice* should be directed to LaNita Tyler or Kemba Walker, Corporate Financing Department, NASD Regulation, at (202) 974-2700.

### Enhancement Of Review Process

COBRA and COBRADesk should benefit members, investors, and the

Department by improving the efficiency of the review process, decreasing review time, and reducing the amount of paper correspondence and documents required to be filed. In addition, the system will provide each filer with a local electronic database of information it has filed with the Department.

The Corporate Financing Rule currently requires a member to file five copies of the offering documents. Members that file through COBRADesk will be deemed to have met this filing requirement, and will not have to file paper copies of the offering documents unless specifically requested by the Department.

The Department's staff will access the offering documents from the Securities and Exchange Commission's (SEC) EDGAR system. In addition, the system will permit electronic correspondence between the Department and filers, thereby further alleviating the need for paper correspondence. NASD members that participate in nonregistered public offerings that are not filed on EDGAR may continue to submit offering documents in paper format, while sending supplementary offering information via COBRADesk.

### Deployment Of The System

The Department will deploy the system after June 30, 1999. Initially, the use of COBRADesk will be voluntary; however, the Department anticipates that most filers will use COBRADesk because it will be more efficient than the current process. The Department intends to later recommend that NASD Regulation promulgate a rule requiring members to use the system for all offerings filed with the Department.

Filers that complete the attached form and return it to the Department by June 1, 1999, will receive the

COBRA software, one printer modem, one printer, and printer paper free of charge. Each user of COBRADesk must enter into a sub-licensing agreement with NASD Regulation and have a dedicated analog phone line for the printer. **To obtain this merchandise free of charge by the July 1, 1999 launch date, complete the attached form and return it to the Department no later than June 1, 1999.**

The COBRADesk software will come with installation instructions and should be installed by the July 1, 1999 launch date. The Department will continue to accept non-electronic filings after July 1, 1999, but we encourage filers to transition to electronic filings after July 1, 1999. We will provide filers with computer-based training software after July 1, 1999, that will instruct filers how to make a filing using COBRADesk. In addition, members may contact the NASD Regulation "Help Desk" at (800) 321-NASD with technical questions regarding COBRADesk or with substantive questions regarding the proper filing of offering information.

For those filers that want more detailed information about filing offerings using COBRADesk, NASD Regulation will conduct "Train-the-Trainer" workshops at the Chase Conference Centers in New York City on July 13 and 14, 1999. Attendance at a workshop may be useful for some filers, particularly those firms with several employees who are involved in filing offerings with the Department. **To participate in one of the "Train-the-Trainer" workshops, please complete Item 4 on the attached COBRADesk Request Form.** Since space in these workshops is limited, we request that each interested filer send no more than one person. A fee of \$100 is required for each participant.

## Background

NASD Regulation is announcing that it intends to deploy the COBRA and COBRADesk systems in order to improve the efficiency of its review process and to alleviate the paperwork burden on members and their counsel that file information with the Department. In April 1999, the Department began a 30-day pilot program for COBRA. In the pilot, the Department's staff and some of its most frequent filers have been able to test the system. The results of the pilot program indicate that COBRA and COBRADesk will streamline the Department's review process and enhance the speed and accuracy of communications with members and their counsel.

## Current Requirements For Filing

The Corporate Financing Rule requires NASD members (usually the managing underwriter) or their counsel to file:

### Five copies of:

- the registration statement;
- the amended registration statement; and
- the offering circular or memorandum.

### Three copies each of:

- the underwriting agreement;
- the agreement among underwriters;
- selected dealer agreements;
- letters of intent; and
- consulting agreements, warrant agreements, and any other document that describes the underwriting or other arrangement in connection with or related to the distribution.

The Rule also requires that supplementary information be filed, such as:

- the exact amount and types of compensation to be paid in connection with distributing the securities;
- the NASD affiliation or association of all officers, directors, and principal shareholders of the issuer; and
- details of all acquisitions of securities by the underwriter or related persons.

The Department receives thousands of packages and letters each year from underwriters or their counsel, in compliance with the Department's filing requirements and in response to requests by the Department for additional information. These documents and information are sent to the Department in hard copy by regular mail, courier, or fax. The Department's analysts review these documents and enter information into the Department's database. This information is used by the Department to determine whether underwriting terms and arrangements meet the requirements of applicable NASD rules.

## Filing Through COBRADesk<sup>1</sup>

By using COBRADesk, filers will be able to make filings with the Department at any time of the day. The Department will receive the information and then be able to access the offering documents from EDGAR. Most filers will not need to send paper documents to the Department and will not have to rely on couriers, mail, or fax. Filing fees can be submitted by wire transfer (as well as check or money order). COBRADesk will automatically calculate filing fees in accordance with NASD rules based on the size of an offering.

Some filings may need to be accompanied by paper documents, if, for example, offering documents are not filed with the SEC on EDGAR or the Department needs information in certain other documents, such as underwriting agreements, that are not in electronic form. The Department intends to continue to develop its processes to minimize the need for supplementary paper filings where possible.

COBRA and COBRADesk will provide a more efficient mechanism for communications between filers and NASD Regulation. In addition, the Department anticipates that the COBRADesk filing process will reduce members' costs by reducing expenses for printing and delivery.

### **Costs**

Filers that complete the attached form and return it to the Department by June 1, 1999, will receive the COBRADesk software, one printer modem, one printer, and printer paper free of charge. Filers that request a "network" version of COBRADesk and more than one printer will be charged a fee for the additional printers. In order to use COBRADesk, filers must have an analog phone line dedicated to the

printer. NASD Regulation will not be responsible for the cost of the phone line.

NASD Regulation also will conduct "Train-the-Trainer" workshops at Chase Conference Centers, 1 Chase Manhattan Plaza, 28th floor, New York City on July 13 and 14, 1999. A fee of \$100 is required for each participant.

### **Technical Requirements**

COBRADesk has the following minimum workstation requirements:

- Pentium PC 166 or better
- 32 MB RAM
- Windows95/Windows98 or NT4.0
- 100 MB of Free Hard Drive Space
- 1 available Communication Port
- US Robotics Courier Modem (provided to users with the printer and paper)
- An analog phone line dedicated to the COBRA Printer

We recommend that all PCs running the COBRADesk Application have a backup procedure in place.

### **Endnote**

<sup>1</sup>An Application Program Interface (API) will be available to vendors that may want to develop their own COBRADesk-related client software. To ensure access compatibility, the API will provide information and instructions needed to create and transmit a properly formatted electronic file of information to COBRA. Interested vendors should forward their request on company letterhead to the Corporate Financing Department and provide a contact person name and telephone number.

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## COBRADESK REQUEST FORM

To Order COBRADesk Software, Modem, Printer, and Printer Paper

1. **Firm Name:** *(please print)* \_\_\_\_\_  
**Address:** \_\_\_\_\_  
*(software, printer modem, printer, and paper will be sent to this address)*  
**City/state/zip:** \_\_\_\_\_  
**Contact Person:** \_\_\_\_\_  
**Daytime Phone:** \_\_\_\_\_

2. **Phone Number of the Analog Phone Line that will be Dedicated to the Printer:** \_\_\_\_\_

3. **Will your firm need a network version of the software:**

- Yes  
 No

**Software:**

- 3.25" Floppy Disc  
 CD ROM

4. **To reserve a date for participation in a training session in New York, please indicate the date you would like to attend:**

- July 13, 1999  
 July 14, 1999

**Name of participant:** \_\_\_\_\_

*Due to space limitations, we must limit participation in the workshops to one person per filer. Please include a check payable to the National Association of Securities Dealers in the amount of \$100 if a person from your firm will participate in the training.*

The workshops will be conducted at Chase Conference Centers, 1 Chase Manhattan Plaza, 28<sup>th</sup> floor, New York, New York from 9:00 a.m. until 3:00 p.m.

*Please mail (if a check is included) or fax this form to:*

**NASD Regulation, Inc.  
Corporate Financing Department  
1801 K Street, NW, 8<sup>th</sup> Floor  
Washington, D.C. 20006  
Attn: COBRADesk  
Fax: (202) 974-2732**

# NASD Notice to Members 99-42

## NASD Offers Guidance On Complying With Notice Requirements Of New SEC Rule Regarding Alternative Trading Systems

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

On April 21, 1999, Securities and Exchange Commission (SEC) Rules 3a1-1, 3b-16, and Regulation Alternative Trading System (Regulation ATS) became effective. Rule 301(b)(2) of Regulation ATS requires alternative trading systems (ATS) to comply with certain notice provisions. Specifically, duplicate originals of certain reports that must be filed with the SEC pursuant to Regulation ATS must also be filed simultaneously with the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) if the NASD is the designated examining authority (DEA) for the ATS.

Questions regarding this *Notice* may be directed to Patricia Casimates, Assistant Director, Market Regulation Department, NASD Regulation, Inc., (NASD Regulation<sup>®</sup>), at (301) 590-6447.

### Reg ATS Notice Requirements Initial Operation Report On Form ATS

At least 20 days prior to commencing operation as an ATS, the ATS must file an initial operation report on Form ATS in accordance with the instructions therein. If the ATS is currently operating as of April 21, 1999, the initial operating report should have been filed no later than May 11, 1999.

### Amendments To Form ATS

At least 20 calendar days prior to implementing a material change to the operation of the ATS, the ATS must file an amendment on Form ATS. Additionally, if any information contained in the initial operation report becomes inaccurate for any reason and has not been previously

reported to the SEC as an amendment on Form ATS, the ATS must file an amendment on Form ATS correcting such information within 30 calendar days after the end of each calendar quarter in which the ATS has operated. Moreover, an ATS must promptly file an amendment on Form ATS correcting information previously reported on Form ATS after discovery that any information previously filed was inaccurate when filed.

### Cessation Of Operations Report On Form ATS

Upon ceasing to operate as an ATS, the ATS shall promptly file a cessation of operations report on Form ATS in accordance with the form's instructions.

### Filing Of Form ATS And Amendments

All the reports described above should be filed with:

U.S. Securities & Exchange  
Commission  
Division of Market Regulation  
Stop 10-2, 450 5th Street, N.W.  
Washington, D.C. 20549

All reports are considered filed upon receipt by the SEC.

If the NASD is the DEA for the ATS, duplicate originals of these reports must also be filed with the NASD<sup>1</sup> by mailing the documents to:

Form ATS Maintenance Coordinator  
Market Regulation Department  
9513 Key West Avenue  
Rockville, Maryland 20850

All the above described reports are deemed confidential when filed.

## Endnote

<sup>1</sup>Pursuant to SEC Regulation ATS, Rule 301(b)(9), an ATS must also file certain summary transaction information required by Form ATS-R within 30 calendar days after the end of each calendar quarter and 10 calendar days after the ATS ceases to operate. Originals of these reports should be filed

only with the SEC. Duplicates should be provided to the NASD or other DEA only upon request.

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# NASD Notice to Members 99-43

## Update On OTC Bulletin Board Eligibility Rule

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

In *Notice to Members 99-15*, the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) described amendments to NASD Rules 6530 and 6540 to limit quotations on the OTC Bulletin Board<sup>®</sup> (OTCBB) to the securities of companies that report their current financial information to the Securities and Exchange Commission (SEC), banking, or insurance regulators and described when those rules would be applied to issuers trading on the OTCBB. The amendments will become effective over an 18-month period, based on the issuer's symbol. This *Notice* includes the effective date schedule that has been published on the OTCBB Web Site ([www.otcbb.com](http://www.otcbb.com)) since January and describes the requirements a security must meet to be quoted after it is subject to the amendments.

Questions regarding this *Notice* should be directed to Liz Heese, Product Manager, Trading and Market Services, The Nasdaq Stock Market, Inc., at (202) 728-8191; Sara Nelson Bloom, Associate General Counsel, Office of General Counsel, The Nasdaq Stock Market<sup>®</sup>, at (202) 728-8478; or Arnold Golub, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, at (202) 728-6938.

### Background

The OTCBB is a quotation service that displays real-time quotes, last-sale prices, and volume information in domestic and certain foreign securities. Eligible securities include national, regional, and foreign equity issues; and warrants, units, and American Depositary Receipts (ADRs) not listed on any other U.S.

national securities market or exchange. Although the OTCBB is operated by the NASD, it is unlike The Nasdaq Stock Market or other listed markets where individual companies apply for listing and must meet and maintain strict listing standards; instead, individual brokerage firms or Market Makers initiate quotations for specific securities on the OTCBB. Currently, approximately 6,500 securities are quoted on the OTCBB.

On January 4, 1999, the SEC approved amendments to NASD Rules 6530 and 6540. As revised, Rule 6530 limits quotations on the OTCBB to the securities of issuers that report their current financial information to the SEC, banking, or insurance regulators and Rule 6540 prohibits a member from quoting a security on the OTCBB unless the issuer has made current filings. These amendments were discussed in *Notice to Members 99-15* and the full text of the rules appears in that *Notice*. *Notice to Members 99-15* also indicated that the new requirements were already effective for securities not quoted on the OTCBB on January 4, 1999, and published a schedule for the effectiveness of the revised rules with respect to issuers that were trading on the OTCBB as of that date. The NASD made slight modifications to that schedule and has published the modified schedule on the OTCBB Web Site since January.

In order to continue to be quoted on the OTCBB, securities quoted on the OTCBB as of January 4, 1999, must be in compliance with the new eligibility requirement based upon the schedule on the following page.<sup>1</sup>

## Effective Date Schedule

<u>Schedule</u>	<u>Issue Symbol</u>
July 1999	A - AD
August 1999	AE - AO
September 1999	AP - BI
October 1999	BJ - CT
November 1999	CU - FL
December 1999	FM - IG
January 2000	IH - MD
February 2000	ME - OR
March 2000	OS - R
April 2000	S - TN
May 2000	TO - Z
June 2000	All Banks & Insurance Companies

## Eligibility Requirements

To continue to be quoted after the first trading day of the scheduled month, the issuer of the security must be:

- registered with the SEC under Section 13 or 15(d) of the Securities and Exchange Act of 1934 (Act), an investment company registered under the Investment Company Act, an insurance company described in Section 12(g)(2)(G) of the Act, or a bank or savings association that is not required to file reports with the SEC; **and**
- current in its required filings. To be current, the issuer must have filed its latest required annual filing and any subsequent quarterly filings.

In the alternative, a security will be deemed eligible if the issuer has filed a Form 10 or a Form 10SB and has cleared all comments by the SEC.

A list of all OTCBB securities and their eligibility status according to Nasdaq's records will be available on [www.otcbb.com](http://www.otcbb.com). If you believe the status of a security is incorrect, please e-mail the correct eligibility status, and the CIK code if the issuer is an EDGAR filer, to [otcbbfeedback@nasd.com](mailto:otcbbfeedback@nasd.com), using "OTCBB Eligibility status correction" as the subject line of the email.

## Endnote

<sup>1</sup>This schedule is subject to change at the discretion of the NASD. The NASD will use the issue symbol as it appears in the OTCBB quotation system on January 4, 1999, to determine where a particular issue falls in the schedule. Subsequent symbol changes will not be considered in determining an issuer's phase-in date.

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# NASD Notice to Members 99-44

## SEC Approves Interpretations And Allocation Chart For Proprietary Accounts Of Introducing Broker/Dealers

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

On November 3, 1998, the Securities and Exchange Commission (SEC) issued a No-Action Letter to clarify its position under SEC Rule 15c3-1 (Net Capital Rule) regarding the capital treatment of assets in the proprietary account of an introducing broker/dealer (PAIB) held by a clearing broker/dealer. National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) *Notice to Members 98-99* discusses PAIB in greater detail and also provides a copy of the SEC's No-Action Letter.

The letter allows introducing broker/dealers to include PAIB assets as allowable assets in their net capital computations, provided the clearing broker/dealer adheres to the provisions, procedures, and interpretations set forth in the letter including the establishment of a separate reserve account for PAIB assets in accordance with SEC Rule 15c3-3 (Customer Protection Rule). The effective date of the No-Action Letter is June 1, 1999.

The SEC has approved six interpretations and an allocation chart relative to PAIB which are contained in this *Notice to Members*. Questions concerning this *Notice* may be directed to Samuel Luque, Jr., Associate Director, Member Regulation, NASD Regulation, Inc. (NASD Regulation<sup>®</sup>), (202) 728-8472; or Susan DeMando, Regional Compliance Supervisor, Member Regulation, NASD Regulation, (202) 728-8411.

### SEC Interpretations On PAIB

- The PAIB letter applies to all broker/dealers with cash and/or securities on deposit in a proprietary account at another broker/dealer.
- Clearing deposits held by clearing brokers are to be included as credit items in the PAIB reserve formula computation.
- If an introducing firm does not have a proprietary trading account, it still must enter into a PAIB agreement with its clearing firm in order to treat its deposit at the clearing firm as a good asset for capital purposes.
- A U.S. broker/dealer's deposit held by a foreign entity is not affected by the PAIB letter. However, the deposit would be subject to the net capital treatment as is normally accorded to such deposits.
- A proprietary account of a foreign broker/dealer is not included in the PAIB calculation.
- If a clearing firm will not enter into a PAIB agreement, the introducing broker/dealer would need to take a non-allowable capital charge only on its net equity at the clearing firm.

## PROPRIETARY ACCOUNTS OF INTRODUCING BROKERS (PAIB) ALLOCATION CHART

This allocation chart shows the relationship between the various allocable items and may be used in conjunction with the interpretations when an allocation is required to determine the debit and credit values includible in the PAIB reserve formula computation.

### A. CREDITS

<u>Short Location:</u>	<u>Long Allocation</u>	<u>Include Credit</u>	<u>Debit</u>
<b>Customer Bank Loan vs:</b>			
	Customer Long	No	No
	Proprietary Long	No	No
	Non-Customer Long	No	No
	PAIB Accounts Long	No	Yes
	Stock Borrowed	No	No
	Fail to Deliver	No	No
<b>Non-Customer Bank Loan vs:</b>			
	Customer Long, Stock Borrowed, or Fail to Deliver	No	No
	Non-Purpose Loan Accounts	No	No
	Proprietary and Non-Customer Accounts	No	No
	PAIB Accounts Long	Yes	Yes (see Note 1)
<b>Proprietary Bank Loan vs:</b>			
	Customer Account Long	No	No
	Fail to Deliver or Stock Borrowed	No	No
	Proprietary, Subordinated, General Partners, Directors, and Principal Officers Accounts Long	No	No
	PAIB Accounts Long	No	Yes
	All Other Long Allocations	No	No
<b>Any Bank or Custody Location with Cross Lien Provisions vs:</b>			
	Customer Account Long	No	No
	PAIB Accounts Long	Yes	Yes (see Note 2)
<b>Collateral to Letter of Credit (LOC) or Collateral Pledged for OCC Customer Margin Requirement vs:</b>			
	Customer Accounts Long	No	No
	Proprietary Qualified Sec.	No	No
	Non-Customer or Proprietary Accounts	No	No
	PAIB Accounts Long	Yes	Yes (see Notes 8 & 9)
<b>Collateral to Letter of Credit or Collateral Pledged for OCC PAIB Margin Requirement vs.</b>			
	Customer Accounts Long	No	No
	Proprietary Qualified Sec.	No	Yes
	Non-Customer or Proprietary Accounts	No	No
	PAIB Accounts	Yes	Yes (see Notes 6,7,8,9)

## A. CREDITS *(continued)*

<u>Short Location:</u>	<u>Long Allocation</u>	<u>Include Credit</u>	<u>Debit</u>
<b>Collateral Pledged to Letter of Credit for Securities Borrowed vs:</b>			
	Customer Accounts Long	No	No
	Non-Customer or Non-Purpose Loan Accounts	No	No
	PAIB Accounts Long	Yes	Yes (see Note 3)
	Proprietary Accounts	No	No
<b>Collateral Pledged for Securities Borrowed vs:</b>			
	Customer Accounts Long	No	No
	Non-Customer and Non-Purpose Loan Accounts	No	No
	PAIB Accounts Long	Yes	Yes (see Note 4)
	Proprietary Accounts	No	No
<b>Securities Loaned vs:</b>			
	Customer Accounts Long	No	No
	Fails to Deliver	No	No
	Securities Borrowed	No	No
	Non-Customer and Proprietary Accounts Long	No	No
	PAIB Accounts Long	Yes	Yes
<b>Fails to Receive vs:</b>			
	Customer Accounts Long	No	No
	Fails to Deliver	No	No
	Non-Customer Accounts Long	No	No
	PAIB Accounts Long	Yes	Yes
	Proprietary Accounts Long	No	No
	Securities Borrowed	No	No
<b>Proprietary and Non-Customer Shorts vs:</b>			
	Customer Accounts Long	No	No
	Non-Customer Accounts Long	No	No
	PAIB Accounts Long	Yes	Yes (see Note 5)
<b>Customer Short Position vs:</b>			
	Customer Long	No	No
	Proprietary and Non-Customer Accounts Long	No	No
	PAIB Accounts Long	Yes	Yes
<b>PAIB Short Position vs:</b>			
	Customer Long	No	No
	Proprietary and Non-Customer Accounts Long	No	No
	PAIB Accounts Long	Yes	Yes

**B. OTHER CREDITS OR VALUES INCLUDIBLE  
- REGARDLESS OF ALLOCATION**

**Include Credit**

Securities Borrowed Secured by an Irrevocable Letter of Credit Secured by Customer Margin Securities	No
Securities Borrowed Secured by an Irrevocable Letter of Credit Secured by PAIB Securities	Yes (see Note 3)
Stock Dividends Receivable, Stock Splits, and Other Distributions Over 30 Calendar Days Old	No
Suspense Account Credits and Short Security Count, Unverified Short and Suspense Security Differences:	
Over seven business days old	No
Over 30 calendar days old	No
Transfer over 40 calendar days old	No
Prepaid Fails to Receive	No
Unclaimed Dividends and Interest Payable	No
All outstanding drafts payable to customers which have been applied against free or other credit balances and checks drawn in excess of bank balances (per firm records)	No
Drafts Payable to PAIB	Yes
TEFRA Accounts Payable	No
Accrued Interest Payable on Customer Credit Balances	No
Accrued Interest Payable on PAIB Credit Balances	Yes

## C. DEBITS

<u>Long Position:</u>	<u>Short Allocation</u>	<u>Include Debit</u>	<u>Credit</u>
<b>Securities Borrowed Collateralized By Cash, U.S. Treasury Bills, Notes, LOC's Secured by Proprietary Qualified Securities, or any other Acceptable Collateral as per (b)(3) vs:</b>			
	Customer Accounts Short	No	No
	Non-Customer or Proprietary Accounts Short	No	No
	PAIB Accounts Short	Yes	Yes
	Fails to Receive	No	No
	Customer Bank Loan	No	No
	Non-Customer or Proprietary Bank Loan	No	No
	Securities Loan	No	No
	Stock Dividend Receivable	No	No
	Transfer	No	No
	All Other Physical Control Locations	No	No
<b>Securities Borrowed Secured By an Unsecured Irrevocable Letter of Credit, Unacceptable Collateral as per (b)(3) or Unsecured Borrows</b>		No	
<b>Fails to Deliver Not Over 30 Calendar Days Old vs:</b>			
	Customer Accounts Short	No	No
	Non-Customer and Proprietary Accounts Short	No	No
	PAIB Accounts Short	Yes	Yes
	Fails to Receive	No	No
	Customer Bank Loan	No	No
	Proprietary and Non-Customer Bank Loan	No	No
	Securities Loaned	No	No
	Transfer	No	No
	Other Physical Control Location for Not More Than Three Business Days	No	No

## NOTES FOR PAIB ALLOCATION

Note 1 Include market value of the collateral up to the amount borrowed as a credit.

