

# Notices to Members

## April 1999

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Parent of The Nasdaq-Amex Market Group

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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 99-26

## NASD Will Terminate Form 211 Applications If Applicants Do Not Respond To NASD Deficiency Letters Within 180 Calendar Days

### 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 purpose of this *Notice to Members* is to advise member firms that Form 211 applications, submitted by member firms to demonstrate compliance with Securities and Exchange Commission (SEC) Rule 15c2-11 and National Association of Securities Dealers, Inc. (NASD® or Association) Rule 6740, will be treated as abandoned and the Association will close its files on the matter if a submitting member firm has not responded to a deficiency letter sent to it by the Market Regulation Department staff within 180 calendar days of the date of the deficiency letters.<sup>1</sup>

Questions concerning this *Notice* may be directed to Ken Worm, Assistant Director, Market Regulation Department, NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) at (301) 208-2862.

### Background

Pursuant to Rule 6740, prior to initiating or resuming quotation of a non-Nasdaq® security in any quotation medium, a member firm must submit a Form 211 application to the Market Regulation Department for its review and a determination that the member firm has demonstrated compliance with SEC Rule 15c2-11. Within three days of the receipt of the Form 211 application, the staff will either clear the application, allowing the member firm to initiate or resume quotations of the non-Nasdaq security in the specified quotation medium, or send the member firm a deficiency letter explaining that it cannot clear the application because of certain specified deficiencies and setting forth what the firm must do to address those specified concerns.

While a member firm is provided an opportunity to cure any deficiencies in

the Form 211 application by providing additional explanation and/or information that addresses those concerns, member firms frequently fail to respond to the letter in any manner. As a result of a member firm's failure to respond, the information relied upon by the member firm in making its application becomes stale and it is no longer possible to approve the application under Rule 6740.

In order to address the lack of current information in these circumstances, as of the date of the publication of this *Notice to Members*, any Form 211 application for which the member firm has not addressed a deficiency letter within 180 calendar days of the date of that letter will be treated as withdrawn and the applicant's file will be closed.<sup>2</sup> If the member firm still desires to initiate or resume quotations of the subject non-Nasdaq security after the file is closed, it must file a new Form 211 application along with current issuer information.

### Endnotes

<sup>1</sup>Six months is the longest period of time that an application can remain current without being supplemented with more timely documents. See SEC Rule 15c2-11(g).

<sup>2</sup>All Form 211 applications currently maintained in the staff's files for which member firms have failed to respond to deficiency letters for 180 calendar days or longer will be closed. All Form 211 applications currently maintained in the staff's files for which this 180-calendar day period has not yet run and all Form 211 applications received subsequent to the publication of this *Notice to Members* will be processed according to this procedure.

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# NASD Notice to Members 99-27

Order Audit Trail System  
Phase 2 Firms Required  
To Register; Firms  
Should Register By  
April 1, 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

In accordance with National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rules 6950 through 6957 (the OATS Rules), the NASD has established a registration process for member firms and third parties that will begin reporting to the Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>) in Phase 2 (August 1, 1999) and Phase 3 (July 31, 2000). In Phase 2, NASD member firms are required to report all electronic orders for Nasdaq<sup>®</sup> securities. All manual orders for Nasdaq securities must be reported by Phase 3.

*Organizations reporting to OATS should complete registration approximately 120 days before they are required to report (April 1, 1999, for Phase 2; April 1, 2000, for Phase 3) in order to allow sufficient time for familiarization and testing.* NASD member firms that handle orders in Nasdaq securities and fail to complete and return the *OATS Subscriber Initiation and Registration Form* or fail to perform all required registration activities will not be able to report OATS data to the NASD; failure to report order information by the specified OATS implementation date is a violation of NASD Rules 6955 and 3110.

Registration for Phase 1 (March 1, 1999) began in September 1998. Parties registered for Phase 1 have begun reporting order data to OATS. (See *NASD Notices to Members 98-33, 98-73, and 99-04* for a complete description of the OATS Rules, OATS Registration process for Phase 1, and OATS Rules amendments.)

For Phase 2 and Phase 3 registration, the NASD has revised the existing *OATS Subscriber Initiation and Registration Form*. The form is available at [www.nasdr.com/3370.htm](http://www.nasdr.com/3370.htm). Member firms and third parties that will be transmitting to OATS directly or via

another entity during Phases 2 and 3 are required to complete Sections 1 through 4 of the revised registration form and return it to the NASD prior to the date when they intend to begin reporting.

The completed form must be accompanied by a request for an initial user account. The request must be on letterhead, and contain the organization's name, address, broker/dealer number (if appropriate), and the user's name, telephone number, and fax number.

All member firms and third parties that will report to OATS in Phase 2 or 3, including those that have previously registered but do not intend to report to OATS in Phase 1, should refer to the Registration Activity Checklist contained in the registration form to ensure that they have performed all required registration activities, including requesting an initial user account. **Any party that intends to use the OATS private network to report to OATS by Phase 2 via File Transfer Protocol (FTP) or CONNECT:Direct, formerly known as Network Data Mover or NDM, must complete a contract with MCIWorldCom by April 1, 1999.**

Questions regarding OATS or the *OATS Subscriber Initiation and Registration Form* may be directed to NASD Business and Technology Support Services via phone at (800) 321-NASD, via fax at (888) 345-6275, or via e-mail at [supportservices@nasd.com](mailto:supportservices@nasd.com). Business Support is available from 8 a.m. to 6 p.m. Monday through Friday, Eastern Time (ET). Technical Support is available from 8 a.m. Monday through 7:30 a.m. Saturday, ET. Information about OATS and copies of the revised registration form and other OATS-related publications are available on the NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) Web Site ([www.nasdr.com](http://www.nasdr.com)).

## Background

The OATS Rules were approved by the Securities and Exchange Commission (SEC) in March 1998 and amended in July 1998. The OATS Rules require that all electronic orders for Nasdaq securities, including SmallCap<sup>SM</sup> and Nasdaq National Market<sup>®</sup> securities, and convertible bonds, received at the trading desk by Market Makers and Electronic Communication Networks (ECNs) be reported to OATS by March 1, 1999 (Phase 1); all electronic orders for Nasdaq securities received by member firms be reported to OATS by August 1, 1999 (Phase 2); and all non-electronic, or manual, orders for Nasdaq securities received by member firms be reported to OATS by July 31, 2000 (Phase 3).

## Discussion Registration For OATS Reporting

Information requested on the *OATS Subscriber Initiation and Registration Form* is necessary to register member firms and non-member third parties to report order information to OATS. NASD member firms that fail to complete and return this form or fail to perform all required registration activities will not be able to report OATS data to the NASD; failure to report order information by the specified OATS implementation date is a violation of NASD Rules 6955 and 3110. Organizations reporting to OATS should complete registration approximately 120 days before they are required to report in order to allow sufficient time for familiarization and testing.

The registration form includes a question regarding the Phase when the member firm is required to report to OATS or the non-member entity will begin transmitting to OATS and a question regarding the mechanism

that the member firm or non-member third party will use to transmit directly to OATS. The available mechanisms include FTP, CONNECT:Direct, e-mail, and the OATS Web interface. Member firms that will not be transmitting directly to OATS are asked to identify the third parties that will be reporting on their behalf and the Phase when reporting will begin.

The registration form also contains a Registration Activity Checklist, which should be used to ensure that the organization has completed all of the steps required to begin reporting to OATS. (Firms should already have used the *OATS Reporting Technical Specifications*, *OATS Subscriber Manual*, and OATS Frequently Asked Questions to prepare a system to report order information to OATS. Alternatively, they should have contracted with one or more third parties to provide this service. No member firm or third party may begin transmitting data to the OATS production environment on its implementation date unless it has already successfully transmitted to the OATS testing environment.)

Registration activities include returning the completed registration form, accompanied by a request for an initial user account, to the NASD. The request for an initial user account must be on letterhead, and contain the organization's name, address, broker/dealer number (if appropriate), the name of the user who is requesting the account, and that user's telephone number and fax number. The initial user account will provide the organization access to the OATS Web interface, which can be used to create and update OATS contact information, view the status of submitted files, view reporting statistics, view and repair record rejections, submit new records, and request additional user accounts.

The completed form and the request for initial user account should be mailed or faxed to:

NASD Regulation, Inc.  
Business & Technology Support  
Services  
ATTN: OATS Registration  
9513 Key West Avenue  
Rockville, MD 20850  
Fax: (888) 345-6275

Other registration activities include obtaining from the NASD an Order Sending Organization ID, a Reporting Date to begin transmitting to OATS, and the initial User ID and Password; using the OATS Web interface to create and update OATS contact information for an OSO Administrator, Technical Contact, and Compliance Contact; ordering a connection to the OATS private network (if submitting to OATS via FTP or CONNECT:Direct); and reporting to the OATS production environment.

Organizations that intend to transmit to OATS using either FTP or CONNECT:Direct must submit to MCI-WorldCom a completed order for a connection to the OATS private network. **The completed circuit orders are due by April 1, 1999, for organizations that must transmit to the OATS production environment by August 1, 1999 (Phase 2) and by April 1, 2000, for organizations that must transmit to the OATS production environment by July 31, 2000 (Phase 3).** This deadline provides time for testing. Any delay may limit the amount of time available for testing via the private network. *No member firm or third party will be allowed to transmit data to the OATS production environment until it has successfully transmitted to the OATS testing environment.* For information about obtaining a connection to the private network or an OATS Service Order Package, contact

MCIWorldCom at (800) 825-9196. Organizations that will be submitting to OATS via e-mail, the OATS Web interface, or one or more third parties, and will not use FTP or CON-

NECT:Direct, should not obtain a connection to the private network.