Note 2 When a broker/dealer pledges PAIB securities to a non-customer loan and also has proprietary and/or customer loans with the same pledgee, it must assure itself that the pledgee does not have a lien upon non-customer collateral for any loan other than for PAIB non-customers.

If a cross lien exists and could place PAIB securities at risk, there shall be included in the PAIB formula the amount of the PAIB loan, **plus** the lower of the value of PAIB collateral in excess of the loan or the amount of loans for other than PAIB.

Note 3 Include the market value of the borrowed securities as a credit.

Note 4 Include the market value of the pledged securities.

Note 5 Include the market value of the short securities.

Note 6 Letters of Credit Secured by Customer and Non-Customer Securities

When a letter of credit, collateralized by both customer and non-customer securities, is deposited with OCC as margin, only the amount required for customers' margin is included as a debit in the customer reserve formula. Therefore, the amount of margin required for Market-Maker accounts is included as a debit in the PAIB reserve formula to the extent it is collateralized by customer and PAIB securities. (The combined customer and non-customer margin requirement, up to the amount of the letter of credit, must be included as a credit in the customer's reserve formula only.)

Note 7 OCC Margin Requirement Met by PAIB Securities

When PAIB collateral is deposited with OCC to satisfy Market-Maker margin requirements, the actual amount of margin required is included in the formula as a debit and a credit.

Note 8 Letters of Credit Secured by PAIB Securities

Include as a credit, the amount of letters of credit which are collateralized by PAIB securities and deposited with OCC, to the extent of the margin requirement at OCC, which is covered by such letters of credit.

Note 9 Commingled Collateral as OCC Margin Deposit

When customer, non-customer, and qualified proprietary securities are commingled as margin on deposit with OCC, the customer margin requirement should be included in the customer reserve formula computation as a credit and the lesser of the customers' margin required or the total of the collateral value, less the amount representing the non-customer should be included as a debit in that formula.

Any amount not allowed as a debit in the customer reserve formula because the margin requirement was satisfied with PAIB securities should be included as a debit in the PAIB reserve formula and no credit need be included to the extent the credit is included in the customer reserve formula.

# NASD Notice to Members 99-45

## NASD Provides Guidance On Supervisory Responsibilities

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Background

The National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) is issuing this *Notice to Members* as part of its continuing effort to provide members, particularly smaller member firms, with guidance on complying with the rules that govern their conduct. This *Notice* will focus on those sections of NASD Conduct Rule 3010 (the Rule) that require members to establish a supervisory system and develop and maintain written supervisory procedures. The NASD recently published a related *Notice to Members* that provides guidance on supervisory responsibilities for trade reporting and market-making activities.<sup>1</sup> In addition, the NASD intends to publish subsequent *Notices* that will focus on written supervisory procedures relating to a particular topic area (e.g., opening and maintaining customer accounts). Members are encouraged to contact Stephanie M. Dumont, Assistant General Counsel, NASD Regulation, Inc. (NASD Regulation<sup>®</sup>) at (202) 728-8176; or Daniel M. Sibears, Vice President, Member Regulation, NASD Regulation, at (202) 728-6911 with questions or comments on this *Notice* or to suggest topics for future *Notices to Members*.

In order to assist members in developing their own supervisory systems, this *Notice* will provide an explanation of the purposes underlying the different sections of Rule 3010.<sup>2</sup> It is important for members to understand that while this *Notice* provides an explanation of the Rule and guidelines on the basic elements of supervisory procedures, it *is not* to be construed as a checklist of steps guaranteed to constitute adequate written supervisory procedures or a substitute for the development of supervisory procedures that are tailored to the needs and circumstances of individual member firms. ***Members retain the responsibility to design and implement supervisory procedures that are appropriate for their specific businesses and structures.***

### Compliance Procedures Versus Supervisory Procedures

It is important that members recognize the distinction between written compliance guidelines and written supervisory procedures. Compliance guidelines generally set forth the applicable rules and policies that must be adhered to and describe specific practices that are prohibited. In contrast, written supervisory procedures document the supervisory system that has been established to ensure that compliance guidelines are being followed and to prevent and detect prohibited practices. For example, a compliance guideline might discuss NASD Rule 2860(b)(19) regarding the suitability of options transactions for customers by describing the elements of the rule and the types of information the firm believes its associated persons must gather about the customer before recommending an options transaction. In comparison, the written supervisory procedures would instruct the supervisor on the steps necessary to determine whether the associated person gathered the requisite information before recommending the options transactions and whether the transaction was suitable for the customer (e.g., the supervisor should examine the customer account forms that describe the customer's net worth, annual income, options trading experience, etc.). In addition, the written supervisory procedures would describe the activities the supervisor will conduct, if he or she determines a transaction is not suitable for a customer.

### Supervisory System Versus Written Supervisory Procedures

Another important concept for members to understand is the distinction between a supervisory system and written supervisory procedures. The Rule sets forth members' obligations to establish both a supervisory system and

written supervisory procedures. Written supervisory procedures are a critical part of an overall supervisory system. The written supervisory procedures document the supervisory system that the firm has established. For example, a supervisory system may include elements such as automated exception reports and surveillance programs that monitor for unusual trading activity in customer accounts. The written supervisory procedures would instruct the supervisor on which reports produced by the surveillance system the supervisor is to review as part of his or her supervisory responsibilities, including a description of how often these reports should be reviewed, the steps to be taken if suspicious activity is discovered, and how to document the supervisor's oversight activities.

### **Supervisory System And Written Procedures - Rule 3010(a) And (b)**

Regardless of its size or complexity, each member must adopt and implement a supervisory system that is ***tailored specifically to the member's business*** and must address the activities of all its registered representatives and associated persons. ***Supervisory procedures must be in writing and must be reasonably designed to achieve compliance*** with applicable securities laws and rules and the rules of the NASD (hereinafter "securities laws"). ***Ultimate responsibility for supervision rests with the member.***

#### ***Tailored To The Member's Business***

To fulfill its obligations to establish and maintain a supervisory system, a member must determine the types of business it conducts, how the firm is organized and operated, and the current regulatory requirements. This analysis will enable the member to design a supervisory system that is current and appropriately tailored to

its specific attributes and structure. Factors that should be considered in this analysis include, among other things, a review of the member's:

- product lines and customer base (*e.g.*, institutional vs. retail);
- number and geographic location of offices and personnel;
- existing reporting systems, operating units, and organizational structures;
- experience of personnel, including whether the firm employs persons who should be subject to heightened supervisory procedures due to a history of customer complaints, disciplinary actions, or arbitration proceedings; and
- applicable regulatory requirements, including specific activities required (*e.g.*, principal approval of transactions) and specific records required to be created and maintained (*e.g.*, new account documentation) in each product or operational area.

Once a thorough review and analysis of these factors has been conducted, the firm can then establish the framework of its supervisory system, taking into consideration, among other things:

- the availability, location, and qualifications of registered principals and, where appropriate, representatives to be assigned supervisory responsibilities;
- the importance of clear lines of authority, accountability, and responsibility;
- the maintenance of records and other documentation that will permit both the firm and regulators to determine how and by whom supervisory obligations are being discharged;

- the technological environment in which the firm operates; and
- the need to provide for the periodic evaluation of the firm's system and procedures such that both will continue to accurately reflect the firm's business and current regulatory requirements.

#### ***Written Procedures***

Once a member has designed its supervisory system, Rule 3010(b) requires the member to memorialize this system in writing and implement and enforce these written procedures. It is important that supervisory procedures be set forth in writing for several reasons. Written procedures provide the personnel subject to the supervisory system, as well as those responsible for implementing it, a document that explains the supervisory system and their specific responsibilities. Written procedures also provide stability and continuity as personnel take on different responsibilities or leave the firm. In addition, senior management can use the written procedures to determine whether personnel are complying with the supervisory system by auditing compliance with the written procedures. Accordingly, the Rule requires that a copy of the member's written supervisory procedures, or the relevant parts, be maintained at each office of supervisory jurisdiction and any other location where supervision occurs.

It is equally important that the written supervisory procedures clearly identify who has supervisory responsibilities. A member must keep a record of each associated person who has supervisory responsibilities and the date each person was assigned those responsibilities. This must include the titles, registration status, and locations of the supervisory personnel. The written procedures also must include the business line and applicable securities laws for which each supervisor is responsible. When developing its written procedures to include this

information, a member should keep in mind that the purpose of this rule is to allow for personnel at the firm, as well as regulators, to easily determine who is responsible for supervising a particular area and the time period for which the person was assigned the supervisory responsibility.

Written supervisory procedures are not static documents that can be used for an indefinite period of time without modification. A firm's existing supervisory system may become outdated or ineffective as a result of changes in the firm's business lines, products, practices, or new or amended securities laws. In such instances, the written supervisory procedures must be updated to properly reflect any necessary changes to the supervisory system. Rule 3010(b) does provide a member with a reasonable amount of time after changes occur to amend its written supervisory procedures. Reasonableness, however, is determined in light of the relevant facts and circumstances. For example, an amendment to rules pertaining to a type of business that a member conducts daily (e.g., market making) should be incorporated into the supervisory system and written procedures prior to the effective date of the rule change. Changes in a title or other administrative matters, on the other hand, may not warrant an immediate change and could be updated on a periodic basis.

It is crucial that all persons associated with a member be informed of any changes in the supervisory system and applicable written procedures. The Rule, therefore, requires members to inform all associated persons of such changes. This can be accomplished, for example, by distributing updates to the relevant sections of the written supervisory procedures.

### ***Reasonably Designed To Achieve Compliance***

The Rule requires that a member's supervisory system be reasonably designed to achieve compliance with applicable laws and regulations. This standard recognizes that a supervisory system cannot guarantee firm-wide compliance with all laws and regulations. However, this standard does require that the system be a product of sound thinking and within the bounds of common sense, taking into consideration the factors that are unique to a member's business described above.

Because reasonableness is determined in light of the particular facts and circumstances surrounding a situation, it is difficult to articulate with any specificity a standard that would be applicable in all circumstances. As practical, the NASD will identify certain procedures it believes are reasonable, as well as those practices that it finds are not reasonable. For example, in *Notice to Members 98-96*, the NASD noted that written supervisory procedures that instruct a supervisor to initial order tickets and blotters or to fill out review logs to document a review are reasonable, while procedures that merely recite the applicable rules or fail to describe the steps the firm will take when potential deficiencies are identified are not reasonable.<sup>3</sup>

### ***Members Are Responsible For Supervision***

The ultimate responsibility for supervision lies with the member. This responsibility, however, does not preclude a member from implementing a supervisory system designed by another party, which could include, for example, a computer software program that detects excessive trading in customers' accounts. If a member chooses to implement such a system, though, it must make its own determination that the system implemented is current and reasonably designed to achieve

compliance with the securities laws. This may include, for example, monitoring the system to ensure that it functions as designed.

### **Minimum Requirements Of A Supervisory System - Rule 3010(a)**

Although a supervisory system must be tailored to meet the member's specific structure, the NASD has identified certain elements that must be included in every member's supervisory system. While each element will be discussed individually, members should keep in mind that each of these elements must be incorporated into an overall supervisory system that is reasonably designed to achieve compliance with the securities laws and rules. Members must be cognizant of how these elements affect and are affected by other requirements in the Rule and other rules and statutory provisions. ***Furthermore, a member is not relieved of its supervisory obligations by merely incorporating each of these minimum elements into its supervisory system.***

### ***Designating Principals Responsible For Supervision - Rule 3010(a)(2)***

Rule 3010(a)(2) requires that a member assign responsibility for each type of business that the member conducts to one or more principals. This requirement is limited to those types of business that require registration as a broker/dealer. If a member also conducts a type of business that does not require broker/dealer registration, this requirement would not apply to that particular type of business, however, other regulatory requirements, including, for example, state insurance laws, may apply.

The Rule requires that principals be appropriately registered and vested with the authority to carry out the supervision for which they are

responsible. Persons responsible for supervising a particular type of business, therefore, must be registered as principals for that type of business. They must also have the authority to implement the written supervisory procedures and take any other action necessary to fulfill their responsibilities.

This provision seeks to achieve several regulatory objectives:

- to ensure that there is an identifiable individual who has ultimate responsibility for implementing the member's supervisory system and written procedures for each type of business the member conducts;
- to ensure that the individual responsible for a particular type of business possesses the knowledge and experience necessary to supervise the business; and
- to ensure that the person responsible for supervision actually has the authority to supervise.

A member would not be in compliance with the Rule, for example, if a person registered solely as a general securities principal was responsible for supervising the preparation of financial reports that are filed with regulators. In addition, a member would not be in compliance with the Rule if a general securities principal was responsible for supervising general securities activities, but was not given the requisite authority to fulfill the supervisory obligations. This could occur, for example, if the principal was not granted access to those documents necessary to determine whether a registered representative was complying with the NASD's suitability rules, or if the principal was not permitted to take action against or place under closer supervision a person that failed to follow the firm's compliance guidelines. Having the requisite authority to fulfill supervisory

responsibilities generally means that the person charged with the responsibilities can exercise power to affect the conduct of a person whose behavior is at issue. This, however, does not necessarily mean that the supervisor must have the ability to terminate a person whose conduct is at issue.<sup>4</sup>

#### ***Designating Offices Of Supervisory Jurisdiction - Rule 3010(a)(3)***

Certain types of activities (e.g., order execution) are sufficiently vested with regulatory significance that the locations where members conduct these types of activities require special recognition and attention. Such locations or offices are known as offices of supervisory jurisdiction (OSJ). Paragraph (g)(1) of the Rule lists the types of activities that have been identified by the NASD as requiring significant supervisory attention and defines the term "office of supervisory jurisdiction" as any office of a member where one or more of the delineated activities occur.

A member must designate as an OSJ any office that conducts any of the functions listed in that section. A member also must designate any other office as an OSJ, if such designation is necessary to enable the member to fulfill its supervisory obligations. In making this determination, members must consider several factors that are listed in the Rule. These factors include whether the activities conducted at the office involve regular contact with public customers, the distance of the office from another OSJ, and whether the activities conducted at the office are diverse or complex.

In summary, in order to design a supervisory system that is in compliance with this paragraph of the Rule, a member must:

- review the types of activities that occur at each of its offices;

- determine for each office whether any of the activities listed in paragraph (g)(1) of Rule 3010 are conducted at the office; if one or more of the activities listed are conducted, then the member must designate that office as an OSJ; and

- determine, after considering the factors listed in paragraph (a)(3), if it is necessary, in order to fulfill its supervisory obligations, to designate any other offices as OSJ.

Members' obligations under this paragraph of the Rule, as well as their obligations under other paragraphs of the Rule, are ongoing. Thus, as events occur that change the structure of the firm, such as changing the types of business that are conducted in different locations, adding registered personnel, or opening, moving or closing offices, members must consider the effects that these events will have on OSJ designation requirements. In this regard, members must have systems and procedures in place to determine the effects of such events or changes.

#### ***Assigning Supervisors For Registered Representatives And Designating OSJ/Non-OSJ Branch Supervisors - Rule 3010(a)(5) And (a)(4)***

Paragraph (a)(5) of the Rule requires that **each registered person** be assigned to at least one supervisor. Thus, it is irrelevant whether the person to be supervised is a registered representative or a registered principal, or that the registered person is part of the senior management of the member.

When designating supervisory personnel, it is important to remember that a supervisor can only be responsible for supervising those activities for which they are qualified. For example, a supervisor with a qualification limited to investment company products and variable contracts cannot supervise a

registered person conducting general securities activities. In such a situation, the supervisor could supervise the registered person's activity in investment company products and variable contracts, but an appropriately qualified supervisor would have to supervise the registered person's other activities.

The requirement that every registered person be assigned at least one supervisor serves several functions. It provides the person being supervised with a clear line of authority and specifically identifies for the supervisor the persons for which he or she has responsibility. In addition, this requirement recognizes the obvious fact that a supervisory system reasonably designed to achieve compliance with the securities laws does not permit persons to supervise themselves.

In summary, in order to design a supervisory system that is in compliance with this paragraph of the Rule, a member must:

- determine the number of registered persons associated with it;
- determine the type(s) of activity each registered person conducts;
- determine the qualifications of each person assigned supervisory responsibility;
- assign each registered person to one or more supervisors that are qualified to supervise the activities of the registered person; and
- continue to monitor the activities of registered persons and the qualifications of their assigned supervisors to ensure that the supervisors are properly qualified.

Paragraph (a)(4) of the Rule requires members to assign each OSJ at least one principal with the authority to carry out the supervisory responsibilities conducted at the

OSJ. Each branch office that is not designated as an OSJ also must have at least one supervisor assigned to it. In this situation, certain supervisory **tasks** may be delegated to a registered representative. However, in all cases, ultimate supervisory **responsibility** for every registered and unregistered branch office must be assigned to one or more appropriately registered principals.

Having one or more identifiable registered principals assigned to supervise each OSJ provides clarity as to who is responsible for all of the supervisory obligations assigned to each OSJ. For example, it provides persons working in an OSJ or being supervised from an OSJ with a clear line of authority and specifically identifies for the supervisor the areas and persons for which the supervisor has responsibility.

Paragraph (a)(4) of the Rule also requires that the person or persons assigned responsibility for supervising an OSJ or a branch office be **appropriately** registered to fulfill the supervisory obligations assigned to the office. Therefore, those individuals with ultimate responsibility for supervising each type of business conducted at the office or supervised from the office must be registered as a principal for that type of business. Thus, a member must ensure that the supervisor(s) assigned to an OSJ are appropriately qualified to supervise the activities conducted or supervised from that OSJ. For example, a principal with limited qualifications could not be assigned as the sole supervisor of an OSJ that conducted activities for which the principal was not qualified. In such a situation, another principal, whose qualifications correspond to the other types activities, must be assigned to the OSJ. In addition, these persons must have the authority to implement the written supervisory procedures and take any other action required to fulfill the supervisory obligations assigned to the office.

In summary, in order to design a supervisory system that is in compliance with this paragraph of the Rule, a member must:

- determine which of its offices are designated as OSJ;
- determine the type of activity conducted at or supervised from each OSJ;
- determine the qualifications of the person assigned supervisory responsibility;
- assign to each OSJ or non-OSJ branch one or more supervisors that are qualified to supervise the activities of the office;
- provide supervisors with the authority to fulfill the supervisory obligations assigned to them; and
- continue to monitor the activities of registered persons and the qualifications of their assigned supervisors to ensure that the supervisors are qualified to supervise.

#### ***Determining Qualifications Of Supervisory Personnel - Rule 3010(a)(6)***

Paragraph (a)(6) of the Rule sets the standard for determining the qualifications of supervisors. The Rule requires that members make reasonable efforts to determine that all supervisory personnel are qualified to fulfill their assigned responsibilities. At a minimum, the supervisor must be properly licensed to conduct the assigned responsibilities. However, passing the appropriate licensing examination does not, in and of itself, qualify a supervisor. Members should determine that supervisors understand and can effectively conduct their requisite responsibilities. In this regard, members should consider the experience the supervisor possesses or the training the supervisor has received.

Determining whether reasonable efforts have been made by a member to ascertain a supervisor's qualifications depends on the facts and circumstances surrounding the situation. For example, if a firm failed to determine whether a supervisor is properly registered for the type of activity the supervisor is responsible for overseeing, the firm would not be considered to have made a reasonable effort, given that a person's registration status is readily available. In addition, merely relying on the representations made by a person about his or her qualifications may not be sufficient if the member can confirm the representations without having to undertake extreme or excessive efforts. A member can contact the person's current or former supervisors, especially when the supervisors are associated with the member.

A member's obligation to determine whether a supervisor is properly qualified to fulfill his or her supervisory duties is an ongoing obligation. Thus, a member that receives indications that a supervisor is having difficulty performing his or her supervisory functions would have an obligation to investigate to determine whether such person can continue in a supervisory role.<sup>5</sup>

A member's written supervisory procedures should identify those qualifications it has deemed important in determining whether a supervisor can fulfill his or her assigned responsibilities, the procedures for determining whether the supervisor possesses such qualifications and the methods for monitoring the supervisor's performance.

### **Annual Compliance Meeting - Rule 3010(a)(7)**

Paragraph (a)(7) of the Rule requires that each registered representative participate, at least once each year, in an interview or meeting at which compliance matters relevant to the particular representative are discussed. This requirement gives

registered representatives the opportunity to regularly discuss compliance issues and assists the firm in ensuring that representatives remain current on changing compliance requirements or changes in the firm. These meetings can be held with representatives individually or with a group of representatives, and can be held at a central or regional location or at the member's place of business. Matters other than compliance may also be discussed at the meeting. The member can designate other persons to conduct the meeting, however, **members remain ultimately responsible for fulfilling the obligations under the Rule**. Thus, at a minimum, members must review the presentation prepared by a third party to determine that all the necessary topics will be discussed at the meeting.

The Rule provides members with substantial flexibility in implementing the compliance meeting. Depending on the method chosen, however, certain precautions must be taken to comply with the Rule. For example, if a meeting is held with a group of registered representatives, the meeting must cover compliance matters that relate to the different types of activities that each of the representatives attending the meeting conduct. Relevant matters not addressed at the group meeting must be covered at an individual meeting or at another group session. Whether the meeting is conducted with each representative individually or through group meetings, each individual representative must be provided the opportunity to discuss compliance matters that relate to the types of activities he or she conducts.

With respect to delivery mediums, the meeting can be conducted by video conference, interactive classroom setting, telephone, or other electronic means, provided that certain safeguards are in place. Members choosing to conduct compliance conferences other than in person must ensure that the

communication forum used allows for interactive communication with the representative. This means, at a minimum, that attendees are able to hear presenters live and, in an interactive environment, ask questions and engage in dialogue with the presenters. This does permit presenters to use supplemental learning and communications tools, such as video tapes or computer programs that include informational or instructional materials.

In addition to ensuring an interactive environment for all compliance conferences, members conducting such conferences through electronic means or aids may bear a heightened responsibility associated with such electronic communications. As with all compliance conferences, members must ensure that representatives scheduled to appear at a particular location in fact arrive at and are in attendance for the entire conference.

A member's written supervisory procedures should document the procedures for developing a meeting that discusses relevant compliance matters, determining when a representative must attend and confirming a representative's attendance at a required compliance meeting.

In summary, in order to design a supervisory system that is in compliance with this paragraph of the Rule, a member must:

- confirm that each registered representative attended a compliance meeting within one year from the last compliance meeting attended;
- identify those representatives that have not attended a compliance meeting at least once in the last year;
- determine for each registered representative the types of activities that the representative conducts;

- develop a meeting, whether held on an individual basis or as a group, that discusses compliance matters relevant to each type of activity conducted by the representative or representatives; and
- determine what, if any, special safeguards must be in place depending on how the meeting is conducted (*e.g.*, video conferencing or contracting with a third party to conduct the meeting).

### **Review Of Supervisory System - Rule 3010(a)(8)**

Rule 3010(a)(8) requires that at least one principal be designated to review the firm's supervisory system, procedures, and internal inspections. If more than one principal is so designated, it must be clear which areas of the supervisory system each has been assigned to review. The purpose of this review is to determine the effects of changes such as hiring additional registered persons, the departure of registered persons, commencing a new line of business (*e.g.*, market making), a change in ownership, or changes in the securities laws, on the member's existing supervisory systems and procedures. A supervisory system and/or written procedures that are not current with regulatory requirements or the structure and business activities of the member would not be reasonably designed to achieve compliance with the securities laws.

The Rule requires that one or more registered principals be specifically assigned this responsibility. In this way, there is at least one person at each member who is responsible for reviewing and analyzing the effect of such changes on the member's supervisory system and procedures as a whole. However, the utility of such a review is undermined if the problems or deficiencies discovered as a result are not addressed and corrected. The principal assigned to conduct the review, therefore, also

has the obligation to take action reasonably designed to achieve compliance with the securities laws or to recommend such action to senior management. Thus, for example, if a principal assigned this responsibility discovers that the written supervisory procedures do not address all the types of businesses that the firm conducts, the principal must take action or recommend such action to senior management to correct this deficiency.

### **Internal Inspections - Rule 3010(c)**

It is important that members not only review their supervisory systems and procedures to ensure that they are current and adequate, but also conduct inspections to determine whether the systems and procedures are being followed. Paragraph (c) of the Rule, therefore, requires members to annually review the businesses they conduct, and sets forth the standard for this review.

The mandatory annual review must be reasonably designed to assist members in detecting and preventing violations of the securities laws. The "reasonably" designed standard means, for example, that indications of problems, or "red flags," must be investigated. When a member receives an indication of irregularities in a customer's account (*e.g.*, a compliance program indicates or a supervisor discovers a frequency of trading in a customer's account that exceeds the customer's normal level of trading), it must require that the account be examined to determine whether churning or some other violative conduct has occurred. If it does not, then that member's examination procedures would not be reasonably designed to detect or prevent irregularities or abuses.

The Rule also requires that each office of a member be reviewed. The frequency of this review will depend on several factors, including whether an office is designated as an OSJ. At

a minimum, an OSJ must be reviewed every year, whereas branch offices are required to be reviewed in accordance with a stated cycle. In determining the inspection cycle for a branch office, a member must consider the nature and complexity of the securities activity for which the branch office is responsible, as well as the volume of business conducted at the office and the number of associated persons assigned to the office. Once a member determines its inspection cycle, it must document the cycle in its written supervisory and inspection procedures.

Some NASD members employ associated persons at offices that are not designated as OSJs and are not registered as branch offices. For purposes of this *Notice*, such offices are referred to as "unregistered offices" and include any location at which a member is conducting a securities business that does not fall within the definition of OSJ or branch office. Some associated persons working in these unregistered offices may be involved in other business enterprises, such as insurance, real estate sales, accounting, tax planning, or investment advisory services, and consequently may be classified for compensation purposes as part-time employees or independent contractors. Some unregistered offices also operate as separate business entities under names other than those of the members. While the NASD does not encourage or discourage such arrangements, a large number of geographically diverse offices presents the potential that sales practice problems will not be as quickly identified as in larger, centralized branch offices. This increased potential must be taken into account when drafting supervisory procedures.

Members employing associated persons in unregistered offices are responsible for establishing and carrying out procedures that will subject these persons to effective supervision. To be effective, the

supervision must be designed to monitor securities-related activities and to detect and prevent regulatory and compliance problems of associated persons working at unregistered offices. In this regard, a member's supervisory responsibility would include, but not be limited to:

- maintaining a record of the locations of all unregistered offices, which must be made available to regulators upon request;
- educating associated persons working from an unregistered office as to their obligations to the firm and to the public, including prohibited sales practices;
- maintaining regular and frequent professional contact with such individuals; and
- implementing appropriate supervisory practices, such as records inspections and compliance audits at the associated persons' places of employment, to ensure that their methods of business and day-to-day operations comply with applicable rules and requirements.

To fulfill these obligations, a firm should consider whether the number and location of its registered principals are adequate to properly supervise its unregistered office personnel effectively.

The Rule does not specify the frequency of inspections for unregistered offices, but in order to fulfill the general obligation to supervise, such inspections should be conducted according to a regular schedule. The frequency and scope of inspections should be determined based on factors such as the nature and volume of business conducted at the office and the nature and extent of contact with customers. A non-OSJ office that supervises one or more unregistered offices should be inspected at least annually.

Inspections of unregistered offices should include, among other things, a review of any on-site customer account documentation and other books and records, meetings with individual registered representatives to discuss the products they are selling and their sales methods, and an examination of correspondence and sales literature.

Unannounced visits may be appropriate, particularly where there are indications of misconduct or potential misconduct, such as the receipt of a significant number of customer complaints, personnel with disciplinary records, or excessive trade corrections, extensions, liquidations, or variable contract replacements. Each firm should determine the types of "red flags" that would trigger an unannounced inspection. Members should note that in *In re Royal Alliance Associates, Inc.*,<sup>6</sup> the SEC stated that it harbored grave doubts that a practice of conducting a pre-announced compliance examination only once a year would necessarily discharge the supervisory obligations of any firm that incorporates a structure in which smaller offices are operated by only one or two representatives. In addition, the SEC recently reaffirmed its belief in the importance of unannounced examinations in *In re NYLIFE Securities, Inc.*<sup>7</sup> In this case, the SEC found that NYLIFE Securities' failure to conduct an unannounced examination of a registered representative during a seven-year period was inadequate to satisfy its supervisory obligations, especially in light of the fact that approximately one-half of NYLIFE Securities' approximately 6,300 registered representatives work in off-site offices with fewer than five people.

*Royal Alliance* and *NYLIFE Securities* emphasize the need for close attention to supervision of small, dispersed offices. Members are encouraged to read both the *Royal Alliance* and *NYLIFE Securities* decisions in their entirety,

as well as *Notice to Members 98-38, NASD Reminds Members of Supervisory and Inspection Obligations*.

## Conclusion

With a better understanding of the reasons for some of the requirements contained in Rule 3010, members can more effectively develop a supervisory system that is tailored to their specific structure. Supervisory systems and written procedures must address changes in regulatory requirements, the types of business the member conducts, and the structure of the member. A member must determine the effects firm-wide of such changes. For example, the decision to begin maintaining customers' funds at a branch office would require that the office be designated as an OSJ, which would in turn require that the office be supervised by an appropriately registered principal and that the office be inspected annually. One change can have multiple effects.

To keep their supervisory systems and written procedures current, members should regularly read *NASD Notices to Members*, *NASD Interpretive Letters*, and *NASD Regulatory and Compliance Alerts*, all of which are available on NASD Regulation's Web Site ([www.nasdr.com](http://www.nasdr.com)). In addition, it is important that each member carefully consider any obligations or requirements imposed by state securities laws, federal laws and rules, and other self-regulatory organization rules. Supervisory obligations of firms and the standards against which their conduct will be measured, may be affected by SEC decisions and interpretations, as well as by judicial determinations.

## Endnotes

<sup>1</sup>*NASD Notice to Members 98-96* (December 1998).

<sup>2</sup>Members should read this *Notice* in conjunction with Rule 3010. The NASD's rules are available on the NASD Regulation's Web Site at [www.nasdr.com](http://www.nasdr.com).

<sup>3</sup>*Supra* note 1. *Notice to Member 98-96* describes additional types of practices the

NASD believes are reasonable and others that it has cited as deficient.

<sup>4</sup>*See In Re Christopher J. Benz*, Securities Exchange Act Release No. 38440.

<sup>5</sup>*See In Re Charles L. Campbell*, Securities Exchange Act Release No. 26510, 42 SEC Docket 1095.

<sup>6</sup>SEC Release No. 34-38174 (January 15, 1997)

<sup>7</sup>SEC Release No. 34-40459 (September 23, 1998)

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# NASD Notice to Members 99-46

Maximum SOES Order  
Sizes Set To Change  
July 1, 1999

## Suggested Routing

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## Executive Summary

Effective July 1, 1999, the maximum Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>) order sizes for 336 Nasdaq National Market<sup>®</sup> (NNM) securities will be revised in accordance with National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 4710(g).

For more information, please contact Nasdaq<sup>®</sup> Market Operations at (203) 378-0284.

## Description

Under Rule 4710, the maximum SOES order size for an NNM security is 1,000, 500, or 200 shares, depending on the trading characteristics of the security. The Nasdaq Workstation II<sup>®</sup> (NWII) indicates the maximum SOES order size for each NNM security. The indicator "NM10," "NM5," or "NM2" displayed in NWII corresponds to a maximum SOES order size of 1,000, 500, or 200 shares, respectively.<sup>1</sup>

The criteria for establishing maximum SOES order sizes are as follows:

- (1) a 1,000-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 3,000 shares or more a day, a bid price of less than or equal to \$100, and three or more Market Makers;
- (2) a 500-share maximum order size shall apply to NNM securities on SOES with an average daily non-block volume of 1,000 shares or more a day, a bid price of less than or equal to \$150, and two or more Market Makers; and
- (3) a 200-share maximum order size shall apply to NNM securities with an average daily non-block volume of less than 1,000 shares a day, a bid price of less than or equal to

\$250, and two or more Market Makers.

In accordance with Rule 4710, Nasdaq periodically reviews the maximum SOES order size applicable to each NNM security to determine if the trading characteristics of the issue have changed so as to warrant an adjustment. Such a review was conducted using data as of March 31, 1999, pursuant to the aforementioned standards. The maximum SOES order-size changes called for by this review are being implemented with three exceptions.

- First, issues were not permitted to move more than one size level. For example, if an issue was previously categorized in the 1,000-share level, it would not be permitted to move to the 200-share level, even if the formula calculated that such a move was warranted. The issue could move only one level to the 500-share level as a result of any single review.
- Second, for securities priced below \$1 where the reranking called for a reduction in the level, the maximum SOES order size was not reduced.
- Third, for the top 50 Nasdaq securities based on market capitalization, the maximum SOES order sizes were not reduced, regardless of whether the reranking called for a reduction.

In addition, with respect to initial public offerings (IPOs), the SOES order-size reranking procedures provide that a security must first be traded on Nasdaq for at least 45 days before it is eligible to be reclassified.

Thus, IPOs listed on Nasdaq within the 45 days prior to March 31, 1999, were not subject to SOES order-size reranking procedures.

Following is a listing of the 336 NNM issues that will have the maximum SOES order size changed on July 1, 1999.

### Endnote

<sup>1</sup>Previously, Nasdaq Market Makers were required to maintain a minimum quotation

size for an NNM security in an amount equal to the maximum SOES order size for that security. See generally, NASD Rule 4613(a)(1) - (2). On July 15, 1998, the Securities and Exchange Commission approved an amendment to NASD Rule 4613(a)(1)(C), which reduced the minimum quotation size for all Nasdaq securities to one normal trad-

ing unit when a Market Maker is not displaying a limit order, and which thus eliminated the requirement that Market Makers quote a size equal to the maximum SOES order size.

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## Maximum SOES Order Size Changes In NNM Securities All Issues In Alphabetical Order By Security Name (Effective July 1, 1999)

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
TCHC	21ST CENTURY HLDG	500	1000	BBHF	BARBERS HAIRSTYLIN	500	1000
<b>A</b>				BPFH	BOSTON PVT FIN	500	1000
ASBP	A S B FINANCIAL CP	500	200	EPAY	BOTTOMLINE TECH INC	200	500
ABANP	ABI CAP TRUST PFD	500	1000	BOYD	BOYD BROS TRANS IN	500	1000
ABOV	ABOVENET COMMUNICTNS	200	500	BRAD	BRADLEES INC	200	500
AAABB	ADMIRALTY BCP B	500	1000	BCST	BROADCAST.COM	1000	500
DINEW	ADVANTICA WTS	1000	500	BRCM	BROADCOM CORP CL	500	1000
AMRI	ALBANY MOLECULAR RES	200	500	BVRS	BVR SYSTEMS LTD	500	1000
AORGB	ALLEN ORGAN CO B	200	500	<b>C</b>			
ALNC	ALLIANCE FINL CP	200	500	CBBI	C B BANCSHARES	500	1000
ALLN	ALLIN COMMUNICATIO	500	200	CERB	C E R B C O INC	500	200
AIFC	AMER INDEMNITY FIN	500	1000	FLYAF	C H C HELICO CL A	200	500
ANFI	AMERICAN NATL FINL	200	500	CSPI	C S P INC	500	1000
ASCA	AMERISTAR CASINO	1000	500	CFFI	C&F FINANCIAL CP	200	500
AFSC	ANCHOR FIN CORP	1000	500	CNEBF	CALL-NET ENTRPR CL B	500	1000
ANDR	ANDERSEN GROUP INC	200	500	CLZRW	CANDELA CP WTS	200	500
ASIGF	ANSALDO SIGNAL NV	1000	500	CNTBY	CANTAB PHARM ADR	200	500
ARCAF	ARCADIS NV	500	1000	CSWC	CAPITAL SOUTHWEST	1000	500
ARIS	ARI NETWORK	1000	500	CBCL	CAPITOL BANCORP LT	1000	500
ARMHY	ARM HLDGS ADS	1000	500	CBCLP	CAPITOL TRUST I PF	500	1000
ATYT	ATI TECHNOLOGIES	200	500	CPRK	CAPROCK COMM	500	1000
ATLPP	ATLANTIC PFD CAP CP	200	500	CRRB	CARROLLTON BANCORP	500	200
AIII	AUTOLOGIC INFO INT	1000	500	CECX	CASTLE ENERGY CP	500	1000
AXHM	AXIOHM TRANS SOL	500	200	CATT	CATAPULT COMM CP	200	500
<b>B</b>				CLPA	CELL PATHWAYS INC	500	1000
BESI	B E SEMICON ORD	200	500	CCBN	CENTRAL COAST BCP	500	1000
BFEN	B F ENTERPRISES IN	500	200	CFAC	CENTRAL FIN ACCEPT	1000	500
BNBCP	B N B CAP TR PFD	200	500	CHNL	CHANNELL COML CORP	1000	500
BTBT	B T SHIP SP ADR	500	200	CHERB	CHERRY CP CL B	500	200
BWINB	BALDWIN LYONS CL B	500	1000	CNRMF	CINRAM INTL INC	200	500
BPAO	BALDWIN PIANO ORGA	1000	500	CIVC	CIVIC BANCORP	500	1000
BMCCP	BANDO MCGLOC PFD A	500	200	CLKB	CLARK/BARDES HLDGS	500	1000
BNSC	BANK OF SANTA CLAR	500	200	CNBB	CNB INC	200	500
BKFR	BANKFIRST CORP	500	1000	CNYF	CNY FINANCIAL CP	500	1000
				CTBP	COAST BANCORP	200	500
				COHB	COHOES BANCORP	200	500