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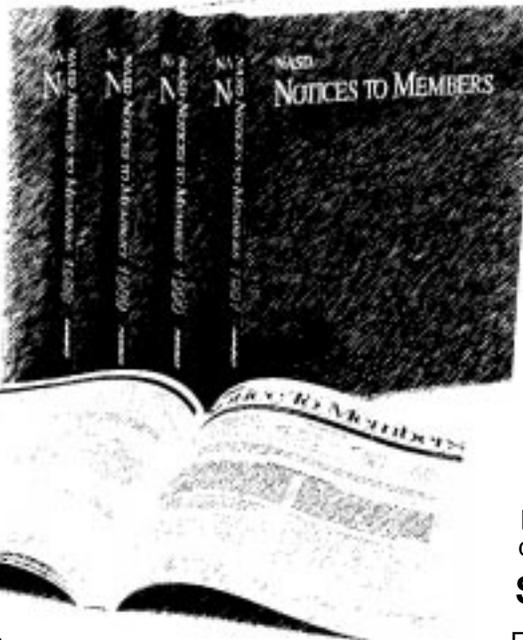
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# NASD Notice to Members 99-28

## NASD Reminds Members Of Obligations Relating To The Short- Sale 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

This *Notice to Members* supersedes *Notice to Members 98-65*, restates the views of NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) and The Nasdaq Stock Market<sup>®</sup> (Nasdaq<sup>®</sup>) concerning National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 3350 (Short-Sale Rule) that were discussed in *Notice to Members 98-65*, and corrects a statement concerning the use of cross-guaranteed accounts for Regulation T purposes.

In 1994, the Short-Sale Rule was adopted to stop market-destabilizing speculative short sales in Nasdaq National Market<sup>®</sup> (NNM) securities. To prevent this conduct, the Short-Sale Rule prohibits member firms from executing customer short sales and non-Market Maker proprietary short sales in an NNM security at or below the current inside bid when the current inside bid is lower than the previous inside bid.

It has come to the attention of NASD Regulation and Nasdaq that certain NASD members may be assisting customers in the circumvention of this Rule. Specifically, these members are failing to net security positions of accounts for customers who maintain accounts in their name and exercise control over, or operate in concert with, other accounts with a strategy designed to circumvent the Short-Sale Rule. The failure to net these positions has permitted these customers, who operate the two accounts with a single investment strategy, to avoid application of the Short-Sale Rule. Members are expected to establish and maintain supervisory procedures to detect and deter this improper trading activity.

The purpose of this *Notice* is to highlight for members that, depending on the facts and circumstances, they may be required to net positions for accounts that are

related or under common control to determine whether a sale is long or short and subject to the Short-Sale Rule requirements. NASD Regulation is committed to ensuring strict adherence to the Short-Sale Rule and will carefully review whether firms have engaged in the conduct described in this *Notice* in examinations and investigations. Violations of the Short-Sale Rule will be vigorously pursued.

Questions concerning this *Notice* should be directed to the Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8294; or the Legal Section, Market Regulation, NASD Regulation, at (301) 590-6410.

### Overview

The NASD adopted the Short-Sale Rule to prevent speculative short selling in NNM securities from accelerating a decline in the price of a security and to stop a form of manipulation known as “bear raiding” or “piling on.” Bear raiding or piling on occurs when short sellers exert pressure on a stock’s price, forcing the price to drop precipitously, frequently within a single trading day. The Short-Sale Rule prohibits member firms from executing customer short sales and non-Market Maker proprietary short sales in an NNM security at or below the current inside bid when the current inside bid is lower than the previous inside bid.<sup>1</sup>

To determine whether a sale is long or short, members must look to the definition of a “short sale” contained in Securities and Exchange Commission (SEC) Rule 3b-3, which is incorporated into the NASD’s Short-Sale Rule as Rule 3350(k)(1). Under SEC Rule 3b-3 and NASD Rule 3350, the term “short sale” means any sale of a security that the seller does not own or any sale that is consummated by the delivery of a security borrowed by, or for the account of, the seller.

To determine whether the seller is long or short overall, the seller must net all positions in the security. This includes netting positions held in accounts that are under common control or traded with a single investment strategy.

## Rule Prohibits Circumvention

The Short-Sale Rule also prohibits a member from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of circumventing the rule.<sup>2</sup> With this *Notice*, NASD Regulation and Nasdaq are clarifying that the following would be a violation of the Short-Sale Rule if a member and its associated persons were found to have assisted customers in the following manner:

- A customer maintains one account (a "long account") that is used to buy and sell various securities several times in a single day. The long account typically begins and ends each day with a long position of 1,000 shares in each security held in that account. The customer also cross guarantees for margin purposes a second account (a "short account"), usually held by a family member or related person.<sup>3</sup> That account holds offsetting short positions of 1,000 shares in the same securities that are held in the long account. In contrast to the long account, the short account generally does not change positions in the securities. At the beginning and end of each day, the combined positions in both accounts for each of the securities are flat. During the trading day, the customer buys and sells securities out of the long account, creating the false

appearance of alternating long and flat positions in the securities in the long account. When the two accounts are appropriately combined and treated as one, short sales occur on a regular basis and often result in transactions occurring on down-bids in violation of the NASD's Short-Sale Rule.

NASD Regulation will conduct a facts and circumstances analysis in making a determination as to whether customer accounts should be netted for purpose of compliance with the Short-Sale Rule. When conducting such analysis, NASD Regulation will, among other things, consider:

- (1) whether a single person exercises discretion over both accounts;
- (2) whether the accounts are cross guaranteed for margin purposes;
- (3) whether the accounts belong to a family member or related person or were opened contemporaneously (*e.g.*, on the same day); or
- (4) whether a similar pattern is occurring in other customer accounts at a firm. This analysis will consider all the facts and circumstances concerning the establishment, maintenance, and trading of these accounts.

The presence or absence of any single factor reflected above does not necessarily lead to the conclusion that such accounts should, or should not, be netted.

NASD Regulation will closely watch for the above-described conduct and

for similar schemes that attempt to circumvent application of the Rule. Members must take steps to develop compliance procedures to guard against such abusive trading practices. Members should also instruct their associated persons not to accept orders for execution where customers are operating two or more accounts in order to circumvent the Rule. A finding of such abuses may result in the imposition of NASD disciplinary action against the member and its associated persons and a referral of such trading conduct by persons outside the jurisdiction of the NASD to other appropriate regulatory authorities.

## Endnotes

<sup>1</sup>NASD Rule 3350(a).

<sup>2</sup>NASD Rule 3350(e).

<sup>3</sup>Cross-guaranteed accounts refer to an agreement where one account is guaranteed by another account to enable their consolidation for the purpose of allowing the margin that must be maintained in those accounts to be determined on the net positions of both accounts. Such a guarantee must be in writing and permit the member carrying the account to use the money and securities in the guaranteeing account to carry the guaranteed account or to pay any deficit therein. See NASD Rule 2520(f)(4) and *Notice to Members 98-102* (December 1998). *Notice to Members 98-65* may have led members to believe that margin accounts may be cross guaranteed to satisfy Regulation T requirements. This is an incorrect statement. Regulation T provides, in pertinent part, "*Guarantee of accounts*. No guarantee of a customer's account shall be given any effect for purposes of this part." Reg. T, Section 220.3(d).

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# NASD Notice to Members 99-29

## SEC Approves Changes To Clearly Erroneous Trade Adjudication Procedures; Changes Effective April 26, 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

On March 17, 1999, the Securities and Exchange Commission (SEC) approved changes to National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 11890 regarding the handling of clearly erroneous transactions.

NASD Rule 11890, as now amended, limits the time period to request an adjudication of an erroneous transaction to 30 minutes for transactions that occur prior to 9:30 a.m. For erroneous transactions that occur between 9:30 a.m. and 9:59 a.m., market participants will still have up to one hour – until 10:30 a.m. – to request adjudication of erroneous transactions. The NASD and The Nasdaq Stock Market<sup>®</sup> (Nasdaq<sup>®</sup>) believe that the process for resolving erroneous transaction complaints will become more fair, efficient, and timely, thereby promoting the maintenance of fair and orderly markets and exposing the parties to an allegedly erroneous transaction to less market risk. This *Notice* is being issued to alert members to the changes involved, which will become effective on April 26, 1999.<sup>1</sup>

Questions concerning this *Notice* may be directed to Richard Bush, Associate Director, Nasdaq Market Operations, at (203) 385-6242; or John Malitzis, Assistant General Counsel, Office of General Counsel, The Nasdaq Stock Market, Inc., at (202) 728-8245.

### Background

NASD Rule 11890 (Rule) sets forth the process through which Nasdaq may review certain transactions and declare them null and void or otherwise modify their terms. In early 1998, the SEC approved changes to the Rule to make the adjudication process more efficient and fair.<sup>2</sup> Among other things, the Rule was amended to shorten the time period

to submit erroneous transaction complaints. Under the 1998 rule changes, market participants were given 30 minutes to request adjudication of erroneous transactions occurring at or after 10:00 a.m. Because of the volume commencing at the 9:30 a.m. opening, however, Nasdaq provided additional time – up to an hour – to submit adjudication requests for trades that occurring prior to 10:00 a.m. Thus, Nasdaq market participants have until 10:30 a.m. to request adjudication for trades that occur between 9:30 a.m. and 9:59 a.m. The language of the 1998 Rule amendments, however, only made reference to trades that occur at or before 10:00 a.m., and did not separately address trades that occur before the 9:30 a.m. opening. As a consequence, a literal reading of the Rule unintentionally accords additional time to all trades that occur before 10:00 a.m., including those trades that occur prior to 9:30 a.m.

After some experience with the Rule, Nasdaq determined it would be appropriate to amend NASD Rule 11890 to limit to 30 minutes the time to request adjudication for trades occurring before 9:30 a.m., as well as those trades occurring at or after 10:00 a.m. Nasdaq is concerned that there are potential abuses and risks associated with affording market participants additional time to file a clearly erroneous appeal when there is no compelling reason (such as heavy volume) for doing so. In particular, for trades occurring prior to 9:30 a.m., market participants have the opportunity to observe the direction of the market at the opening and for an extended period of time thereafter, and then determine whether to file an erroneous trade appeal by 10:30 a.m. While Nasdaq still believes that it is appropriate to provide additional time to request an adjudication for trades that occur immediately following the opening,

based on the concerns outlined above, Nasdaq does not believe members should be provided with this additional time for pre-opening transactions.