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
CBAN	COLONY BANKCORP	200	500	EXAP	EXCHANGE APPLICATNS	200	500
CBBO	COLUMBIA BANCORP	500	1000	EXDS	EXODUS COMMUN	1000	500
CNAF	COMMERCIAL NATL FI	200	500				
CFIC	COMMUNITY FIN CP	1000	500	<b>F</b>			
CMSV	COMMUNITY SVGS	200	500	FCBF	F C B FINANCIAL CP	500	1000
CNQR	CONCUR TECHNOLOGIES	200	500	FLAG	F L A G FINANCIAL	500	1000
CNXT	CONEXANT SYSTMS	200	500	FRPP	F R P PROPERTIES I	200	500
CNRD	CONRAD INDS INC	500	1000	FTMTF	FANTOM TECHS INC	500	1000
CWCO	CONS WATER CO INC	500	1000	FATB	FATBRAIN.COM INC	200	500
CMETS	CONTL MORTGAGE EQUIT	500	1000	FFLC	FFLC BNCP INC	1000	500
COMMF	CORECOMM LTD	500	1000	FSBI	FIDELITY BANCORP I	500	200
COCO	CORINTHIAN COLLEGES	200	500	FFFLP	FIDELITY CAP TR I	1000	500
CSCQW	CORRECTIONAL SVCS	500	200	FACT	FIRST ALBANY COS	500	1000
CRTQ	CORTECH INC	200	500	FBNC	FIRST BANCP TROY	200	500
COVD	COVAD COMMUN GROUP	200	500	FBSI	FIRST BANCSHARES	200	500
CYOE	COYOTE NETWORK SYS	500	1000	FSTC	FIRST CITIZENS COR	500	1000
CMST	CREATIVE MASTER INTL	200	500	FFES	FIRST FED S L E	1000	500
CRNS	CRONOS GROUP THE	1000	500	FMSB	FIRST MUTUAL SVGS	500	1000
CNGR	CROWN GROUP INC	500	1000	FPFC	FIRST PLACE FINL	200	500
CTCI	CT COMMUNICATIONS	200	500	FRGB	FIRST REGIONAL BNC	200	500
CURT	CURTIS INTL LTD	500	1000	FSLB	FIRST STERLING BKS	500	1000
<b>D</b>				FUNC	FIRST UNITED CORP	500	1000
DRAI	DATA RESEARCH ASSO	500	1000	FELE	FRANKLIN ELEC INC	1000	500
HYTDL	DECS TRUST IV	200	500	FTBK	FRONTIER FIN CORP	500	1000
DSGX	DESCARTES SYS GRP	200	500	FFHH	FSF FINANCIAL CP	500	1000
DCBK	DESERT COMMUNITY B	200	500	FTNB	FULTON BANCORP INC	1000	500
DCPI	DICK CLARK PROD IN	200	500	<b>G</b>			
DTEK	DISPLAY TECHS	500	1000	GBNK	GASTON FED BANCP	1000	500
DOCD	DOCDATA NV	1000	500	GFLSP	GCB CAP TRUST PFD	500	200
DHOM	DOMINION HOMES INC	1000	500	GSLI	GEN SCANNING INC	200	500
DCLK	DOUBLECLICK INC	1000	500	GENBB	GENESEE CP B	1000	500
DRRAP	DURA AUTO CAP TR	1000	500	GZMO	GENZYME MOLEC	500	1000
DXPE	DXP ENTERPRISE	200	500	GCTY	GEOCITIES	1000	500
<b>E</b>				GSCI	GEOSCIENCE CP	500	1000
ETEK	E-TEK DYNAMICS INC	200	500	GABC	GERMAN AMER BANCOR	500	1000
ELXS	E L X S I CP	1000	500	GSPT	GLOBAL SPORTS INC	500	1000
EGLB	EAGLE BANCGROUP IN	1000	500	GBIX	GLOBIX CORP	500	1000
EWBX	EARTH WEB INC	500	1000	GNET	GO2NET INC	1000	500
EWBC	EAST WEST BANCORP	200	500	GUCO	GRAND UNION CO	500	1000
EBAY	EBAY INC	200	500	<b>H</b>			
DISHP	ECHOSTAR CV PFD C	500	200	HPSC	H P S C INC	500	1000
EDCO	EDISON CONTROL CP	200	500	HABC	HABERSHAM BANCORP	200	500
ELET	ELLETT BROTHERS IN	1000	500	HACHA	HACH COMPANY CL A	1000	500
ENBRF	ENBRIDGE INC	200	500	HABKP	HAMILTON CAP TR I	200	500
ENGEF	ENGEL GNRL DEV	1000	500	HRBF	HARBOR FED BNCP IN	500	1000
ENTU	ENTRUST TECHS INC	500	1000	HARL	HARLEYSVILLE SAV B	200	500
EQSB	EQUITABLE FED SAV	1000	500				

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
HLTH	HEALTHEON CORP	200	500	MKFCF	MACKENZIE FIN CP	200	500
HMLK	HEMLOCK FED FIN CO	500	1000	FMARP	MARINER CAP TR PFD	1000	500
HTBK	HERITAGE COMMERCE	200	500	MARN	MARION CAP HLDGS	500	1000
HRLYZ	HERLEY INDS WTS	200	500	MKTW	MARKETWATCH.COM INC	200	500
HIFN	HI/FN INC	200	500	MSDX	MASON-DIXON BCSHS	500	1000
HBNK	HIGHLAND FEDERAL B	200	500	MATE	MATEWAN BCSHS INC	500	1000
HOEN	HOENIG GP INC	500	1000	MAXE	MAX ERMAS RESTR IN	500	1000
HOMEF	HOME CTRS (DIY) LTD	1000	500	MAXC	MAXCO INC	1000	500
HLFC	HOME LOAN FINL CP	1000	500	MDCA	MDC COMMUN CORP	500	1000
HPBC	HOME PORT BNCP INC	1000	500	MEDE	MEDE AMERICA CORP	200	500
HFBC	HOPFED BANCORP INC	500	1000	MBFC	MEGABANK FIN CORP	200	500
<b>I</b>				MIGI	MERIDIAN INS GP IN	500	1000
				MRET	MERIT HOLDING CP	500	1000
				MERK	MERKERT AMERICA CORP	200	500
INDBP	INDEP CAP TR I PFD	500	200	MCBI	METROCORP BANCSHARES	200	500
INHO	INDEPENDENCE HLDG	200	500	METFP	METROPOLITAN CAP	500	1000
IHIIZ	INDUSTRIAL HLDG WT	500	1000	METF	METROPOLITAN FIN C	500	1000
ISCX	INDUSTRIAL SCI COR	500	1000	MSIX	MINING SVC INTL CP	1000	500
INCX	INFOCURE CP	200	500	MMAN	MINUTEMAN INTL INC	500	200
INSP	INFOSPACE.COM INC	200	500	MMPT	MODEM MED POPPE	200	500
INKT	INKTOMI CORP	500	1000	MMTM	MOMENTUM BUS APPLICA	200	500
ILABY	INSTRUMENTATION ADR	1000	500	MBBC	MONTEREY BAY BANCO	1000	500
INMG	INSURANCE MGMT SOLUT	200	500	MORP	MOORE PRODUCTS CO	1000	500
GEEK	INTERNET AMERICA INC	200	500	CRGO	MOTOR CARGO INDS	1000	500
INTT	INTEST CORPORATION	1000	500	MOTR	MOTOR CLUB OF AMER	500	1000
IBHVF	INTL BRIQUETTES	500	200	<b>N</b>			
IROQ	IROQUOIS BNCP	500	1000				
<b>K</b>				NARA	NARA BANK N A	500	1000
				NTBK	NET.BANK INC	500	1000
KNAP	KAPE AND VOGT MFG	500	1000	NECS	NETCOM AB ADR	1000	500
KOSS	KOSS CP	500	1000	NETS	NETWORK EVENT THEA	200	500
<b>L</b>				NBSC	NEW BRUNSWICK SCI	500	1000
				NHTB	NEW HAMPSHIRE THRI	500	1000
LXBK	L S B BANCSHARES	500	1000	NSCF	NORTHSTAR COMPUTER	1000	500
LABH	LAB HOLDINGS INC	500	1000	TONS	NOVAMERICAN STEEL	1000	500
LACO	LAKES GAMING INC	200	500	NVDA	NVIDIA CORP	200	500
LCCO	LAMAR CAP CORP	200	500	<b>O</b>			
LAND	LANDAIR CORP	500	1000				
LARK	LANDMARK BSCHS INC	200	500	ODFL	OLD DOMINION FREIG	500	1000
LWIN	LEAP WIRELESS	500	1000	OWOS	OWOSSO CP	1000	500
LGSA	LGS GROUP CL A	200	500	<b>P</b>			
LIBHA	LIBERTY HOMES INC	200	500				
LNCB	LINCOLN BANCORP	200	500	PFCB	P.F. CHANG'S CHINA	200	500
LICB	LONG ISLAND FIN	1000	500	PCNTF	PACIFIC INTERNET SE	200	500
<b>M</b>				ICED	PACKAGED ICE INC	200	500
				PCCIP	PCC CAPITAL I PFD	500	200
MLCH	M L C HOLDINGS INC	1000	500	PMFG	PEERLESS MFG CO	1000	500
MACC	MACC PRIVATE EQU	500	200	PEBK	PEOPLES BANK	500	200

Symbol	Security Name	Old Level	New Level	Symbol	Security Name	Old Level	New Level
PEBO	PEOPLES BNCP INC	500	1000	SATH	SHOP AT HOME INC	500	1000
PBKB	PEOPLES CAP TR PFD	200	500	SFNCA	SIMMONS FIRST NATL A	500	1000
PERM	PERMANENT BNCP INC	1000	500	SIXR	SIX RIVERS NAT BK	1000	500
PNTGF	PETROMET RES LTD	500	1000	SKAN	SKANEATELES BANCP	500	1000
PHLYL	PHIL CONS GR PRIDE	200	500	SGAI	SMITH-GARDNER&ASSOC	200	500
PING	PINNACLE GLOBAL GRP	200	500	SNBJ	SNB BANCSHARES INC	200	500
PHFCP	PITT HOME CAP TR	500	200	SECAY	SOCIETE EUR ADS A	200	500
PWCC	POINT WEST CAP CP	500	1000	SFFS	SOUND FED BANCORP	500	1000
PLMD	POLYMEDICA CORP	200	500	SJFC	SOUTH JERSEY FINL CP	200	500
BPOPP	POPULAR INC PFD A	200	500	OKSB	SOUTHWEST BNCP INC	500	1000
PRBC	PRESTIGE BNCP INC	500	200	CTLG	SPECIALTY CATALOG	1000	500
PRENP	PRICE ENTERPR PFD	500	1000	SPZN	SPEIZMAN INDS INC	500	1000
PSMT	PRICESMART INC	500	1000	SNBCO	SUN CAPITL TR II	500	1000
PRVT	PRIVATE MEDIA GROUP	200	500	SIVBP	SVB CAPITAL I PFD	1000	500
PFACP	PRO-FAC COOP PFD A	500	1000	SVBF	SVB FIN SVCS INC	200	500
PRGY	PRODIGY COMM CORP	200	500	SWMAY	SWEDISH MATCH AB ADR	1000	500
PRSP	PROSPERITY BNC SHS	500	1000				
PAMC	PROVIDENT AMER	500	1000	<b>T</b>			
PBCP	PROVIDENT BANCORP	200	500	TBFCP	TELEBANC CAP TR	500	1000
CARD	PUBLICARD INC	200	500	TERN	TERAYON COMMUN SYS	500	1000
PLFC	PULASKI FURNITURE	1000	500	TBNC	THE BANC CORPORATION	200	500
<b>Q</b>				TGLO	THEGLOBE.COM INC	500	1000
QLGC	QLOGIC CP	500	1000	TMCS	TICKETMASTER ONLINE	200	500
<b>R</b>				TRKA	TRAK AUTO CP	1000	500
RNWK	REALNETWORKS INC	1000	500	TRNI	TRANS INDS INC	1000	500
REBC	REDWOOD EMPIRE BCP	500	1000	TREVV	TREEV INC WTS	200	500
RIMM	RESEARCH IN MOTION	200	500	TRBO	TURBOCHEF INC	200	500
RSBI	RIDGEWOOD FINL INC	200	500	TUTS	TUT SYSTEMS INC	200	500
RNIC	ROBINSON NUGENT IN	1000	500	<b>U</b>			
RMII	ROCKY MTN INTNET	500	1000	USLM	U S LIME & MINERAL	500	1000
RUSMF	RUSSELL METALS	200	500	USPH	U S PHYSICAL THERA	1000	500
<b>S</b>				UBID	UBID INC	200	500
SFED	S F S BANCORP INC	1000	500	UCBH	UCBH HOLDINGS INC	500	1000
SGVB	S G V BANCORP INC	200	500	ULTD	ULTRADATA CP	1000	500
SJNB	S J N B FINANCIAL	500	1000	UBSH	UNION BANKSHARES	500	1000
STVI	S T V GROUP INC	1000	500	UNPH	UNIPHASE CORP	1000	500
SCHR	SCHERER HEALTHCARE	500	1000	UFCS	UNITED FIRE CASUAL	500	1000
SCOP	SCOOT.COM ADR	500	1000	UNEWY	UNITED NEWS & MEDIA	200	500
SCOT	SCOTTISH ANNUITY&LIF	200	500	UPCOY	UNITED PAN-EUR ADS	200	500
SCFS	SEACOAST FIN SVC	200	500	UNTY	UNITY BANCORP INC	500	1000
SEWY	SEAWAY FOOD TOWN I	500	1000	<b>V</b>			
AIRB	SELECT COMFORT CP	200	500	VDRY	VACU DRY CO	500	1000
SENEA	SENECA FOODS CP A	500	1000	VAIL	VAIL BANKS INC	200	500
SEPR	SEPRACOR INC	1000	500	VALN	VALLEN CP	500	1000
SRNA	SERENA SOFTWARE INC	200	500	VNGI	VALLEY NATL GASES	500	1000
				VENT	VENTURIAN CP	1000	500

<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>	<b>Symbol</b>	<b>Security Name</b>	<b>Old Level</b>	<b>New Level</b>
VRSN	VERISIGN INC	1000	500	<b>X</b>			
VERT	VERTICALNET INC	200	500				
VLOG	VIALOG CORP	200	500	XMCM	XOOM.COM INC	200	500
VCAP	VIRGINIA CAP BANCSHS	200	500	<b>Y</b>			
VBNJ	VISTA BANCORP INC	500	1000				
VINF	VISTA INFO SOL	500	1000	YDNT	YOUNG INNOVATIONS	1000	500
VISX	VISX INC	1000	500				
<b>W</b>				<b>Z</b>			
WVFC	W V S FINANCIAL CP	500	1000	ZVXI	ZEVEK INTL INC	500	1000
WAIN	WAINWRIGHT BK TR C	1000	500				
WBSTP	WEBSTER PFD CAP B	500	200				
WEBK	WEST ESSEX BANCORP	500	1000				
WOFC	WESTERN OHIO FIN	500	1000				
WGBC	WILLOW GROVE BANCORP	200	500				
WSBK	WILSHIRE STATE BK	200	500				

# NASD Notice to Members 99-47

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

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

As of April 22, 1999, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
ACKP.GA	Ackerley Group Inc. Series B	9.000	01/15/09
ADLA.GO	Adelphia Communications Corp.	7.875	05/01/09
AGKF.GA	Agrilink Food Inc.	11.875	11/01/08
AMES.GA	Ames Dept. Stores Inc.	10.000	04/15/06
AMPM.GA	American Plumbing & Mech Inc.	11.625	10/15/08
ANT.GA	Anteon Corp.	12.000	05/15/09
AOCH.GB	Argo-Tech Corp.	8.625	10/01/07
ATUC.GB	Atrium Companies Inc.	10.500	05/01/09
BD.GA	Budget Group Inc.	9.125	04/01/06
BRCH.GA	Breed Technologies Inc.	9.250	04/15/08
CFDU.GA	California Steel Industry Inc.	8.500	04/01/09
CGO.GC	Atlas Air Inc.	9.375	11/15/06
CKIF.GA	Cherokee Intl. LLC/Fin. Inc.	10.500	05/01/09
COP.GC	Capital One Financial Corp.	7.250	05/01/06
CPRK.GB	CapRock Communications	11.500	05/01/09
CVXP.GN	Cleveland Electric Illuminating Co.	6.860	10/01/08
CWNI.GB	Crown Castle Intl Corp.	9.000	05/15/11
CWNI.GC	Crown Castle Intl Corp.	10.375	05/15/11
DCS.GA	Doncaster Plc	8.125	05/01/09
FA.GE	Fairchild Group	10.750	04/15/09
FFSM.GB	Fairchild Semiconductor Corp.	10.375	10/01/07
FTL.GE	Fruit of the Loom Inc.	8.875	04/15/06
GDGK.GA	Great Lakes Dredge & Dock Corp.	11.250	08/15/08
GHCI.GA	Glove Holdings Inc. Series B	14.000	08/01/09
HOVV.GC	Hovnanian Enterprises Inc.	9.125	05/01/09
ICT.GA	International Game Technology	7.875	05/15/04
ICT.GB	International Game Technology	8.375	05/15/09
ISLE.GA	Isle of Capri Casinos Inc.	8.750	04/15/09
JAS.GA	Jo-Ann Stores Inc.	10.375	05/01/07
KNUS.GA	KN Capital Trust I	8.560	04/15/27
MTN.GA	Vail Resorts Inc.	8.750	05/15/09
OCTU.GA	Orion Capital Trust II	7.701	04/15/28
OM.GB	Outboard Marine Corp. Series B	10.750	06/01/08
OSUS.GA	Outsourcing Services Group	10.875	03/01/06
PMK.GB	Primark Corp.	9.250	12/15/08
PSUP.GA	Parker & Parsley Petroleum Co.	8.875	04/15/05
PSUP.GB	Parker & Parsley Petroleum Co.	8.250	08/15/07
SCY.GA	Sports Club Inc.	11.375	03/15/06
SKS.GC	Saks Inc.	7.500	12/01/10
SPMA.GA	Sleepmaster LLC/Finl Corp.	11.000	05/15/09
SUPI.GA	Supreme International Corp.	12.250	04/01/06
TRWP.GB	Transwestern Publishing Co. LP	9.625	11/15/07
VEYI.GA	Vista Eyecare Inc. Series B	12.750	10/15/05
WRC.GA	World Color Press Inc.	8.375	11/15/08

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

Symbol	Name	Coupon	Maturity
AMSD.GC	American Standard Inc.	10.875	05/15/99
BFUG.GA	Blue Bell Funding Inc.	11.850	05/01/99
CGF.GA	Carr-Gottstein Foods Inc.	12.000	11/15/05
IK.GB	Interlake Corp.	12.000	11/15/01
KNE.GA	K N Energy Inc.	9.950	04/01/20
KNE.GB	K N Energy Inc.	9.625	08/01/21
KNE.GC	K N Energy Inc.	8.350	09/15/22
KNE.GD	K N Energy Inc.	7.850	09/01/22
KNE.GE	K N Energy Inc.	8.750	10/15/24
KNE.GF	K N Energy Inc.	6.500	09/01/13
KNE.GG	K N Energy Inc.	7.350	08/01/26
KNE.GH	K N Energy Inc.	6.670	11/01/27
KNE.GI	K N Energy Inc.	6.450	03/01/03
KNE.GJ	K N Energy Inc.	6.650	03/01/05
KNE.GK	K N Energy Inc.	6.800	03/01/08
KNE.GL	K N Energy Inc.	7.250	03/01/28
KNE.GM	K N Energy Inc.	6.300	03/01/21
KNE.GN	K N Energy Inc.	6.450	11/30/01
KR.GD	Kroger Co.	10.000	05/01/99
KWND.GA	Kenetech Corp.	12.750	12/15/02
PIDM.JJ	Piedmont Aviation Inc. Series H	9.650	05/08/99
PIDM.JK	Piedmont Aviation Inc. Series I	9.650	05/08/99
PIDM.KJ	Piedmont Aviation Series J	9.800	05/13/99
PIDM.KK	Piedmont Aviation Series K	9.800	05/13/99
WBN.GA	Wanban Inc.	11.000	05/15/04

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

New Symbol	Old Symbol	Name	Coupon	Maturity
PHNT.GA	PHN.GA	PhoneTel Technologies Inc.	12.000	12/15/06
RTHM.GA	RHYC.GA	Rhythms Netconnections Inc.	13.500	05/15/08

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to Stephen Simmes, Market Regulation, NASD Regulation®, at (301) 590-6451.

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

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# NASD Notice to Members 99-48

## Independence Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, July 5, 1999, in observance of Independence Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

<u>Trade Date</u>	<u>Settlement Date</u>	<u>Reg. T Date*</u>
June 29	July 2	July 7
30	6	8
July 1	7	9
2	8	12
5	Markets Closed	—
6	9	13

## Independence Day: Trade Date-Settlement Date Schedule

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

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

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## Errors and Omissions Insurance

***Mistakes can be costly.  
Protect your firm's assets.***



### Program Features:

- Coverage up to \$5 million available for qualified applicants
- No minimum firm size required
- Annual premiums as low as \$1,500
- Automatically protects your firm's newly hired registered representatives for no mid-term charge
- Simplified, easy-to-complete application
- Underwritten by a financially strong and experienced insurance carrier
- 10% discount for eligible NASD Group Fidelity Bond Program participants

*Call the NASD program administrator, Seabury & Smith, at (800) 978-NASD (6273) for availability in your state, policy coverage, and to receive an application. Members in the Washington, D.C. area should call (202) 296-9640.*

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



# NASD Notice to Members 99-49

NASD Regulation  
Provides Interpretive  
Guidance On Registration  
Requirements

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

NASD Regulation, Inc. (NASD Regulation®) receives numerous inquiries regarding whether certain individuals are required to be registered with the National Association of Securities Dealers, Inc. (NASD®) under NASD Rules 1021 and 1031. The purpose of this *Notice to Members* is to provide interpretive guidance to members on some of these issues.

Questions regarding this *Notice to Members* may be directed to Mary M. Dunbar, Assistant General Counsel, NASD Regulation, at (202) 728-8252.

## Background And Discussion Principal Registration

NASD Rule 1021 (the Rule) requires persons who are actively engaged in the management of a member's investment banking or securities business — including supervision, solicitation, conduct of business, or the training of associated persons for any of these functions — to be registered as principals. Individuals covered by the Rule include sole proprietors, officers, partners, managers of Offices of Supervisory Jurisdiction, and directors of corporations.

*Who is considered an outside director of a member corporation? Are such outside directors required to be registered?*

The NASD considers outside directors to include directors who are not officers or employees of the member. Outside directors are not required to be registered if they are not actively engaged in the management of the member's investment banking or securities business. "Actively engaged in management" means day-to-day conduct of the member's securities business and the implementation of corporate policies related to such

business. An outside director's regular participation in board and board committee meetings, during which corporate policies may be developed or adopted, would not by itself rise to the level of being actively engaged in a member's management.

Conversely, an inside director, *i.e.*, an employee of a member who sits on its board of directors, is presumed to be involved in the day-to-day management of the member's business and therefore is required to be registered as a principal.

*Is an officer of the broker/dealer's parent corporation who sits on the board of directors of the broker/dealer required to be registered?*

Generally, if the officer is not actively engaged in the management of the broker/dealer as described above, he or she is considered an outside director and does not need to be registered. However, if this parent corporation officer, in addition to his or her duties with the parent corporation, is an employee of the broker/dealer or otherwise is engaged in the day-to-day management of the broker/dealer, then the officer must be registered as a principal of the member.

*Is a general counsel or corporate secretary of a member required to be registered?*

He or she is required to be registered if he or she sits on the member's board of directors or otherwise participates in the management of the member's securities or investment banking business. As stated above, an employee of a member who sits on its board of directors is presumed to be involved in the day-to-day management of the member's business and therefore is required to be registered as a principal. If the general counsel or

corporate secretary is not a director but has management-level responsibilities for supervising any aspect of the member's investment banking or securities business, then he or she would have to be registered as a principal. Management responsibilities in this context would include serving as a voting member of the firm's executive, management, or operations committees. A general counsel may participate in such committees' activities without triggering a registration requirement if he or she only provides counsel to the committee and does not vote.

*Is a limited or nominal partner required to be registered?*

A limited or nominal partner who is not involved in the day-to-day management of the member's business is not required to be registered.

*Is the chief compliance officer required to be registered as a principal?*

NASD Regulation is proposing to clarify that such person be required

to be registered. See *Notice to Members 99-51*.

### **Registration of Research Personnel**

*Do research personnel have to be registered?*

Any associated person who is engaged in an investment banking or securities business for a member is required to be registered. The registration determination does not depend on the individual's title, but rather on the functions that he or she performs. Functions performed by representatives include, but are not limited to, communicating with members of the public to determine their interest in making investments, discussing the nature or details of particular securities or investment vehicles, recommending the purchase or sale of securities, and accepting or executing orders for the purchase or sale of securities.

Research activity, by itself, does not require registration. However, to the extent that research personnel are involved in written or oral business

communications with the public, either alone or accompanied by registered sales personnel, then such research personnel are required to be registered because their conduct is part of the general sales effort of the member firm. Communicating with the public includes issuing and distributing research reports where the author is identified by name.

Another factor that should be considered in determining whether research personnel should be registered is the nature of their compensation. Transaction-based compensation — *e.g.*, compensation that depends upon the sale of securities, the volume of sales, the success of a solicitation or referral, or the execution of a transaction — is an indicator that the recipient should register with the NASD.

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# NASD Notice to Members 99-50

## SEC Approves Amendments To Corporate Financing Rule Filing Fees

### Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

### Executive Summary

On May 17, 1999, the Securities and Exchange Commission (SEC) approved amendments to the filing fee provisions of the National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) applicable to public offerings filed for review with the Corporate Financing Department (Department). The amendments simplify the filing fee provisions and clarify the manner in which the Department calculates filing fees. The amendments provide that filing fees will be calculated based on the proposed maximum aggregate offering price (or other applicable value) of all securities included on a registration statement filed with the SEC or included on another type of offering document if the offering is not registered with the SEC. An additional filing fee on any amendments to the registration statement or offering document will be imposed only when there is an increase in the maximum aggregate offering price or other applicable value of all securities included on the registration statement or offering document — regardless of any increase in the amount of securities. The amendments were effective May 17, 1999.<sup>1</sup> The text of the amendments follows this *Notice*.

Questions about this *Notice* should be directed to Carl Sperapani, Assistant Director, or Suzanne Rothwell, Chief Counsel, Corporate Financing Department, NASD Regulation, Inc. (NASD Regulation<sup>®</sup>), at (202) 974-2700.

### Background

NASD Conduct Rule 2710 (the Corporate Financing Rule) requires NASD members to file most proposed public offerings with the Corporate Financing Department. The Department reviews these filings prior to the commencement of the offering to determine whether the underwriting terms and arrangements are fair and

reasonable under NASD rules. The NASD imposes a fee on offerings filed with the Department equal to \$500 plus .01 percent of the “gross dollar amount of the offering,” not to exceed \$30,500.

### Description Of Amendments

The amendments to Section 6 of Schedule A to the NASD By-Laws simplify the fee structure for public offerings filed under the Corporate Financing Rule and NASD Conduct Rules 2720 and 2810. The amendments also delete the filing fee provision in paragraph (b)(10) of the Corporate Financing Rule because it is duplicative of Section 6 of Schedule A.

### Application Of Fee To All Securities On Offering Document

The amendments delete the definition of “gross dollar amount of the offering” in paragraph (a)(1) of the Corporate Financing Rule and change Section 6(a) of Schedule A to provide that the filing fee will be calculated on the “proposed maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC).”

The term “proposed maximum aggregate offering price” is the same term used in the fourth column of the fee table on the cover of SEC registration statement forms to identify the total of the proposed public offering price of all securities to be registered on the registration statement. The inclusion of the words “other applicable value” is intended to cover debt securities or offerings in which an issuer only registers a dollar amount of securities without specifying the type of or number of securities being offered.

## Calculation Of Fee On Amendments

Section 6(b) of Schedule A required that the Department collect an additional filing fee when an amendment to the offering document increased the number of securities being registered, regardless of whether there was any increase in the aggregate value of the securities that were included on the original offering document. This additional filing fee was calculated by multiplying the number of additional securities times their new offering price and charging a fee of .01 percent of this product, but not more than \$30,500, for total filing fees for any offering filed.

The amendments to Section 6(b) of Schedule A provide that an additional fee will be imposed only if there is a net increase in the maximum aggregate offering price or other applicable value of all securities included on the offering document, subject to the \$30,500 limit on total filing fees charged for any offering. NASD Regulation will not refund fees when an amendment decreases the maximum aggregate offering price or other applicable value.

Under Section 6(b) of Schedule A, as amended, the additional fee will be imposed to take into account any net increase in the maximum aggregate offering price or other applicable value that is reflected in an SEC Rule 430A prospectus<sup>2</sup> or a related registration statement filed pursuant to SEC Rule 462(b).<sup>3</sup>

## Other Changes

The amendments delete the provision in Section 6(c) of Schedule A regarding the computation of filing fees. Sections 6(a) and 6(b) of

Schedule A have been amended to delete the requirement that a filing fee accompany an initial filing and amendments. NASD Regulation recently deleted the provision in Schedule A that required filing fees to be paid in the form of a check or money order and permitted fees to be paid by wire transfer.<sup>4</sup> These changes will facilitate payment of filing fees and filing public offering information electronically with the Department via COBRADesk, the new automated systems that will permit electronic filing of corporate offering information with the Corporate Financing Department. COBRADesk will automatically calculate filing fees based on the proposed maximum aggregate offering price or other applicable value. For more information on the electronic filing and the COBRADesk System, see *Notice to Members 99-41*.

## Text Of Amendments

*(Note: New language is underlined; deletions are bracketed.)*

### Schedule A To The NASD By-Laws

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

**Section 1 - Section 5** No change

### Section 6- Fees for Filing Documents Pursuant to the Corporate Financing Rule

(a) [The] There shall be a fee imposed for the filing of initial documents relating to any offering filed with the NASD pursuant to the Corporate Financing Rule [shall be accompanied by a filing fee] equal to \$500 plus .01% of the [gross dollar amount of the offering,] proposed

maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement or included on any other type of offering document (where not filed with the SEC), but shall not [to] exceed [a fee of] \$30,500. The amount of filing fee may be rounded to the nearest dollar.

(b) [Amendments] There shall be an additional fee imposed for the filing of any amendment or other change to the [initially filed documents which increase the number of securities being offered] documents initially filed with the NASD pursuant to the Corporate Financing Rule [shall be accompanied by an additional amount of filing fee] equal to .01% of the [per share offering price of the new or additional securities, multiplied by the number of new or additional securities being offered,] net increase in the maximum aggregate offering price or other applicable value of all securities registered on an SEC registration statement, or any related Rule 462(b) registration statement, or reflected on any Rule 430A prospectus, or included on any other type of offering document. However, the aggregate of all filing fees paid in connection with an SEC registration statement or other type of offering document shall not [to] exceed \$30,500 [when aggregated with all fees previously paid].

[(c) The provisions of Rule 457 adopted under the Securities Act of 1933, as amended, shall govern the computation of filing fees for all offerings filed pursuant to this Section, including intrastate offerings, to the extent the terms of Rule 457 are not inconsistent with this Section.]

**Section 7 - Section 15** No change

## 2710. Corporate Financing Rule - Underwriting Terms and Arrangements

### (a) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below. The definitions in Rule 2720 are incorporated herein by reference.

[(1) Gross Dollar Amount of the Offering]

[Public offering price of all securities offered to the public and securities included in any overallotment option, the registration price of securities to be paid to the underwriter and related persons, and the registration price of any securities underlying other securities;]

**(2) - (6)** Renumbered **(1) - (5)**

**(b) Filing Requirements**

**(1) - (9)** No change

**[(10) Filing Fees]** Deleted entirely

**(11) - (13)** Renumbered **(10) - (12)**

**(c)** No change

### Endnotes

<sup>1</sup>SEC Release No. 34-41414 (May 17, 1999).

<sup>2</sup>SEC Rule 430A permits a registrant to reflect in the prospectus filed pursuant to SEC Rule 424(b) or SEC Rule 497(h) or in a post-effective amendment to the registration statement a change in the volume of securities offered (if the total value of securities

offered would not exceed that which was registered) or a change in the bona fide estimate of the maximum offering price range if the changes, in the aggregate, represent no more than a 20 percent change in the maximum aggregate offering price set forth in the fee table in the effective registration statement.

<sup>3</sup>SEC Rule 462(b) permits a registrant to file a registration statement that is effective upon filing if, among other things, the registration statement registers "additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective by the Commission."

<sup>4</sup>SEC Release No. 34-40706 (November 24, 1998); 63 FR 66618 (December 2, 1998).

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# Audio Tape Order Form • NASD Regulation, Inc. • Spring Securities Conference

## May 19-21, 1999 • Sheraton New Orleans Hotel • New Orleans, Louisiana

1999 Dispute Resolution Program	1999 Spring Securities Conference	
<input type="radio"/> 599D01 <b>Status of and New Developments in the NASD Dispute Resolution Program</b> Linda D. Fienberg George H. Friedman	<input type="radio"/> 599S01 <b>General Session Keynote Address</b> State Of The SRO Mary L. Schapiro <b>General Session Panel: Open Forum with Senior Regulatory Staff</b>	<input type="radio"/> 599S11 <b>Continuing Education</b>
<input type="radio"/> 599D02 <b>Neutral List Selection System</b>	<input type="radio"/> 599S02 <b>Communications With The Public</b>	<input type="radio"/> 599S12 <b>Modernized CRD System And CRD/Public Disclosure Issues</b>
<input type="radio"/> 599D03 <b>Avoiding Common Mistakes</b>	<input type="radio"/> 599S03 <b>Impact Of Technology On Markets</b>	<input type="radio"/> 599S13 <b>Open Forum With District Directors</b>
<input type="radio"/> 599D04 <b>Sticky Issues that Arise in Arbitration</b>	<input type="radio"/> 599S04 <b>Effective Supervision</b>	<input type="radio"/> 599S14 <b>Year 2000 Contingency Planning</b>
<input type="radio"/> 599D05 <b>Mediation Session</b> <i>Double Tape</i>	<input type="radio"/> 599S05 <b>Examination Program: Process &amp; Priorities</b>	<input type="radio"/> 599S15 <b>Market Regulation Issues</b>
<input type="radio"/> 599D06 <b>Arbitration Session</b> <i>Double Tape</i>	<input type="radio"/> 599S06 <b>Best Practices In Broker/Dealer Regulatory Technology</b>	<input type="radio"/> 599S16 <b>New And Continuing Member Application Process</b>
	<input type="radio"/> 599S07 <b>A Look Inside The Disciplinary Process</b>	<input type="radio"/> 599S17 <b>Securities Law</b>
	<input type="radio"/> 599S08 <b>Fixed Income Securities</b>	<input type="radio"/> 599S18 <b>Market Volatility And Associated Trading Issues</b>
	<input type="radio"/> 599S09 <b>Small Broker/Dealer Compliance Issues</b>	<input type="radio"/> 599S19 <b>Independent Contractors/Financial Planners/Investment Advisers</b>
	<input type="radio"/> 599S10 <b>Dynamics Of Customer Complaints</b>	<input type="radio"/> 599S20 <b>Q&amp;A with NASDR Senior Staff</b>
		<input type="radio"/> 599S21 <b>Year 2000 Q &amp; A Session I</b>
		<input type="radio"/> 599S22 <b>OATS Q &amp; A Session I</b>

**Please Check Selection Numbers**

### Complete To Order

Single Tape Session	_____ x	\$12.00	= \$	_____
Double Tape Session (599D05 and 599D06 only)	_____ x	\$19.00	= \$	_____
Discount when 8 or more sessions purchased	\$ _____ x	5%=<\$ _____	> = \$	_____
Dispute Resolution Program	_____ x	\$77.40	= \$	_____
Spring Securities Conference	_____ x	\$224.40	= \$	_____

### Session Charges

\$ \_\_\_\_\_

**Sales Taxes:** Orders shipped to Maryland Addresses Only

\$ \_\_\_\_\_ x 5%= \$ \_\_\_\_\_

### Shipping Cost:

\$2.25 for the 1st session \$ 2.25

\$1.50 for each additional session (Max. \$21.00) # \_\_\_\_\_ x \$1.50 = \$ \_\_\_\_\_

Shipments outside of the US Postal Service an Additional \$18.50 \$ \_\_\_\_\_

### Shipping Charges

\$ \_\_\_\_\_

US Dollars Only

**Grand Total \$** \_\_\_\_\_

Your Name \_\_\_\_\_

Company \_\_\_\_\_

Street Address \_\_\_\_\_ MS/FI/Suite/Apt. # \_\_\_\_\_ City \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_ Day Phone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

### For Mail or Fax Charge Card Orders:

Visa     MasterCard     Discover     American Express     Check (payable to A.V.E.R. Associates)

Cardholder Name \_\_\_\_\_ Card Number \_\_\_\_\_

Card Expiration Date \_\_\_\_\_ Cardholder Signature \_\_\_\_\_

Mail or Fax completed form and payment to:

A.V.E.R. Associates, 6974 Ducketts Lane, Elkridge, MD 21075, Phone 410-796-8940, Fax 410-796-8962

Received \_\_\_\_\_ Auth # & Date \_\_\_\_\_ Shipped \_\_\_\_\_ Updated \_\_\_\_\_

# NASD Notice to Members 99-51

NASD Regulation Requests Comment On Requiring Chief Compliance Officers To Be Registered; Comment Period Expires July 16, 1999

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

The Board of Directors of NASD Regulation, Inc. (NASD Regulation®) is seeking comment on whether the National Association of Securities Dealers, Inc. (NASD®) rules should be amended to require the registration of chief compliance officers.

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

## Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal.

Comments should be mailed to:

Joan C. Conley  
Office of the Corporate Secretary  
NASD Regulation, Inc.  
1735 K Street, NW  
Washington, DC 20006-1500

or e-mailed to:

[pubcom@nasd.com](mailto:pubcom@nasd.com)

**Important Note:** The only comments that will be considered are those submitted in writing or via e-mail.

Comments must be received by July 16, 1999. Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission (SEC).

## Background And Discussion

NASD Regulation frequently receives questions about whether various broker/dealer personnel should be registered. One frequently asked question involves whether the chief compliance officer for a

member firm should be registered as a principal.

Rule 3010(a)(8) requires each member to designate and specifically identify to the NASD one or more principals who are required to review the member's supervisory system, procedures, and inspections implemented by the member and take or recommend to the member's senior management appropriate action reasonably designed to achieve the member's compliance with applicable securities laws and regulations, including NASD rules. For some member firms, the individual who is the chief compliance officer listed on Schedule A of Form BD is one of these designated principals. For other members, the chief compliance officer also may already be registered as a principal because he or she is an officer of the member or otherwise engaged in the member's investment banking or securities business in a manner that requires principal registration under the Rule 1021.

Rule 1021(a), which sets forth the requirements for principal registration, states that a member "may" make or maintain an application for principal registration for certain personnel, including compliance personnel. The negative implication of this provision is that compliance personnel are not *required* to be registered, but rather that a member, at its election, may register an individual with compliance responsibilities.

NASD Regulation believes that the chief compliance officer for a member firm (as identified on Schedule A of the Form BD) should be registered. This position generally entails directing the advice that is provided to both registered representatives and principals about compliance issues and devising compliance systems and procedures for the firm as a whole. As such, the

individual performing this function should be able to demonstrate his or her knowledge through a qualifications examination and be subject to continuing education requirements.

There are at least two ways that a registration requirement could be imposed. NASD Regulation could require the chief compliance officer to be registered as a principal. The individual would be required to register as a General Securities Principal, unless the activities of his or her member firm are so limited that it is appropriate for the individual to apply for a more limited principal registration category as described in Rule 1022(a)(1). For example, if a member firm only sells mutual funds, it would be appropriate for the chief compliance officer to apply for registration as a Limited Principal—Investment Company and Variable Contracts Products. NASD Regulation also would issue an interpretation clarifying that a chief compliance officer would not be

deemed to be supervising a member's securities or investment banking business by virtue of being registered as a principal. NASD Regulation staff recommends this approach.

Alternatively, NASD Regulation could create a new examination and registration category for chief compliance officers. The rule language itself could be drafted in such a way that the chief compliance officer would not be deemed to be a supervisor by virtue of registration. However, this approach could be more burdensome for chief compliance officers who are already registered as principals and would have to take another examination. This problem could be mitigated by accepting either a Series 24 or the newly created examination.

NASD Regulation also invites members to comment on whether the New York Stock Exchange's Series 14 examination should be accepted in lieu of either of these

examinations.

Finally, NASD Regulation would like comment from members on an interpretive issue that may arise if a registration requirement is imposed for chief compliance officers. In *Notice to Members 99-49*, NASD Regulation stated that a general counsel of a member is not required to be registered. NASD Regulation would like comment as to whether this interpretation should change if the general counsel is directly supervising a registered chief compliance officer, *i.e.*, has the power to hire and fire and direct the activities of the chief compliance officer.

Any proposed rule will include a grandfather provision for any person serving as a chief compliance officer on the effective date of the rule.

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# Disciplinary Actions

## Disciplinary Actions Reported For June

NASD Regulation, Inc. (NASD Regulation®) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD®) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, June 21, 1999. The information relating to matters contained in this *Notice* is current as of the end of May 20, 1999.

### Firm Expelled, Individual Sanctioned

**TAJ Global Equities, Inc. (CRD #31768, Tampa, Florida)** and **Wilber Glen Jurdine (CRD #1773721, Registered Principal, South Florida, Florida)** were censured and fined \$100,000, jointly and severally. In addition, the firm was expelled from NASD membership and Jurdine was barred from association with any NASD member in any capacity. The sanctions were based on findings that the firm, acting through Jurdine, engaged in options transactions and failed to register an options principal, conducted a securities business while maintaining insufficient net capital, and failed to give telegraphic notice of its net capital deficiency. In addition, the firm, acting through Jurdine, filed inaccurate FOCUS reports, kept inaccurate books and records, engaged in inaccurate trade reporting activities, and failed to report certain customer complaints.

Furthermore, the firm, acting through Jurdine, failed to develop and implement a continuing education program, breached its restrictive agreement with the NASD by servicing discretionary accounts, and Jurdine failed to respond to NASD requests for information. **(NASD Case #C07980041)**

### Firms Fined, Individuals Sanctioned

**Chatfield Dean & Company, Inc. (CRD #14714, Greenwood Village, Colorado)** and **Scott Carothers (CRD #1899247, Registered Principal, Greenwood Village, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$5,000, jointly and severally, and the firm was fined an additional \$6,000. Carothers was suspended from association with any NASD member in any capacity for one day and ordered to requalify as a financial and operations principal. Without admitting or denying the allegations, the firm and Carothers consented to the described sanctions and to the entry of findings that the firm, acting through Carothers, conducted a securities business while failing to maintain its minimum required net capital. The findings also stated that the firm failed to report customer complaints to the NASD on a timely basis and failed to have adequate written supervisory procedures to address compliance with NASD reporting requirements. **(NASD Case #C3A990024)**

**Russell Investment Corporation n.k.a. Lakeside Trading (CRD #39418, Metairie, Louisiana)** and **Thomas Griswold Russell (CRD #2669033, Registered Principal, Metairie, Louisiana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$26,500, jointly and severally. In addition, Russell was suspended from association with any NASD member in any capacity for 10 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 Russell, conducted a securities business while failing to maintain the minimum required net capital, and prepared and maintained an inaccurate trial

balance, general ledger, and computation of net capital. The findings also stated that the firm, acting through Russell, failed to timely file an amended Form BD with the NASD listing the firm's current address and all direct owners, executed proprietary transactions using the Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>), executed two orders within five minutes of each other on the same side of the market in the same security through SOES that, when aggregated, exceeded SOES maximum order sizes in the security. In addition, the NASD found that the firm, acting through Russell, failed to prepare, maintain, and enforce adequate supervisory procedures addressing the execution of transactions using SOES. The firm also failed to timely file its quarterly FOCUS Part IIA Report, and failed to respond fully, accurately, and timely to NASD requests for documentation, and in some instances, provided false and/or misleading information.