Accordingly, on March 17, 1999, the SEC approved a proposal to limit the time period to appeal an erroneous transaction to 30 minutes for transactions that occur prior to 9:30 a.m., as well as those that occur at or after 10:00 a.m.<sup>3</sup> Under the SEC-approved proposal, market participants will still have until 10:30 a.m. to request adjudication of trades that occur between 9:30 a.m. and 9:59 a.m.

Finally, the changes to the Rule announced in this *Notice* will become effective on April 26, 1999.

## Text Of Amendments

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

### 11890. Clearly Erroneous Transactions

(a) No Change

(b) Procedures for Reviewing Transactions

(1) Any member or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof, shall submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:

(A) for transactions occurring at or after 9:30 a.m., Eastern Time, but prior to 10:00 a.m., Eastern Time,

complaints must be submitted by 10:30 a.m., Eastern Time; and

(B) for transactions occurring [on ] prior to 9:30 a.m., Eastern Time and those occurring at or after 10:00 a.m., Eastern Time, complaints must be submitted within thirty minutes.

## Endnotes

<sup>1</sup> See Exchange Act Release No. 34-41180 (Mar. 17, 1999)(Order approving SR-NASD-98-94).

<sup>2</sup> See Exchange Act Release No. 39550 (January 14, 1998)(Order approving SR-NASD-96-51).

<sup>3</sup> See Exchange Act Release No. 34-41180 (Mar. 17, 1999)(Order approving SR-NASD-98-94).

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# NASD Notice to Members 99-30

Fixed Income Pricing  
System Additions,  
Changes, And Deletions  
As Of February 19, 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 February 19, 1999, the following bonds were added to the Fixed Income Pricing System<sup>SM</sup> (FIPS<sup>®</sup>).

Symbol	Name	Coupon	Maturity
AAIF.GA	AAI Fostergrant Inc.	10.750	07/15/06
ACPI.GA	Allied Corp.	0.000	08/01/09
ADLA.GM	Adephia Communications Corp.	7.750	01/15/04
ADLA.GN	Adephia Communications Corp.	7.750	01/15/09
AHYC.GA	Anthony Crane rental LP Series B	10.375	08/01/08
AIFT.GA	Aircraft Service Intl Group Inc.	11.000	08/15/05
AKNI.GA	AKI Inc.	10.500	07/01/08
AMHG.GA	AMM Holdings Inc.	13.500	07/01/09
APGR.GB	Arch Communication Group Inc.	12.750	07/01/07
AQCH.GA	Aqua Chemical Inc.	11.250	07/01/08
AS.GH	Armco Inc.	8.875	12/01/08
AWAS.GB	Allied Waste North America Inc.	7.375	01/01/04
AWAS.GC	Allied Waste North America Inc.	7.875	01/01/09
BEPA.GC	BE Aerspace Inc.	9.500	11/01/08
CDIU.GA	Canandaigua Brands Inc.	8.500	03/01/09
CLMU.GA	Columbia Healthcare Corp.	6.125	12/15/00
CLMU.GB	Columbia Healthcare Corp.	7.500	12/15/23
COL.GB	Columbia/HCA Healthcare Corp.	7.150	03/30/04
COL.GC	Columbia/HCA Healthcare Corp.	8.360	04/15/24
COL.GD	Columbia/HCA Healthcare Corp.	7.190	11/15/15
COL.GE	Columbia/HCA Healthcare Corp.	7.050	12/01/27
COL.GF	Columbia/HCA Healthcare Corp.	7.250	05/20/08
COL.GG	Columbia/HCA Healthcare Corp.	7.000	07/01/07
CXLC.GA	Coaxial LLC/Finl Corp.	12.875	08/15/08
CXPX.GA	Coaxial Comm/Phoenix Assoc.	10.000	08/15/00
DSUO.GC	Doe Run Resources Corp.	11.250	03/15/05
EGCS.GA	Empire Gas Corp.	7.000	07/15/04
ESCR.GB	Echostar DBS Corp.	9.250	02/01/06
ESCR.GC	Echostar DBS Corp.	9.375	02/01/09
GPI.GA	Group I Automotive Inc.	10.875	03/01/09
HPH.GA	Harnischfeger Industry Inc.	8.900	03/01/22
HPH.GB	Harnischfeger Industry Inc.	7.250	12/15/25
HPH.GC	Harnischfeger Industry Inc.	6.875	02/15/27
HPH.GD	Harnischfeger Indus Inc.	8.700	06/15/22
HTHO.GA	Health Trust Inc. The Hospital Co.	8.750	03/15/05
HTHO.GB	Health Trust Inc. The Hospital Co.	10.250	04/15/04
HXL.GA	Hexcel Corp.	9.750	01/15/09
IEE.GA	Integrated Electrical Svcs Inc.	9.375	02/01/09
IFOU.GA	Infousa Inc.	9.500	06/15/08
KING.GA	King Pharmaceuticals Inc.	10.750	02/15/09
KNE.GA	KN Energy Inc.	9.950	04/01/20
KNE.GB	KN Energy Inc.	9.625	08/01/21
KNE.GC	KN Energy Inc.	8.350	09/15/22
KNE.GD	KN Energy Inc.	7.850	09/01/22
KNE.GE	KN Energy Inc.	8.750	10/15/24
KNE.GF	KN Energy Inc.	6.500	09/01/13
KNE.GG	KN Energy Inc.	7.350	08/01/26
KNE.GH	KN Energy Inc.	6.670	11/01/27
KNE.GI	KN Energy Inc.	6.450	03/01/03

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
KNE.GJ	KN Energy Inc.	6.650	03/01/05
KNE.GK	KN Energy Inc.	6.800	03/01/08
KNE.GL	KN Energy Inc.	7.250	03/01/28
KNE.GM	KN Energy Inc.	6.300	03/01/21
LCMU.GA	Loral Space & Communication Ltd.	9.500	01/15/06
LTHR.GC	L-3 Communications Corp.	8.000	08/01/08
MAK.GA	Group Maintenance Amer Corp.	9.750	01/15/09
MCLD.GD	McLeod USA Inc.	9.500	11/01/08
MIDU.GA	Moll Industries Inc.	10.500	07/01/08
MPTC.GA	Mid-Penn Telephone Corp.	7.750	03/15/02
MTLI.GA	MTL Inc.	10.000	06/15/06
PNHI.GA	Penhall International Corp.	12.000	08/01/06
PPP.GB	Pogo Producing Co.	10.375	02/15/09
REGL.GC	Regal Cinemas Inc.	8.875	12/15/10
RMCR.GA	Romacorp Inc.	12.000	07/01/06
RRIC.GA	Renters Choice Inc.	11.000	08/15/08
RSLU.GC	RSL Communications Plc	10.500	11/15/08
SFP.GA	Salton Inc.	10.750	12/15/05
TEX.GB	Terex Corp.	8.875	04/01/08
TLLP.GF	Toll Corp.	9.500	03/15/03
UH.GF	US Home Corp.	8.875	02/15/09
URI.GC	United Rentals Inc. Series B	8.800	08/15/08
WLWH.GA	Woolworth Corp.	7.000	06/01/00

As of February 19, 1999, the following bonds were deleted from FIPS.

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
AES.GA	AES Corp.	9.750	06/15/00
AILT.GA	Atlas Air Inc.	12.250	12/01/02
AKS.GA	AK Steel Corp.	10.750	04/01/04
ALLA.GA	All-American Bottling Corp.	13.000	08/15/01
AS.GF	Armco Inc.	9.375	11/01/00
AWAS.GA	Allied Waste North America Inc.	10.250	12/01/06
AWIN.GA	Allied Waste Industries Inc.	12.000	02/01/04
AWIN.GB	Allied Waste Industries Inc.	11.300	06/01/07
BCC.GA	Boise Cascade Corp.	9.875	02/15/01
BCEG.GE	Bank of New England Corp.	8.850	03/01/99
BS.GA	Bethlehem Steel Corp.	6.875	03/01/99
CLKS.GA	Clark-Schwebel Inc.	10.500	04/15/06
CWBI.GA	Clark-Schwebel Inc.	12.500	07/15/07
DRBH.GA	Dr. Pepper Bottling Hldgs Inc.	11.625	02/15/03
FLTW.GA	Florist Transworld Del Inc.	14.000	12/15/01
FOHO.GA	Fort Howard Corp.	9.000	02/01/06
GNFC.GA	GNF Corp.	10.625	04/01/03
HHI.GA	Home Holdings Inc.	8.625	12/15/03
HTHO.GA	Healthtrust Inc. The Hospital Co.	8.750	03/15/05
ISPT.GA	ISP Chem/ISP Tech	9.000	03/01/99
MACA.GB	Macandrews & Forbes Hldgs Inc.	13.000	03/01/99
MALR.GA	Malrite Communication Group Inc.	15.250	02/15/99
MLWL.GA	Mail-Well Corp.	10.500	02/15/04

<b>Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
MPTC.GA	Mid-Penn Telephone Corp.	7.750	03/15/02
NMK.GI	Niagara Mohawk Power Corp.	8.770	01/01/18
PARA.GC	Paramount Communications Inc.	7.500	01/15/02
PARA.GD	Paramount Communications Inc.	8.250	08/01/22
PARA.GE	Paramount Communications Inc.	5.875	07/15/00
PARA.GF	Paramount Communications Inc.	7.500	07/15/23
PLNT.GA	Plantronics Inc.	10.000	01/15/01
RAPA.GI	Rapid American Corp. Del	0.000	03/01/99
SPF.GA	Standard Pacific Corp.	10.500	03/01/00
TCOM.GA	Telecommunications Inc.	11.125	10/01/03
TRAM.GA	Transamerican Refining Corp.	18.500	02/15/02
TRAM.GB	Transamerican Refining Corp.	16.500	02/15/02
UIS.GB	Unisys Corp.	9.750	09/15/16
VLIN.GC	Valassis Inserts Inc.	9.375	03/15/99
WMAS.GD	Western Mass Electric Co.	6.250	03/01/99
WSFS.GA	WSFS Financial Corp.	11.000	12/31/05
WX.GB	Westinghouse Electric Corp.	8.875	06/01/01
WX.GC	Westinghouse Electric Corp.	8.375	06/15/02
WX.GD	Westinghouse Electric Corp.	8.625	08/01/12
WX.GE	Westinghouse Electric Corp.	6.875	09/01/03
WX.GF	Westinghouse Electric Corp.	7.875	09/01/23

As of February 19, 1999 changes were made to the symbols of the following FIPS bonds:

<b>New Symbol</b>	<b>Old Symbol</b>	<b>Name</b>	<b>Coupon</b>	<b>Maturity</b>
EMRE.GA	EGCS.GB	Empire Inc.	9.000	12/31/07
FST.GB	FOIL.GB	Forest Oil Corp.	11.250	09/01/03
FST.GC	FOIL.GC	Forest Oil Corp.	10.500	01/15/06
PNFT.GB	PNF.GB	Penn Traffic Co. New	10.375	10/01/04
PNFT.GC	PNF.GC	Penn Traffic Co. New	9.625	04/15/05
PNFT.GD	PNF.GD	Penn Traffic Co. New	8.625	12/15/03
PNFT.GF	PNF.GF	Penn Traffic Co. New	10.250	02/15/02
PNFT.GG	PNF.GG	Penn Traffic Co. New	11.500	04/15/06
PNFT.GH	PNF.GH	Penn Traffic Co. New	10.650	11/01/04

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<sup>SM</sup>, at (301) 590-6451.

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

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# NASD Notice to Members 99-31

## Memorial Day: Trade Date–Settlement Date Schedule

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

The Nasdaq Stock Market® and the securities exchanges will be closed on Monday, May 31, 1999, in observance of Memorial 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>
May 25	May 28	June 2
26	June 1	3
27	2	4
28	3	7
31	Markets Closed	—
June 1	4	8

### 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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# NASD Member Benefits

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***If you are interested in individual life and health insurance, call (888) BUY-NASD (289-6273).***

# Disciplinary Actions

## Disciplinary Actions Reported For April

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). Unless otherwise indicated, suspensions will begin with the opening of business on Monday, April 19, 1999. The information relating to matters contained in this *Notice* is current as of the end of March 22, 1999.

### Firms And Individuals Barred Or Suspended

**L.H. Alton & Company (San Francisco, California)** and **Lewis Hunt Alton (Registered Principal, San Francisco, California)** were censured and fined \$40,000, jointly and severally. In addition, the firm was suspended from participation in underwriting activities for 30 business days, and ordered to hire an independent consultant to audit the firm's compliance and written supervisory policies, procedures, and practices and to comply with the requirements in the consultant's written report. Alton was suspended from association with any NASD member in any principal capacity for 30 days, and ordered to comply with the consultant's recommendations before acting again in any principal capacity. Alton must also requalify by examination before acting in any principal capacity. The Securities and Exchange Commission (SEC) affirmed the sanctions following the appeal of a December 1997 National Business Conduct Committee (NBCC) decision. The sanctions were based on findings that the firm, acting through Alton, conducted a securities business while maintaining insufficient net capital, filed false and inaccurate FOCUS Parts I and II Reports, and permitted an unregistered person to act as a representative and principal of the firm.

Furthermore, the respondents participated in the underwriting of several "hot issues" without obtaining required information from the purchasers of the hot issues, and failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Requirements. In addition, the firm, acting through Alton, failed to maintain written supervisory procedures relating to the customer complaint reporting requirement.

L.H. Alton & Company and Alton have appealed this action to the U.S. Court of Appeals and the sanctions are not in effect pending consideration of the appeal.

**La Jolla Capital Corporation (San Diego, California), Harold Bailey Gallison (Registered Principal, Las Vegas, Nevada), Christopher S. Knight (Registered Principal, Forest Hills, New York), and Gregory Karl Mehlmann (Registered Principal, Englewood, Colorado).**

The firm and Gallison were censured, barred from engaging in penny stock transactions in any capacity, fined \$297,380, jointly and severally, and fined \$50,000 each individually, and required to present proof of restitution or rescission to their damaged customers, jointly and severally. Gallison was also barred in all principal and supervisory capacities, and suspended in all capacities for 30 days. Knight was censured, fined \$95,854.55, barred in all principal and supervisory capacities, barred from engaging in penny stock transactions in any capacity, and suspended in all capacities for 15 days. Mehlmann was censured, fined \$10,000, suspended in all principal and supervisory capacities for 10 days, and required to requalify as a general securities principal.

The National Adjudicatory Council (NAC) imposed the sanctions following appeal of a Los Angeles District

Business Conduct Committee (DBCC) decision. The sanctions were based on findings that the firm, Gallison, and Knight violated the SEC's penny stock rules by failing to make adequate disclosure to their customers who purchased penny stocks. In addition, the firm, Gallison, Mehlmann, and Knight failed to establish, maintain, and enforce procedures reasonably designed to detect and prevent violations of the penny stock rules. Knight also permitted unregistered personnel to engage in the securities business at the firm's New York office while he managed that office.

La Jolla Capital Corporation and Gallison have appealed this action to the SEC and the sanctions, other than their bars, are not in effect pending consideration of the appeal.

**Strategic Resources Management, Inc. (Aurora, Colorado) and William Arthur Moler (Registered Principal, Aurora, Colorado)** submitted an Offer of Settlement pursuant to which they were censured and fined \$7,500, jointly and severally, and both the firm and Moler were suspended from membership in the NASD for six months. In addition, Moler must requalify as a Series 24 general securities principal prior to resuming duties that require registration as a principal. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Moler failed to file an amended Form U-5 for an individual to disclose the filing of an arbitration claim against the individual.

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

**Royal Alliance Associates, Inc. (New York, New York) and Kathryn Travis (Registered Principal, Lattinatown, New York)** submitted a

Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$25,000; Travis was censured, fined \$10,000, and barred from association with any NASD member in a supervisory capacity with a right to re-apply after one year. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Travis failed to supervise adequately the activities of a registered representative resulting in the individual engaging in unsuitable and excessive trading, including excessive mutual fund and annuity switching activity in the accounts of public customers.

**Sturdivant & Co., Inc. (Clementon, New Jersey), Harvey Richard DeKrafft (Registered Principal, Mount Laurel, New Jersey), and Albert Anzael Sturdivant (Registered Principal, West Orange, New Jersey).** The firm and Sturdivant were censured and fined \$7,500, jointly and severally, and the firm was fined \$3,500, individually. Sturdivant was suspended from acting in the capacity of general securities principal for 30 days, and DeKrafft was censured, fined \$10,000, and suspended from acting in his capacity as a principal for 60 days. Sturdivant's and DeKrafft's suspensions will be served consecutively. The sanctions were based on findings that DeKrafft operated as a principal at the firm without being properly registered. In addition, the firm conducted a general securities business while only having one registered general securities principal when a minimum of two was required. The firm and Sturdivant failed to conduct a training needs analysis and failed to provide the firm's registered persons with the required Firm Element training. In addition, the firm failed to file MSRB Form G-37 in a timely manner.

Sturdivant's suspension will commence April 19, 1999, and will conclude at the close of business on May 18, 1999. DeKrafft's suspension will commence May 19, 1999, and will conclude at the close of business on July 16, 1999.

### **Firms And Individuals Fined**

**Auerbach, Pollak & Richardson, Inc. (Stamford, Connecticut) and Harry Nathaniel Bloch II (Registered Principal, Stamford, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$17,500, jointly and severally, and the firm was fined an additional \$1,000. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm split a customer's 4,000-share order for a single security into four separate 1,000-share orders for entry into the Small Order Execution System<sup>SM</sup> (SOES<sup>SM</sup>). In addition, the NASD found that the firm, acting through Bloch, failed to report to the NASD statistical and summary information regarding customer complaints, and the firm failed to report customer complaints. The findings also stated that the firm, acting through Bloch, failed to report, in a timely manner, the settlement of a customer's claim against one of its registered representatives, failed to develop a written training plan for continuing education, failed to maintain records documenting the implementation and completion of its continuing education plan, and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws, regulations, and NASD rules relating to continuing education and the reporting of customer complaints.

**Pond Securities Corp. (Brooklyn, New York) and Ezra Yehuda Birnbaum (Registered Principal, Brooklyn, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which they were censured and fined \$10,000, jointly and severally, and the firm was fined an additional \$7,500. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm reported transactions in Nasdaq National Market<sup>®</sup> (NNM), Nasdaq SmallCap<sup>SM</sup>, OTC equity securities, listed securities executed over-the-counter, and in the Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>), in violation of applicable securities laws and regulations regarding trade reporting. The finding also stated that the firm failed to prepare written supervisory procedures which adequately covered the firm's trade reporting requirements, in that they did not specify the procedures that a qualified principal of the firm would follow to ensure compliance with all relevant rules. Furthermore, the NASD determined that the firm effected transactions in municipal securities without paying an initial fee to the MSRB, effected transactions in municipal securities without qualifying an individual at the firm as a municipal securities principal, and failed to abide by the terms and conditions agreed to in the firm's restrictive agreement with the NASD. The firm also failed to complete a training needs analysis and to develop written training plans concerning the Firm Element of the Continuing Education Program.

### **Firms Fined**

**ABN-AMRO Incorporated (Chicago, Illinois)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$13,500. Without admitting or denying the allegations,

the firm consented to the described sanctions and to the entry of findings that it failed to provide, in connection with transactions where the firm acted as principal, written notification to its customer of the reported trade price of the transaction. The findings also stated that the firm failed to report the correct price to ACT in transactions in NNM securities, and failed to report the correct price to ACT in one transaction in Nasdaq SmallCap securities. The NASD also determined that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules relating to the designation of supervisory personnel, trade reporting, best execution, the Limit Order Protection Interpretation, the Order Handling Rules, the registration of persons with the NASD, the use of SOES, and anti-competitive practices.