**(NASD Case #C0599008)**

### **Firms And Individuals Fined**

**Cantella & Co., Inc. (CRD #13905, Boston, Massachusetts) and Vincent Michele Cantella (CRD #39796, Registered Principal, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$50,000, 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 Cantella, failed to establish, maintain, and enforce procedures reasonably designed to achieve compliance with securities laws and applicable NASD rules in that the firm was unable to meet its required reserve deposit for its reserve computation. The findings also stated that Cantella failed to exercise, adequately or reasonably, his supervisory responsibilities with the firm. **(NASD Case #C11970039)**

**Financial Advantage Brokerage Services, Inc. n.k.a. Corporate Funding Ltd. (CRD #37027, Minot, North Dakota), Roger William Domres (CRD #2190341, Registered Principal, Minot, North Dakota), Mark Steven Guttormson (CRD #1966356, Registered Principal, Minot, North Dakota), Bruce Allan Hager (CRD #1358936, Registered Principal, Fargo, North Dakota), and Bradley Paul Wells (CRD #1257278, Registered Principal, Minot, North Dakota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$25,000, jointly and severally. In addition, the firm was ordered to provide the following information to the NASD: (a) documentation that the firm has established an audit committee; (b) documentation that the firm has appointed an independent director to its board of directors and the audit committee; and (c) documentation that the firm has put in place a system for periodic reports to the firm's shareholders. If the firm does not provide this documentation to the NASD within the required time frame, it shall be suspended from membership with the NASD until it provides the requested information. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Wells, Domres, Hager, and Guttormson, failed to file offering documents for intrastate offerings with the NASD, failed to submit to the NASD an estimate of the maximum underwriting discount or commission that the firm anticipated receiving as a result of its participation in the offerings and any documents and information pertaining to the terms, conditions, and arrangements relating to the underwriting or distribution of such shares. The findings also stated that the firm, acting through Wells, Domres, Hager, and Guttormson, sold these offerings without the

submissions and proceeded without obtaining "no objection" letters to the underwriting terms and arrangements of the offerings; participated in the underwriting and/or distribution of the firm's stock without retaining a qualified independent underwriter to conduct due diligence and provide a pricing opinion; failed to have the qualified independent underwriter act as manager of the offerings, which was required since the firm had not been engaged in the investment banking or securities business for the five-year period immediately preceding the offering; failed to establish an audit committee for the firm within 12 months after its initial offering; and failed to appoint to its board of directors and the audit committee a public director to serve as a committee member to protect the interests of the investors. The firm, acting through Wells, Domres, Hager, and Guttormson, also failed to provide ongoing periodic reports to the firm's shareholders which would inform shareholders of the current condition of the firm. **(NASD Case #C04990019)**

**Marquis Financial Services of Indiana, Inc. (CRD #20733, Valparaiso, Indiana) and Timothy Martin Scannell (CRD #1552763, Registered Principal, Valparaiso, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$18,000, 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 Scannell, effected options transactions while no partner or officer of the firm was registered as a registered options principal or designated to serve as the firm's senior registered options principal, and failed to identify specifically a senior registered options principal who was responsible for the diligent supervision of all of its customer accounts

and all orders in these accounts. The findings also stated that the firm, acting through Scannell, failed to comply with the terms of its membership agreement when it effected options transactions while agreeing to conduct only certain types of securities business that did not include such transactions. **(NASD Case #C8A990033)**

## Firms Fined

**Barington Capital Group, L.P. (CRD #29383, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$23,500, and fined \$2,000, jointly and severally with an individual. In addition, the firm was required to pay \$3,815 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 implement and enforce adequate written supervisory procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and submitted inaccurate free-riding questionnaires to the NASD for several offerings. In addition, the firm failed to obtain required documentation on a timely basis in connection with “hot issue” purchases by customer accounts. The findings also stated that the firm participated in contingency offerings, failed to deposit investor funds in an independent escrow account, and failed to include in the private placement memoranda a statement that persons associated with the firm would be purchasing a portion of the offering. In addition, the NASD determined that the firm failed to execute customer limit orders in some instances and to timely execute other customer limit orders in others. **(NASD Case #C04990018)**

**Interfirst Capital Corporation (CRD #7659, Los Angeles, California)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$10,000, ordered to offer rescission or early redemption to all investors in a contingent offering, and to the extent the offer of rescission is accepted by any investors, the firm was ordered to exchange each investor’s interest in the investment for full and complete restitution and to provide proof of the required rescission or early redemption offers to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it offered and sold investments in a contingent offering of securities and failed to deposit and retain customer funds in a separate escrow account until the minimum number of units had been sold. **(NASD Case #C02990023)**

**NationsBanc Montgomery Securities LLC (CRD #4357, San Francisco, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$15,000, and required to pay \$968.75, 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 reported transactions to the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) in violation of applicable securities laws and regulations regarding limit orders. In the execution of customer orders, the firm failed to use reasonable diligence to ascertain the best inter-dealer markets for securities and sell in such markets so that the resultant prices to customers were as favorable as possible under prevailing market conditions. The findings also stated that the firm failed to immediately display customer limit orders in the firm’s public quote where each such order was at a better price than the firm’s public quote or at a price equal

to the firm’s public quote when such quote was priced equal to the national best bid or offer in such security and that order represented more than a *de minimus* change in relation to the size associated with the firm’s bid or offer. In addition, the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures with respect to: ACT compliance, trade reporting, the Securities and Exchange Commission’s (SEC) Order Handling Rules, the Limit Order Protection Interpretation, best execution, anti-competitive practices, the use of SOES, and the annual review of the firm’s OTC Trading Department. **(NASD Case #CMS990039)**

**Paradise Valley Securities, Inc. (CRD #18501, Phoenix, Arizona)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500, jointly and severally, with two individuals. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm, in connection with a private offering of securities, extended the date by which the minimum number of units was required to be sold without making a reconfirmation offer to the persons who had purchased units prior to the termination date stated in the offering materials. The findings also stated that the firm failed to conduct a needs analysis, prioritize its training needs, or develop a training plan to comply with the Firm Element Continuing Education requirement. **(NASD Case #C3A990019)**

**RBC Dominion Securities Corporation (CRD #6579, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm con-

sented to the described sanctions and to the entry of findings that the firm permitted individuals to act in the capacity of general securities principals prior to their properly qualifying and becoming registered in that capacity. **(NASD Case #C10990055)**

**Securities America, Inc. (CRD #10205, Omaha, Nebraska)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$50,000, and required to retain an independent consulting firm for one year to review the firm's compliance and written supervisory procedures relating to the review and approval of new accounts and daily trading activity effected in the firm's branch offices to determine their adequacy and consistency with applicable laws and regulations. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish adequate written supervisory procedures designed to detect and prevent unsuitable trading activity. The firm also failed to supervise an individual adequately in that the actions taken by the firm were insufficient to detect or prevent his unsuitable trading activity. **(NASD Case #C07990026)**

**Sherwood Securities Corp. (CRD #7172, Jersey City, New Jersey)** submitted an Offer of Settlement pursuant to which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to execute purchase or sell orders at the firm's published bid or offer and failed to honor its bid or offer quotations. **(NASD Case #CMS970018)**

## **Individuals Barred Or Suspended**

**Larry Jon Ames (CRD #1295093, Registered Principal, Miami, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to pay \$4,242.66, plus interest, in restitution to a member firm. Without admitting or denying the allegations, Ames consented to the described sanctions and to the entry of findings that he diverted customer transactions to his personal broker number at his member firm and as a result, received \$4,242.66 in net commissions, without receiving prior explicit approval from his member firm. **(NASD Case #C07990021)**

**Brian Douglas Angiuli (CRD #1867364, Registered Representative, Port Washington, New York)** was censured, fined \$15,000, suspended from association with any NASD member in any capacity for one year, and ordered to requalify as a general securities representative. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a Philadelphia District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Angiuli executed unauthorized transactions in the account of a public customer. **(NASD Case #C9B960032)**

**Everette Ward Artist (CRD #864926, Registered Representative, Phoenix, Arizona)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Artist failed to respond to NASD requests for information. **(NASD Case #C3A980036)**

**Arthur Bruce Bahlav (CRD #1191483, Registered Principal,**

**New York, New York)** submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Bahlav consented to the described sanctions and to the entry of findings that he executed a promissory note in the amount of \$21,906 with public customers, and after making an initial payment of \$7,326, failed to make either of the two subsequent monthly payments totaling \$14,580. **(NASD Case #C05970036)**

**Marcos Beltran Barcelo (CRD #2355671, Registered Principal, Santa Fe Springs, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$81,614.80, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Barcelo consented to the described sanctions and to the entry of findings that he received commission checks in the total amount of \$322.96 issued by his member firm and payable to an employee under his supervision. According to the findings, rather than giving the checks to the employee, Barcelo converted the checks to his own use and benefit by endorsing and depositing the checks in his wife's personal bank account without the employee's knowledge or consent. **(NASD Case #C02990021)**

**Anthony Vito Biondo (CRD #2432635, Registered Representative, Valley Stream, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Biondo consented to the described sanctions and to the entry of findings that he failed to respond

to NASD requests for information. **(NASD Case #C10980106)**

**Angelo John Bosco (CRD #2184908, Registered Representative, Huntington, New York)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Bosco failed to respond to NASD requests for information regarding a customer complaint. **(NASD Case #C10980061)**

**Lilia Frianeza Cayabyab (CRD #2911603, Registered Representative, Sherman Oaks, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Cayabyab consented to the described sanctions and to the entry of findings that she submitted a Form U-4 to her member firm that failed to disclose that she was the subject of an embezzlement conviction. **(NASD Case #C02990018)**

**Jeffrey John Chaimowitz (CRD #2589437, Registered Principal, Rock Point, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Chaimowitz consented to the described sanctions and to the entry of findings that he effected transactions in public customer accounts without the prior authorization of the customers. The findings also stated that Chaimowitz made material misrepresentations, omitted to disclose material facts, and predicted the future prices of securities to public customers in connection with solicitations to sell securities. Furthermore,

the NASD determined that Chaimowitz received instructions from public customers to sell securities from their accounts and failed to sell the securities. **(NASD Case #C3A990018)**

**Maria Magdalena Coats (CRD #2785906, Associated Person, Moreno Valley, California)** submitted an Offer of Settlement pursuant to which she was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Coats consented to the described sanctions and to the entry of findings that she submitted to her member firm a Form U-4 that contained false responses to disciplinary questions, when in fact, she was the subject of a welfare fraud conviction and a state action. Furthermore, the NASD found that Coats failed to amend the Form U-4 to disclose the conviction and state action. **(NASD Case #C02990008)**

**Adebayo Bankole Cole (CRD #2430939, Registered Representative, Staten Island, New York)** was censured, fined \$75,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cole submitted Form U-4 applications that failed to disclose information or provided inaccurate and misleading information concerning, among other things, his criminal record. Cole also failed to respond to NASD requests to provide testimony. **(NASD Case #C10980013)**

**Philip Edward Colgan (CRD #2286018, Registered Representative, Redmond, Washington)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or deny-

ing the allegations, Colgan consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to provide prior written notice to his member firm describing in detail the proposed transactions, his proposed role therein, and stating whether he had received, or would receive, selling compensation in connection with the transactions. **(NASD Case #C3B990011)**

**Ronald Ernest Collins (CRD #2071112, Registered Representative, Redlands, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Collins consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests to provide documents and testimony. **(NASD Case #C02990025)**

**Joseph Gaspare Coluccio (CRD #2439259, Registered Representative, West Hampton Beach, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, suspended from association with any NASD member in any capacity for nine months, and required to demonstrate that he has made restitution to a public customer in the amount of \$180,650. Without admitting or denying the allegations, Coluccio consented to the described sanctions and to the entry of findings that he solicited public customers to purchase securities by means of misrepresentations of material fact and omissions to disclose material fact. The findings also stated that Coluccio solicited a customer to purchase a security by predicting the future price of the security to the customer without a reasonable basis, and with

knowledge that the security was speculative. Furthermore, the NASD determined that Coluccio solicited a customer to purchase securities by guaranteeing the customer against loss in the investment and failed to take the promised actions to prevent loss. **(NASD Case #C3A990023)**

**Thomas John Connell (CRD #52082, Registered Representative, Melville, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Connell consented to the described sanctions and to the entry of findings that, in response to a telephone call he received from an individual from the NASD asking why his member firm was not answering its telephones, Connell responded to the question by stating the firm was experiencing telephone problems. The NASD found that the firm was not experiencing telephone problems, but rather, Connell had been directed not to answer the telephones in the trading room. **(NASD Case #C10990043)**

**Nicholas Joseph Cosmo (CRD #2452953, Registered Principal, Wantagh, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$68,209, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cosmo consented to the described sanctions and to the entry of findings that he replaced a public customer's name on an account transfer form with the name of an account at a member firm over which he had sole control, and attached to the transfer form a letter authorizing the transfer of the customer's account to the firm account he controlled, without the

customer's knowledge or consent. The findings also stated that Cosmo provided the customer with an account statement and trade confirmation, purportedly reflecting the customer's account at the firm when, in fact, no such account existed. **(NASD Case #C10990053)**

**John Michael Doughty (CRD #2649919, Registered Representative, Farmington, Maine)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$157,500, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Doughty consented to the described sanctions and to the entry of findings that he obtained blank checks from a public customer's securities account that he forged and negotiated, without the customer's knowledge or consent. The NASD found that Doughty converted the proceeds totaling approximately \$29,500 to his own use and benefit. **(NASD Case #C11990012)**

**James Alvis Elkins, Jr. (CRD #1970235, Registered Principal, Marietta, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Elkins consented to the described sanctions and to the entry of findings that he participated in private securities transactions totaling \$1,013,787 in promissory notes and failed to provide his member firm written notice describing in detail the proposed transactions, his proposed role therein, and stating whether he would receive selling compensation in connection with the transactions. **(NASD Case #C3B990013)**

**Jon Douglas Erickson (CRD #403437, Registered Principal,**

**Nashville, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$1,000,000, barred from association with any NASD member in any capacity, and ordered to pay \$943,000 in restitution to appropriate parties. Without admitting or denying the allegations, Erickson consented to the described sanctions and to the entry of findings that he engaged in outside business activities in that he acted as a trustee for trusts established for public customers without providing prompt written notice to his member firm. The findings also stated that Erickson converted approximately \$943,000 in trust property to his own use and benefit, without the knowledge or consent of the donors. **(NASD Case #C11990018)**

**Charles Allen Eskew, Jr. (CRD #2027735, Registered Representative, Bastrop, Texas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Eskew consented to the described sanctions and to the entry of findings that he received a check in the amount of \$102,779.61 from a public customer; deposited \$74,779.61 into a bank account he controlled, without the customer's knowledge or consent; and failed to return the funds to the affected customer until a later date. **(NASD Case #C06990001)**

**Donald Howard Estey, Jr. (CRD #2020550, Registered Representative, Bozeman, Montana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Estey consented to the described sanctions and to the entry of findings that he participated

in private securities transactions totaling \$1,567,883.39 in promissory notes without providing his member firm written notice describing in detail the proposed transactions, his proposed role therein, and stating whether he would receive selling compensation in connection with the transactions. **(NASD Case #C3B990012)**

**Albert Joseph Ford (CRD #1835821, Registered Representative, Oakton, Virginia)** and **Douglas Francis Andrews (CRD #1793108, Registered Representative, Ashburn, Virginia)** submitted an Offer of Settlement pursuant to which Ford was censured, fined \$95,000, and barred from association with any NASD member in any capacity, and Andrews was censured, fined \$75,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Ford and Andrews assisted in the “boiler room” operations of their member firm, and recruited and trained inexperienced registered representatives to telemarket aggressively low-priced, speculative securities recommended by their member firm to the public. According to the findings, Ford and Andrews directed, fostered, or induced the registered representatives to engage in the following abusive sales practices: making baseless price predictions about the stock recommended by their member firm, making material misrepresentations and omitting material negative information during sales presentations to customers, discouraging or prohibiting registered representatives from independently researching the firm’s stocks, and discouraging or prohibiting registered representatives from processing unsolicited customer sell orders. Furthermore, the NASD found that Ford and Andrews engaged in these abu-

sive sales practices in their individual capacities during presentations to their customers. Ford, acting through other registered representatives, directed, encouraged, caused, and/or facilitated the purchase of stock by other registered representatives for their customers’ accounts without the customers’ prior authorization or consent, and Ford purchased stocks for his own customers’ accounts, without the customers’ prior authorization or consent. Ford and Andrews also failed to establish, implement, and enforce reasonable procedures to deter or prevent the above violations. **(NASD Case #C9B960013)**

**Merlin Richard Gackle (CRD #1024847, Registered Principal, Odessa, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and suspended from association with any NASD member in any capacity for 15 business days in a supervisory capacity. Without admitting or denying the allegations, Gackle consented to the described sanctions and to the entry of findings that, as the president of a member firm, Gackle failed to address, or failed adequately to address, the firm’s written supervisory procedures regarding, among other things, insider trading, receipt of customer funds and securities, mutual fund breakpoints, variable annuities and variable life insurance, options, municipal securities, customer complaint reporting, cold calling, sales supervision, and discretionary accounts. Furthermore, the findings stated that Gackle, as president of the firm, failed to inspect each branch office according to the cycle set in its written supervisory procedures, and failed to supervise and/or enforce the firm’s written supervisory procedures adequately as they relate to the review of daily transactions, mutual fund switches, branch office inspections and examinations, and

advertising and correspondence. Moreover, the NASD found that the firm failed to have each registered representative participate in an annual compliance meeting, failed to conduct a periodic examination of all customer accounts to detect and prevent irregularities or abuses, failed to report customer complaints, and allowed an individual to serve as the firm’s acting chief administrative officer when the individual was never registered properly with the NASD in any capacity. **(NASD Case #C07990027)**

**Paul Joseph Garceau, Jr. (CRD #1716125, Registered Representative, Clinton Township, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Garceau consented to the described sanctions and to the entry of findings that he engaged in outside business activities by receiving approximately \$19,000 in compensation for selling fixed annuities through a non-member insurance brokerage company, and in connection therewith, failed to give prompt written notice of his engagement in such activities to his member firm. **(NASD Case #C8A990035)**

**Theodore Scott Geller (CRD #3035282, Registered Representative, Rome, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Geller consented to the described sanctions and to the entry of findings that he took the Series 7 exam, obtained a failing score, and altered his copy of the test report to reflect a passing grade. The findings also

stated that Geller then sent copies of the falsified test report to the NASD and his member firm using envelopes with the testing center indicated as the return address in an attempt to convince them that he had qualified as a general securities representative. **(NASD Case #C11990010)**

**Frank Albert Ghergurovich (CRD #1398577, Registered Representative, Scituate, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ghergurovich consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The findings also stated that, in connection with the above private securities transactions, Ghergurovich recommended to customers the purchase of securities without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customers on the basis of their financial situation, investment objectives, and needs. **(NASD Case #C11990013)**

**Mark Edwin Gort (CRD #1398585, Registered Principal, Wyoming, Michigan)** submitted an Offer of Settlement pursuant to which he was censured, fined \$35,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gort consented to the described sanctions and to the entry of findings that he executed securities transactions for the account of a public customer, without the knowledge or consent of the customer, and in the absence of written or oral authorization to exercise discretion in said

account. Gort also failed to respond to NASD requests for documents and information. **(NASD Case #C8A990024)**

**Jeffrey Harold Hamsher (CRD #1187004, Registered Representative, Wyomissing, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was censured, fined \$125,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hamsher consented to the described sanctions and to the entry of findings that he made material misrepresentations and omitted to disclose material facts in connection with his solicitation of public customers' funds in that he misrepresented to the investors that their funds would be invested in U.S. Treasury bonds when, in fact, the funds were used to trade U.S. Treasury bond/Treasury note options and futures; misrepresented that monies would be deposited with an NASD securities firm; misrepresented that the investments were "risk-free" and that the investors would receive an annual return of 44 percent although there was no reasonable basis for such a representation. The findings also state that Hamsher failed to timely disclose the terms of the "Profit Participation Agreement" or that he had entered into a separate agreement with an unregulated third party which assumed discretionary authority over the customer funds. Furthermore, the NASD determined that Hamsher transferred approximately \$80,000 of the investors' funds to the third party without their consent or authority. Hamsher engaged in private securities transactions without prior written notice to, and approval from, his member firm in that he offered and sold securities which he represented to be U.S. Treasury bonds to the investors, and failed to respond to NASD requests to provide complete bank records. **(NASD Case #C9A980037)**