### **Barron Chase Securities, Inc.**

**(Boca Raton, Florida)** submitted an Offer of Settlement pursuant to which the firm was censured and fined \$40,743.76. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it permitted an individual to function as a general securities representative and execute transactions on behalf of public customers when the individual was not registered as a general securities representative.

### **Everen Securities, Inc. (Chicago, Illinois)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$13,000, and required to pay restitution and interest 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 preserve for a period of not less than three years memoranda of brokerage

orders that showed the time of receipt of the order. The firm also failed to use reasonable diligence to ascertain the best inter-dealer market for the subject securities and failed to buy and sell in such market so that the resultant prices to the customers were as favorable as possible under the prevailing market conditions. The findings also stated that the firm failed to contemporaneously execute customer limit orders after it traded each subject security for its own market-making account at a price that would satisfy each customer limit order and failed to immediately display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders.

### **GVR Company, Inc. (Chicago, Illinois)**

submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to the customer was as favorable as possible under prevailing market conditions. In addition, NASD determined that the firm failed to immediately display customer limit orders when the orders were at a price that would have improved the firm's bid or offer in each security related to those orders, or when the full size of the orders was priced equal to the firm's bid or offer, and the national best bid or offer and the orders represented more than a *de minimis* charge in relation to the size associated with the firm's bid or offer in each security. The findings also stated that the firm failed to establish and maintain written supervisory procedures relating to the SEC Order Execution Rules, best execution, books and records,

the Limit Order Protection Interpretation, trade reporting rules, and locked and crossed markets.

**Wien Securities Corporation (Jersey City, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which the firm was censured, fined \$23,500, and ordered to pay \$356.25 in restitution plus interest to the public customers whose orders did not receive best execution. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it reported transactions to ACT, in violation of applicable securities laws and regulations. The findings also stated that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the applicable securities laws and regulations regarding trade reporting, ACT reporting, books and records, locked and crossed markets, SOES, the order handling rules, anti-competitive practices, and best execution.

### **Individuals Barred Or Suspended**

**Gary Leroy Armstrong (Registered Representative, Binghamton, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Armstrong consented to the described sanctions and to the entry of findings that, without the knowledge or consent of his member firm or numerous public customers, Armstrong fraudulently effected mutual funds transactions at a time when any exchanges between two firms were to be done at net asset value with no sales charge and customers who made redemptions or received distributions were allowed to reinvest the funds at net asset

another fund of the same class. Armstrong utilized new account applications that generated sales charges of at least \$103,661 of which he was paid commissions totaling approximately \$71,076, in lieu of submitting exchanges at net asset value with no sales charges.

**James Edward Bickle (Registered Representative, Freeport, Illinois)** 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, Bickle consented to the described sanctions and to the entry of findings that he participated, for compensation, in private securities transactions by participating in the sale of promissory notes to public customers, and failed to give written notice of his intention to, and receive written approval from, his member firm prior to engaging in such activities.

**Ronald Tolbert Braswell (Registered Representative, Winter Springs, Florida)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$60,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Braswell consented to the described sanctions and to the entry of findings that he misused and mishandled a public customer's funds by holding \$10,000 of the customer's funds for over two months and failing to timely purchase mutual funds as requested by the customer.

**Michael Howard Carstens (Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, and barred from association with any NASD member in

any capacity. Without admitting or denying the allegations, Carstens consented to the described sanctions and to the entry of findings that he participated in private securities transactions by selling limited partnership interests without giving written notice to, and receiving written approval from, his member firms with which he was registered at the time.

**Jeffrey Michael DeForest (Registered Representative, Medway, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$15,000, and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, DeForest consented to the described sanctions, and to the entry of findings that he recommended and sold securities to a public customer without having reasonable grounds for determining this activity to be suitable for his customer.

**Robert Alan Denton (Registered Principal, Parkland, Florida), Lee Michael Rough (Registered Principal, Aventura, Florida), and Marc David Siden (Registered Principal, New York, New York)** submitted Offers of Settlement pursuant to which Denton was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 30 days. Rough was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 45 days; and Siden was censured, fined \$10,000, and suspended from association with any NASD member in any capacity for 15 days. Without admitting or denying the allegations, Denton, Rough, and Siden consented to the described sanctions and to the entry of findings that they solicited public customers to purchase warrants while knowingly or recklessly failing to disclose to the customers that they were selling warrants from

their personal accounts, or accounts which they controlled, at or about the same time as they were making recommendations to public customers.

**Joseph Vincent Detrano (Registered Representative, Nesconset, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$10,000, suspended from association with any NASD member in any capacity for two years, and required to requalify by exam as a Series 6 investment company and variable contract representative. Without admitting or denying the allegations, Detrano consented to the described sanctions and to the entry of findings that, during the sale of an insurance product to a policyholder, Detrano commingled the policyholder's check in the amount of \$14,000 with his own personal funds.

**Daniel Joseph DiPoalo (Registered Representative, Matawan, New Jersey)** was censured, fined \$75,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that DiPoalo received \$144,850.58 in funds from public customers for investment purposes, and contrary to the customers' instructions, deposited their checks in his own bank account or otherwise diverted their funds. DiPoalo also failed to respond to NASD requests for information.

**Dale Andrew Diskant (Registered Representative, Huntington Beach, California)** 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 10 business days. Without admitting or denying the allegations, Diskant consented to the described sanctions and to the entry of findings that he participated in outside business activities for which he

received compensation, and failed to provide his member firm with prompt written notification of these activities.

**Jawahar Keshavlal Doshi (Registered Principal, Bayside, New York)** was censured, fined \$22,500, 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 Doshi guaranteed a customer against loss and gave untruthful testimony during an on-the-record interview conducted by the NASD.

**Paul Ian Dratel (Registered Representative, Flushing, New York)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dratel consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in 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 customer's account.

**Gale Lynne Fairbrother (Registered Representative, Novato, California)** submitted an Offer of Settlement pursuant to which she was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fairbrother consented to the described sanctions and to the entry of findings that she participated in private securities transactions without providing prior written notification to her member firm. Fairbrother also provided false testimony to the NASD.

**Mark Joseph Federowicz (Registered Representative,**

**Williamsville, New York)** was censured, fined \$30,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Federowicz failed to respond to NASD requests for information.

**Sandy Charles Giglio (Registered Representative, Palm Coast, Florida)** was censured, fined \$20,000, suspended from association with any NASD member in any capacity for five days, and required to requalify by taking and passing the Series 7 exam. The sanctions were based on findings that Giglio forged the signatures of public customers on forms to move their accounts from his former member firm to his current member firm.

**Kenneth Edward Grant (Registered Representative, Oxford, Michigan)** submitted an Offer of Settlement pursuant to which he was censured, fined \$11,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Grant consented to the described sanctions and to the entry of findings that he received checks totaling \$2,622 made payable to insurance customers which included the repayments for insurance policies canceled by the customers, but also included a mistaken overpayment for insurance policies purchased for the customers. According to the findings, Grant endorsed the checks by writing the customers' names on the checks, without the customers' knowledge or consent, cashed the checks, and used \$2,185 for some purpose other than the benefit of his member firm or the customers, and later paid his firm \$2,165.

**Maximo Justo Guevara (Registered Representative, Philadelphia, Pennsylvania)** was censured, fined \$100,000, barred from association with any NASD member in any

capacity, and ordered to pay \$13,992, plus interest, in restitution to a public customer. The NAC imposed the sanctions following appeal of a Philadelphia DBCC decision. The sanctions were based on findings that Guevara made unsuitable recommendations in connection with sales of partnership interests to retail customers. Guevara also engaged in private securities transactions outside the regular course or scope of his employment without providing written notice to his member firm.

Guevara has appealed this action to the SEC and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Matthew Edward Haggerty (Registered Principal, Overland Park, Kansas)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$60,000, barred from association with any NASD member in any capacity, and required to pay \$4,000, plus interest, in restitution to entitled parties. Without admitting or denying the allegations, Haggerty consented to the described sanctions and to the entry of findings that he requested checks totaling \$10,000 from the securities accounts of public customers, and converted the funds to his own use and benefit by endorsing the checks and depositing them into his personal bank account, without the knowledge or consent of the customers. Furthermore, the NASD determined that Haggerty did not return any portion of the funds until he journaled \$6,000 of funds from his personal securities account to one of the customer's securities account.

**Daniel Richard Hillard (Registered Representative, White River Junction, Vermont)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$50,000, and barred from asso-

ciation with any NASD member in any capacity. Without admitting or denying the allegations, Hillard consented to the described sanctions and to the entry of findings that he improperly converted at least \$65,000 belonging to a client for his own use and benefit.

**Brett Elliot Hirsch (Registered Representative, New York, New York), Richard Paul Simone (Registered Representative, New York, New York), William Patrick Rosemond (Registered Representative, New York, New York), Jack Jay Wolynez (Registered Principal, Jericho, New York), John James McAndris (Registered Principal, Montvale, New Jersey), and Frank Michael Lucia, Jr. (Registered Representative, Robbinsville, New Jersey)** submitted Offers of Settlement pursuant to which Hirsch was censured, fined \$110,000, and barred from association with any NASD member in any capacity. Simone was censured, fined \$104,000, and barred from association with any NASD member in any capacity, and Rosemond was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Wolynez was censured, fined \$100,000, and barred from association with any NASD member in any capacity, and McAndris was censured, fined \$50,000, and barred from association with any NASD member in any capacity. Lucia was censured, fined \$5,000, and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that Hirsch, Simone, Rosemond, and Lucia engaged in unauthorized transactions in the accounts of public customers and in the absence of written or oral authorization to exercise discretion in the

accounts. Hirsch also purchased securities for the account of a limited partnership without the knowledge or consent of the partnership or its agent. The findings also stated that Hirsch purchased shares of securities from his firm but failed to pay for the securities, Simone failed to follow a customer's instructions to sell securities, and Wolynez and McAndris failed to establish, maintain, or enforce written supervisory procedures or to otherwise supervise Hirsch, Rosemond, Simone, and Lucia properly to prevent the occurrence of such violations.

The NASD also determined that Wolynez and McAndris participated in an initial public offering (IPO) of common stock and warrants to the public on a best efforts, minimum/maximum basis, and induced the purchase of stocks by means of manipulative, deceptive, and/or other fraudulent devices or contrivances. Moreover, the findings stated that Wolynez and McAndris continued to receive investor funds, and failed to return promptly to public customers \$9 million in excess of the stated maximum for the offering, and commenced trading securities in the secondary market, without the consent of the customers.

**Richard Dean Holloway (Registered Representative, Tulsa, Oklahoma)** was censured, fined \$85,000, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Holloway received insurance refund checks issued by his member firm totaling \$1,991.65 payable to public customers, failed to deliver the refund checks to the customers, and instead, converted the funds to his own use and benefit by forging endorsements on the checks without the public customers' knowledge or consent. In addition, Holloway failed to respond to NASD requests for information.

**Frank John Ingersoll (Registered Principal, San Antonio, Texas)** submitted an Offer of Settlement pursuant to which he was censured, fined \$388,535, barred from association with any NASD member in any capacity, and ordered to pay \$301,088 in restitution to public customers. The NAC imposed the sanctions following a review of a Dallas DBCC decision. Without admitting or denying the allegations, Ingersoll consented to the described sanctions and to the entry of findings that he effected transactions in securities through an entity without providing prior written notice to his member firm, and acted as an unregistered broker/dealer by failing to register either himself or the entity as a securities broker/dealer with the SEC or the NASD. The findings also stated that Ingersoll caused misleading sales literature in the form of research reports to be distributed to the public, and failed to disclose a material adverse interest in connection with the sale of securities. Furthermore, the NASD determined that Ingersoll effected sales of shares of stock, and failed to disclose to customers and to his member firm the total remuneration he received in connection with those sales.

**Lawrence Ralph Kassl (Registered Representative, Danville, Illinois)** submitted an Offer of Settlement pursuant to which he was censured, fined \$53,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Kassl consented to the described sanctions and to the entry of findings that he received checks totaling \$10,500 with instructions to deposit the funds in a variable annuity and, contrary to the customer's instructions, and without the customer's knowledge or consent, Kassl deposited the checks in a bank account in which he either had an interest or controlled, and used the funds for some purpose

other than the benefit of the customer until he returned the funds to her with interest.

**Michael Andrew Maher (Registered Representative, Portland, Oregon)** submitted an Offer of Settlement pursuant to which he was censured, fined \$60,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Maher consented to the described sanctions and to the entry of findings that he withdrew at least \$12,097.97 from a scholarship fund operated by employees of his member firm, without the knowledge or approval of the scholarship fund board of directors, and used the funds for his own personal use and benefit.

**Jerri Marlene Masley (Registered Representative, Killeen, Texas)** submitted an Offer of Settlement pursuant to which she was censured, fined \$25,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Masley consented to the described sanctions and to the entry of findings that she failed to respond to NASD requests for information and to provide documentation.

**Gerald Cash McNeil (Registered Representative, North Bergen, New Jersey)** was censured, fined \$20,000, suspended from association with any NASD member in any capacity for two years, ordered to pay restitution in the amount of \$3,712.50 plus interest, and required to requalify by examination in all capacities prior to associating with a member firm. The NAC imposed the sanctions following appeal and review of a New York DBCC decision. The sanctions were based on findings that McNeil executed transactions in the accounts of public customers without their prior authorization or consent.

**Warren Benjamin Minton, Jr. (Registered Representative, Helmetta, 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 Minton failed to respond to NASD requests for information.

**Keith Laurence Mohn (Registered Representative, West Bloomfield, Michigan)** was censured, fined \$52,222, and barred from association with any NASD member in any capacity. The NAC affirmed the sanctions following appeal of a Chicago DBCC decision. The sanctions were based on findings that Mohn participated in private securities transactions without giving written notice of his intention to engage in such activities to his member firm and receiving prior written approval from his member firm.

Mohn has filed an appeal to the SEC, and the sanctions, other than the bar, are not in effect pending consideration of the appeal.

**Siva Kumar Pemmaraju (Registered Representative, Minneapolis, Minnesota)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$55,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Pemmaraju consented to the described sanctions and to the entry of findings that he transferred funds from public customer accounts into accounts that he controlled, and converted \$9,015.92 to his own use and benefit, without the knowledge or consent of the customers.

**Michael John Price (Registered Principal, Atlanta, Georgia)** submitted an Offer of Settlement pursuant to which he was censured, fined \$22,500, suspended from associa-

tion with any NASD member in any capacity for 30 days, and barred from association with any NASD member in any proprietary, principal and/or supervisory capacity. Without admitting or denying the allegations, Price consented to the described sanctions and to the entry of findings that he gave false or misleading statements to an NASD examiner as to the whereabouts of an individual, and failed to disclose that the individual had resigned. The findings also stated that Price failed to establish, implement, and enforce reasonable supervisory procedures designed to ensure compliance with NASD rules and federal securities laws.

**David Irving Proctor, Jr. (Registered Principal, Indianapolis, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$30,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Proctor consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give written notice to, and receive written approval from, his member firm prior to engaging in such activities. The findings also stated that Proctor engaged in outside business activities and failed to give prompt written notice of his engagement in such activities to his member firm.

**Michel Andre Rebonati (Registered Representative, Kilchberg, Switzerland)** 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, Rebonati consented to the described sanctions and to the entry of findings that he falsified a client instruction letter that authorized the sale of bonds belonging to a public cus-

tomers and requested the proceeds totaling \$950,331.25 be wired to a nominee account. The findings also stated that Rebonati failed to respond to NASD requests for information.

**John Joseph Rogers (Associated Person, Rochester, 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, Rogers consented to the described sanctions and to the entry of findings that, while taking the Series 7 exam, he brought unauthorized study materials into the testing area, despite being informed that unauthorized materials were prohibited, and referred to those materials during the exam.

**Freddie Joe Royer, Jr. (Registered Principal, Dallas, 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 with a right to reapply after two years. Without admitting or denying the allegations, Royer consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and business activities outside the scope of his employment without giving his member firm prior written notice of his activities, and he failed to notify his member firm of securities accounts he maintained or established at other member firms for a non-member firm. The findings also stated that Royer failed to notify the firms holding the accounts of his association with his member firm. In addition, Royer opened a securities brokerage account with an NASD member, omitted to disclose that he was associated with a member firm, and purchased shares in an IPO that traded at an immediate premium in

the secondary market and was considered a "hot issue" for purposes of the NASD's Free-Riding and Withholding Interpretation. Furthermore, the NASD determined that Royer co-signed a membership agreement for another member firm, held a 40 percent ownership stake in the firm, and during the first and only examination of the firm, the NASD discovered that the firm had failed to comply with the membership agreement, with two of the noted violations attributable to Royer.

**Daniel Charles Sanders (Registered Representative, Martinez, California)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$20,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sanders consented to the described sanctions and to the entry of findings that he failed to appear for an NASD on-the-record interview.

**Tobin Joseph Senefeld (Registered Principal, Crestwood, Kentucky)** 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 principal capacity for 20 days. Without admitting or denying the allegations, Senefeld consented to the described sanctions and to the entry of findings that, as branch manager, he failed to take appropriate action that was reasonably designed to supervise a registered representative and prevent unsuitably excessive trading in a customer's account by the individual.

**Ronald Adam Stewart (Registered Representative, Mahopac, New York)** submitted an Offer of Settlement pursuant to which he was censured, fined \$10,000, and barred from association with any NASD

member in any capacity. Without admitting or denying the allegations, Stewart consented to the described sanctions and to the entry of findings that he forged contract withdrawal forms requesting partial liquidations from a public customer's annuity contracts and then converted the \$19,500 in proceeds to his personal use. The findings also stated that Stewart caused \$10,108 to be withdrawn from customers' accounts and converted the proceeds to his own use. Stewart converted a total of \$29,608 from public customers without their knowledge or consent.

**Igor Eric Stolyar (Registered Representative, Brooklyn, New York)** was censured, fined \$35,000, suspended until he pays an arbitration settlement, plus an additional 30 business days, and barred from association with any NASD member in any capacity. The sanctions were based on findings that Stolyar failed to execute an order from a public customer to sell certain securities in the customer's account. Stolyar also failed to pay a \$10,300 arbitration settlement, and failed to respond to an NASD request for information and to appear for an interview.

**Dale Cochren Trask (Registered Representative, Swampscott, Massachusetts)** submitted an Offer of Settlement pursuant to which he was censured, fined \$250,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Trask consented to the described sanctions and to the entry of findings that he improperly converted \$157,250 of customer funds for his own use and benefit.

**Stephen James Wilson (Registered Representative, Grand Haven, Michigan)** submitted an Offer of Settlement pursuant to which he was censured, fined \$25,000, suspended from association with any

NASD member in any capacity for 90 days, and required to requalify by exam as a representative. Without admitting or denying the allegations, Wilson consented to the described sanctions and to the entry of findings that he purchased securities for the accounts of a public customer, in which he had a beneficial interest, in violation of the Board of Governors' Free-Riding and Withholding Interpretation.

**Richard Allan Yaksic (Registered Representative, Pitcairn, Pennsylvania)** submitted a Letter of Acceptance, Waiver, and Consent pursuant to which he was censured, fined \$925,000, and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Yaksic consented to the described sanctions and to the entry of findings that he caused a total of \$142,348.52 to be withdrawn from policies and mutual fund accounts owned by public customers and converted the funds to his own use and benefit. The findings also stated that Yaksic failed to remit approximately \$10,425 in premiums received from public customers, retaining them for his own use and benefit, and improperly caused a total of \$6,439.17 to be withdrawn from their policies and converted the monies to his own use and benefit. In addition, the NASD found that Yaksic failed to remit \$5,642.49 in premiums received from a public customer and converted such monies to his own use and benefit. Yaksic also converted to his own use and benefit \$1,081.48 of a public customer's funds intended to be used for the purchase of an annuity by the customer.