**Patrice Roberto Harris (CRD #2062802, Registered Representative, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, barred from association with any NASD member in any capacity, and required to pay \$16,036.21 in restitution to public customers. Without admitting or denying the allegations, Harris consented to the described sanctions and to the entry of findings that he executed transactions in the accounts of public customers without their knowledge or consent and in the absence of written or oral authorization to Harris to exercise discretion in these accounts. **(NASD Case #C10980104)**

**Michael Wayne Hawkins (CRD #2297934, Registered Representative, Atlanta, Georgia)** was censured, fined \$65,000, and suspended from association with any NASD member in any capacity for two years. The sanctions were based on findings that Hawkins guaranteed a customer against loss in connection with securities transactions. Hawkins also participated in private securities transactions and failed to provide his member firm with written notice of these transactions or to obtain approval or acknowledgment from the firm. **(NASD Case #C07980047)**

**Keith Allen Heichel (CRD #2058597, Registered Representative, Berea, Ohio)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$33,142.25, and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Heichel consented to the described sanctions and to the entry of findings that he received a \$1,000 check for financial planning services. The NASD found that Heichel deposited the check in his

personal bank account and did not make restitution to his member firm until a later date. Heichel also participated in outside business activities and failed to give prompt written notice to his member firm of such activities. **(NASD Case #C8B990013)**

**James Salvadore Heitzer (CRD #1187636, Registered Principal, Atlanta, Georgia)** and **Christine Ann Heitzer (CRD #1099089, Registered Principal, Atlanta, Georgia)** were each censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that James and Christine Heitzer failed to respond to NASD requests for information concerning the investigation of various customer complaints and the Form U-5 filed on behalf of the Heitzers by a member firm. **(NASD Case #C07980015)**

**John Vernon Hiers (CRD #1998818, Registered Representative, Canyon Lake, California)** was censured, fined \$137,500, barred from association with any NASD member in any capacity, and ordered to pay \$6,106.77, plus interest, in restitution to a public customer. The sanctions were based on findings that Hiers received a \$7,500 check from a public customer intended for investment purposes, and without the customer's knowledge or consent, deposited the check in his personal brokerage account, used the funds to cover a day trade previously made in his account, and dissipated all but \$1,393.23 of the funds through trading in his personal account. Furthermore, Hiers falsely represented to the customer on numerous occasions that the account statements reflecting the trade that the customer had authorized in his account would be forthcoming. Contrary to these representations, however, no such statements were ever provided to the

customer because no account was ever established in the customer's name. Hiers later paid the customer \$1,393.23 but failed to return any portion of the remaining \$6,106.77. **(NASD Case #C02980029)**

**Meredith Ivan Horowitz (CRD #250404, Registered Principal, Brooklyn, New York)** was censured, fined \$1,000, and barred from association with any NASD member as a financial and operations principal. The sanctions were based on findings that a former member firm, acting through Horowitz, conducted a securities business while failing to maintain its minimum required net capital and effected a withdrawal of equity capital while its net capital was under the minimum requirement. **(NASD Case #C10960032)**

**William Terrill Hundley (CRD #2291524, Registered Representative, Moore, Oklahoma)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and suspended from association with any NASD member in any capacity for two years. Without admitting or denying the allegations, Hundley consented to the described sanctions and to the entry of findings that he shared in the losses in the account of public customers by reimbursing the customers with a cashier's check in the amount of \$4,112.70 and issuing a promissory note for \$6,000 as repayment for losses incurred in the customers' account. The findings also stated that Hundley failed to timely and completely respond to NASD requests for information. **(NASD Case #C05990002)**

**Mark Jude Iacono (CRD #1154923, Registered Principal, Smithtown, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and suspended from association with any NASD member in any capacity for 30

days. Without admitting or denying the allegations, Iacono consented to the described sanctions and to the entry of findings that he repeatedly failed to make the required "affirmative determination" that certain securities he sold short would be delivered or were available and could be borrowed. The findings also stated that Iacono failed to comply with the rule requiring that all order tickets be marked either as a "long" or "short" transaction. **(NASD Case #CAF980002)**

**Timothy Jones (CRD #1901591, Registered Representative, Tallahassee, Florida)** was censured, fined \$65,000, suspended from association with any NASD member in any capacity for two years, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Jones participated in outside business activities without providing prompt written notice to his member firm of such activities. Jones also failed to respond to NASD requests for information. **(NASD Case #C07980020)**

**Jonathan Ki Jung (CRD #2763865, Registered Representative, Boston, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, suspended from association with any NASD member in any capacity for one year, and required to requalify by exam as a general securities representative by taking the Series 7 exam prior to acting again in any registered capacity with the NASD. Without admitting or denying the allegations, Jung consented to the described sanctions and to the entry of findings that he falsified documents and sent these documents to customers to create the erroneous impression that the execution price on options purchase transactions was lower than the actual price that had been previously

reported to the customers. **(NASD Case #C11990011)**

**Christopher S. Knight (CRD #1710581, Registered Principal, Forest Hills, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Knight consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and/or information. **(NASD Case #C10990051)**

**Harriet Jacqueline Kozyn (CRD #2724496, Registered Representative, Ann Arbor, Michigan)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Kozyn failed to respond to NASD requests for information. **(NASD Case #C8A980067)**

**Brian Joseph Lichtlin (CRD #2647463, Registered Representative, Secaucus, New Jersey)** was censured, fined \$65,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Lichtlin effected unauthorized trades in the accounts of public customers and forged the signatures of public customers on documents stating that certain of the unauthorized purchases were unsolicited. Lichtlin also failed to respond to NASD requests for information. **(NASD Case #C10980112)**

**Mario J. Liriano (CRD #2538442, Registered Principal, Bronx, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$40,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations,

Liriano consented to the described sanctions and to the entry of findings in that he received a check from public customers in the amount of \$5,000 to invest in several mutual funds, failed to submit the check to his member firm, presented the check to a third party for payment, and converted the funds to his personal use. Liriano attempted to conceal his conversion by sending his member firm the customers' application and his own personal check that was dated the same day he received the funds from the customers in an attempt to mislead his employer into believing that the customers' funds were submitted contemporaneously with the investment application and not improperly used by Liriano. The findings also stated that Liriano presented his member firm with a personal check that was rejected for insufficient funds. **(NASD Case #C10990027)**

**Robert Charles Madrid (CRD #2474262, Registered Representative, Blue Island, Illinois)** was censured, fined \$35,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Madrid engaged in unauthorized trading and failed to respond to NASD requests for information. **(NASD Case #C8A980069)**

**Kevin Michael Mahon (CRD #1933710, Registered Representative, Manalapan, New Jersey)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Mahon failed to respond to NASD requests for information concerning customer complaints, private securities transactions, and dual registration with member firms. **(NASD Case #C10980079)**

**Wayne Charles Maier (CRD #317449, Registered Representa-**

**tive, Bay City, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Maier consented to the described sanctions and to the entry of findings that he participated in a private securities transaction in the form of a promissory note in the amount of \$50,000, and failed and neglected to provide written notice to, or to receive written authorization from, his member firm of his participation. **(NASD Case #CA8990037)**

**Joseph Edward Mattera (CRD #2560300, Registered Representative, Medford, New York)** submitted an Offer of Settlement pursuant to which he was censured, suspended from association with any NASD member in any capacity for nine months, and required to pay \$58,200 in restitution to public customers. Without admitting or denying the allegations, Mattera consented to the described sanctions and to the entry of findings that he solicited public customers to purchase securities and omitted to disclose material information concerning the nature of the transaction recommended and the issuer of the securities. The findings also stated that Mattera predicted the future price of a security to members of the public, and effected a purchase of a security in the accounts of public customers without their prior authorization. Furthermore, the NASD found that Mattera represented to a customer that the customer's failure to pay for an unauthorized transaction would have a negative effect on the customer's credit rating. **(NASD Case #C3A980065)**

**Christopher Thomas McNamara (CRD #2451397, Registered Representative, Dix Hills, New York)** was censured, fined \$100,000, barred

from association with any NASD member in any capacity, and ordered to pay \$140,101.72, plus interest, in restitution to public customers. The sanctions were based on findings that McNamara induced public customers to purchase securities by making numerous material misrepresentations, false and misleading statements, and omissions of fact about the companies and the securities. The findings also stated that McNamara misrepresented the amount of the commissions he would earn on these transactions. In addition, McNamara effected unauthorized transactions in customer accounts and made fraudulent price predictions. McNamara also failed to follow, or follow promptly, a public customer's instructions to sell securities. **(NASD Case #C3A980045)**

**Andrew Means (CRD #2729697, Associated Person, Brooklyn, New York)** was censured, fined \$65,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Means failed to respond to NASD requests for information. Means also filed an inaccurate Form U-4 and failed to disclose that he had been convicted or plead guilty to felony charges on several occasions. **(NASD Case #C10980060)**

**George Jerry Merges (CRD #1610239, Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which he was censured, fined \$5,000, and suspended from association with any NASD member in a supervisory capacity for 10 business days. Without admitting or denying the allegations, Merges consented to the described sanctions and to the entry of findings that he failed to supervise adequately an individual so as to be able to detect unsuitable recommendations made to a public customer. **(NASD Case #C07980045)**

**Jeffrey David Miller (CRD #733159, Registered Representative, Moody, Alabama)** was censured, fined \$50,000, suspended from association with any NASD member in any capacity for one year, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Miller received a check in the amount of \$2,558 from a public customer for the purchase of insurance policies, failed and neglected to execute the purchases of these insurance policies, and instead, made improper use of the customer's funds. Miller also failed to amend his Form U-4 to disclose a civil judgment and the filing of a federal tax lien against him. Furthermore, Miller failed to respond to NASD requests for information. **(NASD Case #C05980039)**

**James Scott Morrill (CRD #2489543, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Morrill consented to the described sanctions and to the entry of findings that, in connection with an initial public offering (IPO), Morrill solicited public customers to purchase units of the offering by telling the customers that they could only purchase units in the IPO if they agreed to commit to aftermarket purchases. The findings also stated that Morrill effected an unauthorized purchase of shares of the IPO for a public customer when the customer agreed only to purchase aftermarket units, effected an unauthorized cancellation of the customer's authorized IPO purchase because the customer refused to pay for the unauthorized shares, and canceled a public customer's purchase of units because the customer was unable to timely remit funds to

purchase aftermarket units. In advising customers that their rights to purchase units in the IPO were contingent upon their committing to purchase aftermarket shares, the NASD found that Morrill misrepresented to the customers certain material facts relating to the terms and conditions of the IPO and misrepresented the customers' actual rights under the federal securities laws, and failed to advise them of certain material facts, such as the extensive risks associated with the proposed investment, including but not limited to the history of operating losses. Furthermore, the NASD determined that Morrill attempted to induce, and did in fact induce, persons to purchase units, shares, and warrants prior to the completion of the IPO. **(NASD Case #C10970143)**

**William Nunziato (CRD #727864, Registered Principal, Whitestone, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nunziato consented to the described sanctions and to the entry of findings that, acting with others, Nunziato arranged to purchase approximately 1.3 million shares of common stock from former affiliates of an offering and, acting alone and with others, engaged in a secondary distribution using special selling efforts and selling methods at a time when his firm acted as a Market Maker; bid for and purchased securities which were the subject of the distribution; and induced other persons to purchase such securities before the distribution was completed. Moreover, the findings stated that Nunziato failed to inform his firm's customers that the IPO was not a bona fide public distribution nor were they informed of the secondary distribution that diluted the shareholders' interests in the aftermarket. The findings also stated that

a member firm, acting through Nunziato, failed to supervise adequately and properly an individual with respect to “flipping” IPO shares to ensure compliance with applicable rules and regulations, and failed to take any steps to discharge his supervisory responsibilities with the firm. Nunziato also failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #CAF980098)**

**David Charles Olson (CRD #1007413, Registered Principal, Aurora, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Olson consented to the described sanctions and to the entry of findings that he made a material misrepresentation to a public customer regarding the customer’s investment. The NASD found that, based on Olson’s false representation, the customer continued to hold his position of the stock and purchased additional shares through another broker/dealer. **(NASD Case #C3A990026)**

**Huang Hwei Ong (CRD #2670892, Registered Representative, Singapore)** was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 days. The sanctions were based on findings that Ong provided false information on a Form U-4. **(NASD Case #C10980006)**

**Michael Anthony Petrucci (CRD #2152102, Registered Representative, New Haven, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$32,500, and barred from association with any NASD member in any capacity. Without admitting or deny-

ing the allegations, Petrucci consented to the described sanctions and to the entry of findings that he engaged in outside business activities and engaged in a private securities transaction without prior written notice to, or approval from, his member firm. The findings also stated that Petrucci made untrue statements of material facts, and omitted to state material facts necessary to make the statements not misleading, in connection with his offer and sale of a promissory note to a public customer. Furthermore, the NASD found that Petrucci guaranteed the customer that he would not lose any money as an inducement for the customer to invest in the promissory note. **(NASD Case #C11990016)**

**Robert Louis Plomgren (CRD #1240476, Registered Principal, Solana Beach, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Plomgren consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm describing the proposed transactions and his proposed role therein. **(NASD Case #C02990031)**

**Thomas James Quesnel (CRD #1556028, Registered Representative, South Hadley, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, barred from association with any NASD member in any capacity, and ordered to pay \$7,558.52, plus interest, in restitution to a member firm. Without admitting or denying the allegations, Quesnel consented to the described sanctions and to the entry of findings that he

misappropriated \$7,558.52 in cash surrender proceeds from the life insurance policies of his customers. According to the findings, the customers had endorsed cash surrender checks and requested that Quesnel use the funds to pay the premium on their new insurance policies. The NASD found that, instead, Quesnel double-endorsed the checks and improperly converted the funds for his own use and benefit. **(NASD Case #C11990015)**

**Christopher Johnalbert Richardson (CRD #2041338, Registered Representative, New York, New York)** submitted an Offer of Settlement pursuant to which he was censured and suspended from association with any NASD member in any capacity for 18 months. Without admitting or denying the allegations, Richardson consented to the described sanctions and to the entry of findings that he submitted materially inaccurate Forms U-4, and failed to amend his Form U-4 to disclose state actions taken against him. The findings also stated that Richardson failed to respond timely to NASD requests for information. **(NASD Case #C10980137)**

**Matthew Joseph Samul (CRD #2708526, Registered Representative, Henderson, Nevada)** was censured, fined \$2,500, and suspended from association with any NASD member in any capacity for five business days. The sanctions were based on findings that Samul used indecorous language during a conversation with a potential customer. **(NASD Case #C10980111)**

**Richard San Miguel, Jr. (CRD #1884910, Registered Representative, Oceanside, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30

business days. Without admitting or denying the allegations, San Miguel consented to the described sanctions and to the entry of findings that he submitted Forms U-4 to his member firms and failed to notify his firms that he was convicted of petty theft and was disciplined by the state of California for failing to disclose the conviction on a registration application. **(NASD Case #C02990019)**

**Thomas Robert Sanford (CRD #2384344, Registered Principal, Dana Point, California)** submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, barred from association with any NASD member in any capacity with the right to reapply after five years, required to show proof of restitution to public customers, and required to reimburse his member firm \$21,800. Without admitting or denying the allegations, Sanford consented to the described sanctions and to the entry of findings that he effected transactions in the accounts of public customers without the customers' knowledge, authorization, or consent and initiated unauthorized wire transfers totaling \$21,800 from the joint account of public customers. The findings also stated that, in order to facilitate this unauthorized wire transfer, Sanford forged the customers' signatures on wire transfer instruction forms, and as a result, \$21,800 belonging to the customers was transferred from their joint account to bank accounts of which the customers had no beneficial nor other interest. **(NASD Case #C02980090)**

**Mark Anthony Savage (CRD #1907412, Registered Representative, Morristown, New Jersey)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Savage failed to respond to NASD requests for information. **(NASD Case #C10980101)**

**Andrew Daniel Schiff (CRD #2273198, Registered Representative, West Long Branch, New Jersey)** was censured, fined \$14,000, and barred from association with any NASD member in any capacity. The NAC imposed the sanctions following appeal of a New York DBCC decision. The sanctions were based on findings that Schiff executed transactions in the accounts of public customers without the customers' knowledge, authorization, or consent. **(NASD Case #C10970156)**

**Rex Dale Schilling (CRD #2120285, Registered Principal, Portland, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schilling consented to the described sanctions and to the entry of findings that he failed to respond to NASD requests for documents and information. **(NASD Case #C3B990010)**

**David Jordan Smith (CRD #2139062, Registered Representative, Kailua, Hawaii)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Smith failed to respond to NASD requests for information. **(NASD Case #C3B980024)**

**Frank John Spinelli, Jr. (CRD #2712773, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, suspended from association with any NASD member in any capacity for 60 days, and required to requalify by exam in all capacities. Without admitting or denying the allegations, Spinelli consented to the described sanctions and to the entry of findings that he solicited public customers, took customer orders to open new

accounts, and executed securities transactions while he was unregistered. According to the findings, Spinelli forwarded the customer information to a co-worker who opened the accounts and executed the securities transactions under his name and internal account executive number. Spinelli failed to inform the customer or his member firm of this matter. The NASD found that upon completion of his registration with the NASD, these accounts were transferred back to Spinelli's name and internal account executive number. Furthermore, the NASD determined that Spinelli solicited customers securities without first knowing the customers and the customers' suitability for the securities. **(NASD Case #C10990048)**

**Richard Kent Steele, Jr. (CRD #2195547, Registered Representative, Los Angeles, California)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Steele failed to respond to NASD requests for information and an on-the-record interview. **(NASD Case #C10980083)**

**Gerald James Stoiber (CRD #871482, Registered Representative, Mokena, Illinois)** was fined \$450,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$450,000 in restitution to public customers. However, the fine may be reduced by any amounts Stoiber pays in restitution to public customers. The United States Court of Appeals for the District of Columbia dismissed Stoiber's appeal of an SEC decision rendered September 1997 sustaining NASD disciplinary action, and the Supreme Court of the United States denied a writ of certiorari in April 1999. The sanctions were based on findings that Stoiber engaged in private securities transactions while failing to give prior writ-

ten notice to, and obtain prior written approval from, his member firm to engage in such activities.

Stoiber's suspension began on May 31, 1999, and will conclude at the close of business on November 29, 1999. **(NASD Case #C8A940013)**

**Jennifer Marie Tew (CRD #2704798, Registered Representative, North Glenn, Colorado)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which she was censured, fined \$11,250, suspended from association with any NASD member in any capacity for one year, and required to repay \$250 to a bank. Without admitting or denying the allegations, Tew consented to the described sanctions and to the entry of findings that she used the computer accounting function of a bank associated with her member firm to cause her checking account at the bank to be credited in the aggregate amount of \$250. The NASD found that this amount was credited to offset charges that had been debited to the account. **(NASD Case #C3A990003)**

**Vincent Gerard Vaccaro (CRD #2200443, Registered Principal, Lydenhurst, New York).** Vaccaro was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to disgorge commissions totaling \$135,982.50 to his customers. The sanctions were based on findings that Vaccaro participated in a "boiler room" at his member firm and made material misrepresentations and omissions to public customers while recommending that they purchase interests in an IPO and aftermarket stock underwritten by his member firm. In addition, Vaccaro made an unauthorized purchase for a public customer and failed to execute sell orders he received from customers. **(NASD Case #CMS960174)**

**Alejandro Vargas (CRD #2843561, Associated Person, Inglewood, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Vargas consented to the described sanctions and to the entry of findings that he submitted a Form U-4 to his member firm that failed to disclose a petty theft conviction. **(NASD Case #C02990020)**

**Greg Todd Vittor (CRD #1864219, Registered Principal, Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which he was censured, fined \$20,000, and suspended from association with any NASD member in any capacity for 30 business days. Without admitting or denying the allegations, Vittor consented to the described sanctions and to the entry of findings that he repeatedly failed to make the required "affirmative determination" that certain securities he sold short would be delivered or were available and could be borrowed. **(NASD Case #CAF980002)**

**Daniel Phillip Whaley (CRD #1161113, Registered Principal, Bay City, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$7,500, suspended from association with any NASD member in any capacity for five business days, and required to requalify by exam as a general securities principal. Without admitting or denying the allegations, Whaley consented to the described sanctions and to the entry of findings that a member firm, acting through Whaley, failed to ensure that an individual was qualified and/or registered in the appropriate capacity with the firm prior to permitting the individual to engage in securities transactions. **(NASD Case #C8A980008)**

## Individuals Fined

**Brad Ralph Miles (CRD #2468765, Registered Representative, Hooper, Utah)** submitted an Offer of Settlement pursuant to which he was censured and fined \$10,000. Without admitting or denying the allegations, Miles consented to the described sanctions and to the entry of findings that he participated in private securities transactions and failed to give his member firm prior written notification of his participation in the transactions. **(NASD Case #C3A990009)**

**Greg Steven Sklar (CRD #1694379, Registered Representative, Los Angeles, California)** submitted an Offer of Settlement pursuant to which he was censured, fined \$30,000, and ordered to requalify by exam as a general securities representative. Without admitting or denying the allegations, Sklar consented to the described sanctions and to the entry of findings that he knew, or should have known, that the recommendations in the account of a public customer were unsuitable for the customer and that the account was excessively traded. Sklar failed to take appropriate action to prevent the violative activity in the account and substantially benefited from the violative trading activity. **(NASD Case #C02980024)**

**Randy James Wishinsky (CRD #1461972, Registered Principal, Clinton, Tennessee)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured and fined \$20,000. Without admitting or denying the allegations, Wishinsky consented to the described sanctions and to the entry of findings that he improperly paid commissions to a registered representative of another firm for transactions with public customers he never met. According to the findings, Wishinsky had no involvement in these transactions except to the extent that each of the accounts was opened and the transactions accom-

plished with his registered representative number through his member firm. **(NASD Case #C11980012)**

## Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of May 14, 1999. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

**Sylvester Cannon, Jr. (CRD #2766126, Registered Representative, Detroit, Michigan)** was censured, fined \$25,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Cannon failed to respond to NASD requests for information regarding alleged forgeries.