**Jay Alan Yeggy (Registered Representative, Boise, Idaho)** 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, Yeggy consented to the described sanctions and to the entry of findings that he submitted a falsified application for insurance for a public customer and a falsified delivery receipt for the insurance policy for this customer to his member firm. The findings also stated that Yeggy transmitted to a client falsified Common Remitter Billing Notices that overstated amounts due and owing on the client's insurance policies and submitted a falsified insurance application for another public customer to his member firm.

## Individuals Fined

**Nicholas Robert Marino (Registered Principal, Brooklyn, New York)** submitted an Offer of Settlement pursuant to which he was censured and fined \$15,000. Without admitting or denying the allegations, Marino consented to the described sanctions and to the entry of findings that a member firm, acting through Marino, effected, as principal, sales of warrants to public customers at prices that were unfair and unreasonable taking into consideration all relevant circumstances in that the prices charged to customers were not reasonably related to the prevailing market price.

**David Carmichael Montano (Registered Principal, Orange, California)** was censured, fined \$10,000, and ordered to requalify by exam as a general securities principal. The NAC affirmed the sanctions following a July 1998 SEC decision remanding the matter to the NASD. The sanctions were based on findings that Montano appeared on a television program and made recommendations regarding a stock while failing to provide a sound basis for evaluating the stock's financial prospects or his recommendation to sell the stock short. Montano also failed to

describe market conditions while highlighting the success of past recommendations. The findings also stated that Montano made exaggerated and unwarranted claims; made improper comparisons by referring to previous specific recommendations and implied comparable future results for his current recommendation; and made specific predictions and projections concerning future investment results.

### 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.

**David Alvarado (Registered Principal, Commack, 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. The complaint also alleges that in connection with his solicitation of customers to purchase securities, Alvarado made future price predictions of securities when he knew, or should have known, that he did not have a reasonable basis for his predictions. The complaint also alleges that Alvarado effected transactions in the accounts of public customers without the customers' prior authorization. The complaint alleges that Alvarado also failed to execute a public customer's sell order.

**Alberto Enrique Argomaniz (Registered Representative, Miami,**

**Florida)** was named as a respondent in an NASD complaint alleging that he forged a public customer's signature on an insurance policy refund check for \$7,500, deposited the customer's refund check into his personal account, and used at least a portion of the funds for his own use and benefit, all without the knowledge or authorization of the customer. The complaint alleges that after the customer contacted Argomaniz several times questioning the whereabouts of the refund check, Argomaniz wired \$7,500 from his personal bank account to the customer's bank account.

**Bradford Lee Brinton (Registered Representative, St. Joseph, Missouri)** was named as a respondent in an NASD complaint alleging that he forged the signature of a public customer on a dividend check payable to the customer, in the amount of \$1,695.23, without the customer's knowledge or consent. The complaint alleges that Brinton then deposited the \$1,695.23 check into a bank account he controlled, and converted the funds to his own use and benefit, without the customer's knowledge or consent.

**Emanuele Robert Cardaci (Registered Principal, Farmingville, 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, and, in connection with his solicitation of customers to purchase securities, Cardaci made future price predictions when he knew, or should have known, that he did not have a reasonable basis for his predictions. The complaint also alleges that Cardaci effected transactions in the accounts of public customers without the customers' prior authorization, and failed to execute a public customer's sell order. The complaint also alleges that Cardaci conditioned the pur-

chase of IPO securities upon an agreement to purchase additional securities in the secondary market when it commenced, which resulted in an economic detriment to the public customer and an economic benefit to Cardaci.

**John Mike Dabal (Registered Principal, Smithtown, New York)** was named as a respondent in an NASD complaint alleging that he made unsuitable recommendations to public customers. The complaint alleges that Dabal made statements that were materially false, misleading or exaggerated, and/or made statements for which there was no reasonable basis in fact, and failed to disclose material facts to public customers. The complaint also alleges that Dabal effected transactions in the accounts of public customers without the customers' knowledge or authorization and without having been granted discretionary authority, orally or in writing, to effect transactions.

**Charles John Distefano (Registered Representative, Medford, New York)** was named as a respondent in an NASD complaint alleging that he made material misrepresentations and failed to disclose material information to public customers in connection with his solicitation of customers to purchase securities. The complaint also alleges that Distefano failed to execute a public customer's sell order, and effected transactions in public customer accounts without the prior authorization of the customers. The complaint also alleges that Distefano failed to appear for an on-the-record interview with the NASD.

**Averell Golub (Registered Representative, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that in connection with inducements for the offer, sale, and purchases of securi-

ties, Golub employed devices, schemes, contrivances, and artifices to defraud. The complaint alleges that Golub made material misrepresentations and omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, and engaged in acts, practices, or courses of business that operated as a fraud or deceit upon public customers.

**Mark Edwin Gort (Registered Principal, Wyoming, Michigan)** was named as a respondent in an NASD complaint alleging that he executed transactions in 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 Gort failed to respond to NASD requests for information.

**Patrice Roberto Harris (Registered Representative, Brooklyn, New York)** was named as a respondent in an NASD complaint alleging that he executed transactions in the accounts of public customers without the knowledge or consent of the customers, and in the absence of written or oral authorization to exercise discretion in the accounts.

**Dean Llewellyn Kroenke (Registered Representative, Rochester, Minnesota)** was named as a respondent in an NASD complaint alleging that he received a check in the amount of \$1,440 from a public customer for the purpose of investing in a variable life insurance policy, and without the knowledge or consent of the customer, cashed or deposited the check in a bank account he controlled, and converted the funds to his own use and benefit. The complaint also alleges that Kroenke failed to respond to NASD requests for information.

**Landmark International Equities, Inc. (Westbury, New York), Howard Brett Berger (Registered Principal, Roslyn Heights, New York), Eric Jay Aronson (Registered Representative, Muttontown, New York), and William Nunziato (Registered Principal, Fresh Meadows, New York)** were named as respondents in an NASD complaint alleging the firm, acting through Aronson, a controlling person of the firm, and through its registered representatives, engaged in the preselling of the aftermarket by soliciting customers to purchase securities in aftermarket trading as a requirement to purchase in the IPO and failed to inform the firm's customers that the IPO was not a *bona fide* public distribution. The complaint also alleges that the firm, acting through Berger and Aronson, entered into prearranged agreements with their customers to sell units of the IPO back to the firm in the immediate aftermarket trading of the security (flipping) and should have been aware that these "flippers" did not have *bona fide* investment intent and did not constitute the investing public for purposes of completing a *bona fide* public distribution. The firm acted as a Market Maker in the securities while units were redistributed, and attempted to induce other persons to purchase such securities before the initial distribution was completed. The firm, acting through Berger and Aronson, failed to tell its non-flipping customers that the IPO was not a *bona fide* public distribution and engaged in a secondary distribution using special selling efforts and selling methods. Furthermore, the complaint alleges the firm, acting through Berger, Aronson, and Nunziato, purchased common stock from former affiliates at a purchase price that was below the firm's contemporaneous sales of common stock to its customers and engaged in a secondary distribution using special efforts and selling methods and failed to tell its

customers that their interests would be diluted by the secondary distribution and that the IPO was not a *bona fide* public distribution. In addition, the complaint alleges that the firm, acting through Nunziato, failed to supervise Aronson adequately and properly with respect to the flipper transactions described above and failed to take any steps to discharge his supervisory responsibilities with respect to these transactions, and the firm, acting through Berger, failed to establish and maintain adequate written supervisory procedures to prevent the above violations and to address compliance with the securities laws and regulations relating to the underwriting and distribution of securities. Also, the complaint alleges that the firm, acting through Berger, allowed unregistered representatives to enter aftermarket trades while not registered and failed to supervise adequately the registration of its representatives. Furthermore, Aronson and Nunziato each failed to respond to an NASD request to appear for an on-the-record interview.

**Edwin Leslie Lawrence, Jr. (Registered Representative, Dix Hills, New York)** was named as a respondent in an NASD complaint alleging that he executed securities transactions in the accounts of public customers without the knowledge or consent of the customers, and in the absence of written or oral authorization to exercise discretion in the accounts.

**Mario J. Liriano (Registered Principal, Bronx, New York)** was named as a respondent in an NASD complaint alleging that he improperly used and converted \$5,000 he received from public customers to invest in mutual funds. The complaint alleges that, instead of submitting the check to his firm, he presented the check for payment to a third party, converted the funds to his own use,

used some of the money to pay his personal expenses, and deposited the remainder into his personal bank account. The complaint alleges that Liriano attempted to conceal his conversion from his member firm by sending his firm the customers' application and his own personal check that was dated the same day he received the funds from the customers, and thereby attempted to mislead his employer into believing that the customers' funds were submitted contemporaneously with the investment application and not improperly used by Liriano. The complaint also alleges that Liriano presented his member firm with a personal check that was rejected for "insufficient funds," when he knew, or should have known, that he did not have the funds in his account to cover his personal check at the time it was presented to his firm.

**Jeffrey Tod Marshall (Registered Representative, Atlanta, Georgia)** was named as a respondent in an NASD complaint alleging that he received an application from an individual to become associated with Marshall's member firm, as well as a personal check made out to Marshall for \$150 to cover her licensing fees, and rather than submitting the application and check to his firm, Marshall cashed the applicant's check and converted the proceeds to his own use and benefit. The complaint also alleges that Marshall failed to respond to NASD requests for information.

**Scott Jason Siegel (Registered Representative, Dix Hills, 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, and made future price predictions of securities when he knew, or should

have known, he did not have a reasonable basis for his predictions. The complaint also alleges that Siegel failed to execute a public customer's sell order.

**Andrew Frank Soldo, Jr. (Registered Representative, East Islip, 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, and made future price predictions of securities to public customers when he knew, or should have known, that he did not have a reasonable basis for his predictions. The complaint also alleges that Soldo effected transactions in the accounts of public customers without the prior authorization of the customers. The complaint alleges that when a public customer informed Soldo that he would not pay for a transaction because it had not been authorized by the customer, Soldo represented to the customer that other securities in the customer's account would be sold to pay for the transaction and that a judgment would be entered against the customer that would ruin his credit rating if he did not pay for the transaction. As a result of these alleged representations, the customer borrowed funds from a bank to pay for the transaction.