Cannon has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C8A980054)**

**Vincent Michael Carrella (CRD #2321148, Registered Principal, East Islip, New York)** was censured, fined \$100,000, barred from association with any NASD member in any capacity, and required to disgorge commissions totaling \$161,623.75 to his customers. The sanctions were based on findings that Carrella made fraudulent misrepresentations to public customers while recommending that they purchase interests in an IPO and after-market stock underwritten by his member firm. Carrella failed to disclose to customers material information concerning the risks attendant to investing in the offering.

Carrella has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #CMS960174)**

**Steven Fishman (CRD #2428781, Registered Principal, Brooklyn, New York)** was censured and barred from association with any NASD member in any capacity. The sanctions were based on findings that a former member firm, acting through Fishman, operated a securities business without a financial and operations principal and conducted a securities business while failing to maintain its minimum required net capital. In addition, the firm, acting through Fishman, failed to establish, maintain, and enforce written supervisory procedures that addressed the receipt of customer checks made payable to the firm.

Fishman has appealed this action to the NAC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C10960032)**

**Harry Gliksman (CRD #223138, Registered Principal, Beverly Hills, California)** was censured, fined \$25,000, suspended from association with any NASD member in any capacity for six months, and required to requalify as a general securities representative. The NAC affirmed the sanctions following appeal of a Los Angeles DBCC decision. The sanctions were based on findings that Gliksman made unsuitable recommendations to a public customer.

Gliksman has appealed this action to the SEC and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C02960039)**

**Robin Bruce McNabb (CRD #1016598, Registered Principal, San Jose, California)** was censured, fined \$50,000, and barred from association with any NASD member in any capacity. The NAC

imposed the sanctions following appeal of a San Francisco DBCC decision. The sanctions were based on findings that McNabb participated in private securities transactions without giving prior written notification to his member firm. In addition, McNabb recommended to public customers the purchase of securities without having reasonable grounds for believing that the investments were suitable for the customers in light of the facts disclosed by the customers as to their other security holdings and as to their financial situation and needs.

McNabb has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal. **(NASD Case #C01970021)**

## Complaints Filed

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

**William Thomas Breese (CRD #2542710, Registered Representative, Midlothian, Illinois)** was named as a respondent in an NASD complaint alleging that he received \$141,793.19 in checks and cash from public customers to purchase securities, failed to apply the funds, except for \$1,000, as they directed, and without their knowledge and authorization, used the funds for his own benefit or for some purpose other than for the benefit of the customers. The complaint alleges that

Breese obtained a total of \$151,376.88 from accounts belonging to a public customer, without the knowledge or authorization of the customer, and used the funds for the benefit of himself or individuals other than the customer. The complaint also alleges that Breese failed to respond to NASD requests for information. **(NASD Case #C8A990039)**

**Robert Steven Calavetta (CRD #2399753, Registered Representative, Staten Island, New York)** was named as a respondent in an NASD complaint alleging that he purchased securities for the account of a public customer, without the knowledge or consent of the customer, and in the absence of written or oral authorization to exercise discretion in the account. The complaint also alleges that Calavetta failed to appear for an on-the-record interview requested by the NASD. **(NASD Case #10990054)**

**Michael Daniel Cleary (CRD #2692653, Registered Representative, New York, New York)** was named as a respondent in an NASD complaint alleging that he effected a purchase in the account of a public customer without the knowledge or consent of the customer, and failed to execute other customers' sell orders. The complaint also alleges that Cleary made false or misleading statements to a public customer when he knew, or was reckless in not knowing, that they were false or misleading. The complaint alleges that Cleary allowed an unregistered person to use his account executive number to effect securities transactions when he knew or should have known that the individual was not registered with the NASD. Furthermore, the complaint alleges that Cleary knowingly entered false and misleading information on his Form U-4, and failed to respond in a timely manner to NASD requests for information or to appear for an on-the-

record interview. **(NASD Case #10990056)**

**Oscar Conrad Dotson (CRD #2585430, Registered Representative, Providence, Rhode Island)** was named as a respondent in an NASD complaint alleging that he received a check in the amount of \$556.70 from a public customer in order to pay the premium to reinstate her husband's insurance policy, failed to apply the \$556.70 to the insurance policy as intended by the customer, and instead, improperly converted the funds for his own use and benefit. The complaint also alleges that Dotson failed to respond to NASD requests for information. **(NASD Case #C11990020)**

**John Edwin Evans (CRD #1649451, Registered Principal, Dunwoody, Georgia)** was named as a respondent in an NASD complaint alleging that he made representations to public customers regarding the purchase of warrants that constituted a guarantee against loss and a manipulative, deceptive, and fraudulent inducement to effect the purchase of a security. The complaint also alleges that Evans failed to respond to NASD requests for information. **(NASD Case #C07990035)**

**Christopher Gordon Fike (CRD #2493817, Registered Principal, Bayshore, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted to disclose material information to public customers in connection with his solicitations and recommendations of transactions. The complaint alleges that Fike made price projections of securities to public customers without having a reasonable basis for his predictions. The complaint also alleges that Fike made unsuitable recommendations to a public customer, in light of the customer's

financial circumstances and needs. **(NASD Case #C3A990021)**

**Len Kenneth Furman (CRD #1964317, Registered Principal, Bradenton, Florida)** was named as a respondent in an NASD complaint alleging that he made omissions of material fact in connection with the sale of promissory notes to public customers. The complaint also alleges that Furman solicited and sold promissory notes to public customers, outside of the scope of his regular employment with his member firm, without giving prior written notice to, or receiving approval from, his firm of his proposed participation in such transactions. The complaint also alleges that Furman signed false and misleading affidavits in connection with arbitration proceedings filed by public customers. **(NASD Case #C07990033)**

**Hanna Grzedzicakawalek (CRD #2610590, Registered Representative, Glen Cove, New York)** was named as a respondent in an NASD complaint alleging that she received a \$1,479 cash payment from a public customer to pay the annual premium for a life insurance policy, failed to transmit this payment to the insurance company, and instead, deposited the money in her personal bank account, and began making monthly premium payments of \$135 on the customer's policy. The complaint alleges that Grzedzicakawalek made a total of \$810 of such payments and converted the remaining \$669 to her own use and benefit without the customer's knowledge or consent. The complaint also alleges that Grzedzicakawalek received insurance checks totaling \$1,115.39 payable to public customers, representing premium refunds from canceled life insurance policies, and rather than transmitting these payments to the customers, endorsed the checks, deposited them in her personal bank account, and converted the resulting

funds to her own use and benefit without the customers' consent or authority. The complaint also alleges that Grzedzicakawalek failed to respond to NASD requests for information. **(NASD Case #C9B990002)**

**James Mirven Hinderliter, III (CRD #2573867, Registered Representative, Shirley, New York)** was named as a respondent in an NASD complaint alleging that he received \$182.63 in cash premium payments for life insurance policies, failed to forward these payments to his member firm, and instead, converted these funds to his own use and benefit without the customer's knowledge or consent. The complaint also alleges that Hinderliter failed to respond to NASD requests for information. **(NASD Case #C9B990003)**

**Mark Allen McGee (CRD #2422551, Registered Representative, New-castle, Washington)** was named as a respondent in an NASD complaint alleging that he received a check in the amount of \$5,079 from a public customer for investment purposes, and the customer did not receive either the shares of stock he intended to purchase, nor did McGee return the funds to the customer. The complaint also alleges that McGee received a total of \$26,000 from public customers for investment in the "Equity Committee Portfolio," a fund they were told by McGee was managed by a group of financial advisors in his firm's Seattle office, when in fact, there was no such product provided by the firm, and the customers' funds were not placed in a bona fide investment, nor did McGee return the funds to them. Furthermore, the complaint alleges that McGee failed to respond to NASD requests for information. **(NASD Case #C3B990017)**

**Patrick John McVicar (CRD #2182305, Registered Representative, Jersey City, New Jersey)** was

named as a respondent in an NASD complaint alleging that he executed unauthorized purchase transactions in the account of a public customer without the customer's knowledge or consent. The complaint alleges that McVicar sent correspondence to a public customer without the prior approval or review by his supervisor. The complaint also alleges that McVicar failed to respond to NASD requests for information. **(NASD Case #C05990011)**

**Keith Malvin Peters (CRD #2247575, Registered Principal, Copiague, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and omitted to disclose material information to public customers in connection with his solicitations and recommendations of transactions. The complaint alleges that Peters predicted the future price of securities to public customers without having a reasonable basis. The complaint also alleges that Peters effected a transaction in the account of a public customer that exceeded the customer's authorization. The complaint also alleges that Peters failed to sell securities as instructed by a public customer. **(NASD Case #C3A990022)**

**Fernando Patricio Rodriguez (CRD #1587712, Registered Principal, Cudahy, California)** was named as a respondent in an NASD complaint alleging that he received cash payments totaling \$800 from a public customer for the purpose of paying the customer's individual retirement account fixed annuity premiums, and instead of making the payments for the customer, converted the \$800 to his own personal use. **(NASD Case #C02990032)**

**Wei John Wang (CRD #2549111, Registered Representative, Nashville, Tennessee)** was named as a respondent in an NASD com-

plaint alleging that he forged the signature of a public customer to a form titled "Authorization to Change Broker/Dealer," which effected a change of the broker/dealer of record for the customer's account from one member firm to another, without the customer's knowledge or consent. The complaint also alleges that Wang exercised discretion in the account of a public customer by effecting a transfer of funds held in the customer's variable annuity from an index equity fund to a high yield bond fund, without having obtained prior written authorization from the customer and prior written acceptance of the account as discretionary by his member firm. The complaint also alleges that Wang provided the NASD with a copy of a letter purportedly written and signed by a public customer, which represented that the customer was satisfied with the manner in which his account had been handled by Wang when Wang knew, or should have known, that the letter was not written by the customer and the purported signature was a forgery. The complaint also alleges that Wang provided the NASD with a copy of a letter purportedly written and signed by another customer which represented that the customer was retracting a complaint previously made against Wang when Wang knew, or should have known, that the letter was not written by the customer and the purported signature was a forgery. **(NASD Case #C05990014)**

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

**Conlon, John J. III**, Wallingford, Connecticut (April 28, 1999)

**Melville, Andrew B.**, Altamonte Springs, Florida (April 28, 1999)

**Priolo, Antonio Eugene**, Brooklyn, New York (April 28, 1999)

### **NASD's National Adjudicatory Council Fines A.S. Goldmen & Co. \$150,000; Orders Restitution To Customers; Sanctions And Fines Firm Execs**

NASD Regulation's National Adjudicatory Council (NAC) ordered Iselin, N.J.-based A.S. Goldmen & Co., Inc., to pay a \$150,000 fine and more than \$500,000 in restitution and interest to customers involved in securities transactions relating to today's decision.

A.S. Goldmen President and owner Anthony J. Marchiano has been fined, together with the firm, \$150,000; required to requalify as a principal; and censured for failing to supervise. Vice President Stuart E. Winkler has been suspended for two years, fined \$36,000, and censured for engaging in manipulative conduct, charging excessive markups, and failing to supervise. Head Trader Stacy Meyers was censured, fined \$5,000, and required to requalify as a general securities representative.

Following an independent review of the entire record in this matter, the NAC affirmed in part and reversed in

part the findings of New York's DBCC. The NAC found that A.S. Goldmen and Winkler engaged in manipulative and fraudulent trading practices, and that Meyers was responsible for the firm's excessive markups. Finally, the NAC upheld the determination that A.S. Goldmen, Winkler, and Marchiano failed to adequately establish, maintain, and enforce a supervisory system at the firm. During the appeal the staff filed a motion to reverse and dismiss the DBCC's finding of excessive underwriting compensation because the staff determined that the calculation of the compensation was erroneous. Based upon the staff's motion, the NAC dismissed the finding and reduced the sanctions accordingly.

The NAC concluded that during a four-day period in July 1994, A.S. Goldmen, through Winkler and Meyers, charged retail customers fraudulently excessive markups in 500 sales of Innovative Tech Systems, Inc. (ITSY) warrants, that the firm dominated and controlled the ITSY warrant market, and that A.S. Goldmen manipulated the market by bidding for and purchasing ITSY warrants while engaged in a distribution of the warrants. The manipulation and the overcharging, resulted in more than \$500,000 in illicit profits.

NASD Regulation found that even though A.S. Goldmen was only one of 12 Market Makers in Innovative Tech, it accounted for approximately 97 percent of all the warrants traded during the four-day period. By dominating the market to this extent, A.S. Goldmen controlled the supply of Innovative Tech's warrants, through its own accounts and its customers' accounts, immediately following the company's IPO on July 26, 1994.

A.S. Goldmen artificially increased the warrant's price to almost \$2 per share, more than a 700 percent increase over the offering price. As a result, customers were charged markups of five to 140 percent. NASD Regulation considers markups greater than five percent to be excessive and greater than 10 percent to be fraudulent.

NASD Regulation found no evidence that Innovative Tech Systems, which was (and still is) listed on The Nasdaq SmallCap Market<sup>SM</sup> at the time, knew that the price of its warrants was being manipulated.

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# For Your Information

## Market Regulation Compliance Report Cards

On September 24, 1998, staff of the Market Regulation Department (Market Regulation) of NASD Regulation began making available quantitative reports for each NASD member firm concerning its compliance with trade reporting, firm quote, and best execution. The reports are being provided to firms as a compliance aid to assist them in ensuring that they are submitting transaction reports in a timely manner, handling SelectNet<sup>SM</sup> liability orders in compliance with the firm quote rule, providing best execution to their customers, and, if necessary, taking appropriate measures to improve their performance in these areas. Each report contains information for the previous calendar month and is available on the 24th of each month or the first business day after the 24th if that day falls on a weekend or holiday.

The reports are available to view at [www.nasdaqtrader.com](http://www.nasdaqtrader.com), however, given the proprietary nature of the firm-specific reports, a firm must subscribe to the Proprietary Trading Data section of the Web Site to access any of the reports. For a detailed description of each of the reports and subscription information, please call Nasdaq Subscriber Services at (800) 777-5606.

Although these reports are designed and intended to be a preventive compliance tool, the information contained in these reports may indicate the existence of rule violations that may be pursued by Market Regulation staff depending on the circumstances. If you have any questions concerning the trade reporting report card, call Patricia Casimates at (301) 590-6447. If you have any questions concerning the firm quote compliance or best execution report cards, call Joe McDonald at (301) 212-3835.

## Exemptive Letter Issued

On April 26, 1999, NASD Regulation staff issued an exemptive letter under the NASD Rule 9600 Series concerning the application of the Free-Riding and Withholding Interpretation, IM-2110-1 (Interpretation), to purchases of hot issues by state government employee pension, benefit, or retirement plans. Specifically, the letter exempts from the Interpretation purchases by government employee pension, benefit, and retirement plans to the same extent that plans qualified under the Employee Retirement Income Security Act (ERISA) are exempted by paragraph (f)(3) of the Interpretation. The letter explains that although state government employee benefit plans are not "qualified under ERISA," they are subject to separate state and municipal regulation, they are not sponsored by entities typically engaged in financial services, and they often include thousands or hundreds of thousands of participants.

The exemptive letter may be found on the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)) in the section listing Interpretive Letters.

## Announcement - Upcoming District 4 And District 7 Compliance Seminars

### District 4 Membership Preventive Compliance Program

The 1999 District 4 Membership Preventive Compliance Program will be held on Wednesday, September 29, 1999. Members of the NASD Regulation staff, as well as selected industry speakers, will discuss current industry issues and offer insights and best practices on regulatory and compliance matters. Some of the topics to be discussed include the Central Registration Depository (CRD<sup>SM</sup>) system, communications with the public, continuing education,

on-line trading, written supervisory procedures, and more. CLE credits will be offered for this program.

The program will be held at the Radisson Plaza Hotel in Minneapolis, Minnesota and the registration fee is \$150. For more information on the program, contact Cheryl Hackathorn, NASD Regulation, District 4 Office, at (816) 421-5700.

### **District 7 Compliance Seminar**

On August 26 to 27, 1999, the 1999 District 7 Compliance Seminar will be held in Atlanta. Members of the NASD Regulation staff from Atlanta and Washington, as well as selected industry speakers, will discuss current industry issues and offer insights and best practices on regulatory and compliance matters.

The seminar will be held at the Ritz-Carlton Buckhead Hotel in Atlanta; the registration fee is \$225. For more information, contact the District 7 Office at (404) 239-6117.

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# Special NASD Notice to Members 99-52

**Mail Vote**—NASD Solicits  
Vote On Amendments To  
NASD By-Laws To The  
Associated Person  
Definition; **Last Voting  
Date: July 16, 1999**

## Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

## Executive Summary

The National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) invites members to vote to approve the following amendments to the NASD By-Laws: amend the definition of “person associated with a member” to include persons who have applied for registration and, for purposes of Rule 8210, certain persons who have ownership interests in NASD members. The last voting date is July 16, 1999. The text of the proposed amendments follows this *Notice*.

Questions concerning this *Notice* may be directed to Mary M. Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc. (NASD Regulation<sup>®</sup>), at (202) 728-8252.

## Background And Discussion

The NASD Board of Governors (the Board) recommends two minor amendments to the definition of the term “person associated with a member” in Article I of the NASD By-Laws. The term is currently defined to include:

(1) a natural person registered under the Rules of the Association; or

(2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association.

At least two issues have arisen with respect to the definition. The first issue is whether the definition should

be expanded modestly to apply to certain owners of members. Currently, the definition only includes owners who are natural persons engaged in the member’s investment banking or securities business **and** who have a direct or indirect control relationship with the member. The By-Laws do not define the term “control.”<sup>1</sup>

While the Board does not believe that the definition of associated person should include all owners and thereby subject them to all NASD rules, the Board would like to expand the definition minimally to give the staff authority to direct a request for information under Rule 8210 (the Rule) to any person – including a natural person or corporate or other entity – who holds a five percent or greater interest in a member firm, regardless of whether they “control” the member firm or are actively engaged in its securities or investment banking business. Such persons are easily identified because members must list them in Schedule A of Form BD, which is filed with the NASD and the Securities and Exchange Commission. For example, if the member is a corporation, the member generally must list each shareholder that directly owns five percent or more of a class of a voting security of the broker/dealer. If the member is a partnership, the member must list all general partners and those limited and special partners that have contributed, or have the right to receive upon dissolution, five percent or more of the partnership’s capital. Members have a continuing obligation to update Schedule A.

The Board is not recommending any change to the Rule itself, which is one of the staff’s primary tools for carrying out its regulatory responsibilities. The Rule authorizes the staff, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or

rules, to require a member or associated person to provide information or testimony. The Rule also authorizes the staff to inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding. The proposed amendment to the definition of associated person represents an incremental change that would permit the staff to direct a Rule 8210 request to any owner – individual, corporate, partnership, trust, or otherwise – listed in Schedule A of Form BD, whether or not such owner controls the member firm. The Board does not believe that it is necessary at this time to apply any other NASD rules to this group of owners or to amend Rule 8210.

The second issue involves an anomaly between the By-Law definition of the term “associated person” and the Form U-4, which is the application form for registration that must be signed by the prospective registered person. The Form U-4 states that by signing the Form, the applicant is subject to the jurisdiction of the NASD and any state in which he/she is applying for registration. However, the current

By-Law does not expressly address applicants for registration. The Board recommends that the By-Law should be made expressly consistent with the Form U-4 in this respect.

### Text Of The Proposed Amendments

*(Note: New language is underlined; deletions are bracketed.)*

#### By-Laws Of The NASD, Article 1

(a) – (dd) No Change

(ee) “person associated with a member” or “associated person of a member” means:

(1) a natural person who is registered or has applied for registration under the Rules of the Association; [or]

(2) a sole proprietor, partner, officer, director, or branch manager of a member, or [a] other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly

controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association; and

(3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;

(ff) – (mm) No Change

### Endnote

<sup>1</sup>The Form BD defines “control” as the “power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that ... directly or indirectly has the right to vote 25% or more of a class of a voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or ... in the case of a partnership, has the right to receive upon dissolution, or has contributed 25% or more of the capital, is presumed to control that company.”

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