### **Firms Suspended/Canceled**

The following firms were suspended/canceled from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspensions/cancellations commenced is listed after the entry. If the firm has complied with the requests for information, the listing

also includes the date the suspension concluded.

**Brownstone Capital Corp.**, New York, New York (March 8, 1999)

**Greig Middleton, Inc.**, Boston, Massachusetts (March 8, 1999)

**Kronos Investments Limited**, Oklahoma City, Oklahoma (March 8, 1999)

**Parker Bromley Ltd.**, Garden City, New York (March 8, 1999)

**Pellett Investments, Inc.**, Missoula, Montana (March 8, 1999)

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

**Biltmore Securities, Inc.**, Ft. Lauderdale, Florida (March 1, 1999)

**H.J. Meyers & Co., Inc.**, Rochester, New York (March 1, 1999)

**Hunter International Securities**, Ft. Lauderdale, Florida (February 26, 1999)

**Kentucky Eagle Financial Group, Inc.**, Louisville, Kentucky (March 1, 1999)

**Westhagen & Westhagen, Inc.**, Ripon, Wisconsin (March 11, 1999)

### **Suspension Lifted**

The NASD has lifted the suspension from membership on the dates shown for the following firm because it has complied with formal written requests to submit financial information.

**Barry F. Cohen & Company, Inc.**, Boca Raton, Florida (March 1, 1999)

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

**Beasley, Jr., Jere L.**, Montgomery, Alabama (March 1, 1999)

**Clark, William H.**, Staten Island, New York (March 1, 1999)

**Curran, Gregory J.**, Springfield, Illinois (March 1, 1999)

**Dabo, Jr., Mitchell J.**, Hollister, California (February 26, 1999)

**Hannan, Joseph P.**, Newport Beach, California (March 1, 1999)

**Lerner, Bernice L.**, New York, New York (February 26, 1999)

**McAdoo, Duane S.**, Yonkers, New York (February 26, 1999 - March 16, 1999)

**Nizza, Jr., Louis N.**, Deerfield Beach, Florida (February 26, 1999)

**Schulz, Marc W.**, Rockford, Illinois (February 26, 1999)

**Westhagen, Eric P.**, Ripon, Wisconsin (March 11, 1999)

## **NASD Regulation Fines PaineWebber for Registration Violations**

NASD Regulation announced that it has censured and fined PaineWebber, Inc., \$50,000 in connection with violations of NASD rules requiring registration of individuals engaged in the securities business.

An examination of PaineWebber by NASD Regulation's District staff in New Orleans revealed that the firm failed to ensure that certain employees held all the proper registrations required for the functions they per-

formed. At various times from June 1989 to August 1998, those employees acted as general securities principals or representatives and were not properly registered as such. NASD Regulation also found that PaineWebber failed to establish, maintain, and enforce written supervisory procedures to ensure the proper registration of certain persons.

Under NASD rules, individuals engaged in the investment banking or securities business as representatives must pass a qualifications test and be registered with the member firm. Individuals who are actively engaged in the management of a firm's investment banking or securities business, including supervisory activities, must be appropriately registered as "principals" of the firm.

As part of its settlement, PaineWebber, which neither admitted nor denied the allegations, agreed to conduct a review of its supervisory procedures regarding registration of personnel within 90 days. After completion of the review, PaineWebber will implement changes necessary to ensure that all persons engaged in the firm's investment banking or securities business, or in the management thereof, are properly registered, and will submit a report to the staff detailing its review procedures and any revised supervisory procedures.

## **NASD Regulation Bars Pacific Cortez Securities, Formerly La Jolla Capital Corp., From Penny Stock Transactions**

### ***Firm Ordered to Pay Fines and Restitution in Excess of \$900,000***

NASD Regulation announced that it has censured and barred San Diego-based Pacific Cortez Securities, formerly known as La Jolla Capital

Corp., from selling penny stocks. In addition, three of its senior officials have been sanctioned for violating federal securities laws governing the trading of penny stocks. Penny stocks are unlisted securities that trade over-the-counter and are typically priced under \$5 per share.

The decision was issued by NASD Regulation's NAC following an appeal of an earlier decision by its Los Angeles DBCC.

The NAC upheld the earlier decision that Pacific Cortez President Harold B.J. Gallison, and Branch Manager Christopher S. Knight be permanently barred from the penny stock industry for participating in a 17 month-long scheme promoting unlawful sales of penny stocks to unsuspecting investors. They were also ordered to pay fines of more than \$500,000. Separately, the firm and Gallison are jointly responsible for repaying more than 100 investors throughout the country almost \$400,000.

The NAC also found that Pacific Cortez Securities implemented a system to circumvent the SEC penny stock rules designed to ensure that investors receive honest and candid information about risk disclosure and suitability issues before they invest. The firm had investors sign a misleading document that purported to exempt the transactions from the rules' requirements. The letters were portrayed to investors as a "formality," and in some cases investors' signatures were forged. Pacific Cortez also was found to have implemented deficient supervisory policies and procedures designed to foster the improper claim of this exemption.

The sales practice abuses at Pacific Cortez were uncovered after a lengthy investigation by NASD Regulation's District Offices in Los Angeles, San Francisco, and Denver. The

NAC found that from January 1994 through May 1995, Pacific Cortez and certain of its senior officials circumvented investor protection laws in approximately 140 transactions involving 15 separate securities. All of the transactions involve penny stocks. The violations occurred at the firm's offices in San Diego, CA; New York, NY; Las Vegas, NV; and Bethesda, MD.

The following senior officials were sanctioned:

- Harold B.J. Gallison, President, and Pacific Cortez Securities were fined a total of \$397,380, plus costs (\$8,260.75). Gallison was also suspended in all capacities for 30 days; permanently barred from participating in penny stock transactions; permanently barred from acting as a supervisor; and censured.
- Gregory K. Mehlmann, National Branch Compliance Officer, was fined \$10,000 plus costs (\$3,500); suspended as a supervisor for 10 business days; ordered to retake the qualifying examination to become a supervisor; and censured.
- Christopher S. Knight, Branch Manager, was fined \$95,854, plus costs (\$6,500.00); permanently barred from acting as a supervisor; permanently barred from participating in penny stock transactions; suspended in all capacities for 15 days; and censured.

The NAC dismissed all charges against Robert C. Weaver, Chief Legal Counsel and Gerald J.R. Budke, Branch Manager. The firm has appealed the decision to the SEC. As a result, the findings may be modified or reversed. Gallison is still employed by Pacific Cortez Securities.

In related disciplinary actions between February 1996 and October 1996, 22 other Pacific Cortez brokers and supervisors, without admitting or denying liability, were fined and disciplined in connection with this case. Pacific Cortez Securities employs 53 brokers in six offices in California, New York, Georgia, and Nevada.

### **NASD Regulation Sanctions And Fines 10 Sterling Foster Brokers For Fraudulent "Boiler Room" Sales Practices; Orders \$1.1 Million Restitution**

NASD Regulation announced that the use of "abusive" "high-pressure" "boiler room" sales practices designed to defraud investors were among the grounds for a disciplinary action that resulted in seven brokers being barred from the industry and suspensions for three others. The 10 former brokers of Sterling Foster & Co., Inc., a defunct Melville, New York broker/dealer, were ordered to pay investors a total of \$1,138,517 in restitution and fined a total of \$837,500. The violations of NASD rules and federal securities laws related to the sales of the securities of Advanced Voice Technologies, Inc.

This brings the total number of Sterling Foster brokers disciplined by the NASD in the past year to 31 and increases the total amount of fines and restitution imposed to \$4,256,393. Several more cases are pending.

According to the findings issued by the NASD Market Regulation Committee, the Sterling Foster brokers used a variety of high-pressure sales tactics, including: aggressive cold-calling, fraudulent misrepresentations, and baseless predictions of dramatic price increases. In many instances, customers requested, but were never sent, copies of the Advanced Voice offering prospectus. Customers were sometimes told that

the firm had simply "run out" of them. On those occasions when prospectuses were delivered, the brokers actively discouraged customers from reading them.

The Committee further found that, instead of revealing the true financial condition of the company, brokers at Sterling Foster sold Advanced Voice securities by representing to customers that the IPO was "oversold" or "oversubscribed" and that there would be a huge, unsatisfied demand for the stock once trading began, causing the price to soar. Customers frequently were urged to "act immediately or else [they] would miss out on this incredible opportunity to get rich." In some instances, brokers told customers that "it didn't matter if the company made screen doors for submarines." Brokers also, at times, misrepresented to customers that they were privy to inside information about the company.

Although Advanced Voice began trading at a substantial premium, rising as high as \$18.00 per share, the stock never came close to matching the brokers' unsubstantiated predictions. The NASD also found that the Sterling Foster brokers effected numerous unauthorized transactions in customer accounts, buying many more shares than the customers had authorized or could afford.

The Market Regulation Committee also noted that, for the most part, the customers who purchased Advanced Voice securities comprised a relatively sophisticated group. Many had previous experience investing, almost all were well-educated, and a surprising number were owners of their own successful businesses. Yet, they still succumbed to the Sterling Foster brokers' combination of relentless tactics and outlandish promises.

The NASD also found that, as a group, the Sterling Foster brokers embraced the firm's stated philosophy of "Buy or Die," meaning "never take 'no' for an answer" when selling securities to a customer. Each broker was expected to make hundreds of calls per day. Once a sale was made, however, the brokers simply ignored their customers' calls and frequently refused to accept sell orders. One customer-witness who had placed approximately 25 calls to the firm, testified that these were the "most evasive people I ever saw." In another instance, a customer who tried repeatedly to sell his shares, was told that the firm's "legal department" first had to approve the sale because the customer "had a short history with the firm." A former Sterling Foster broker who testified at the hearing, corroborated the customer-witnesses' accounts, and stated that when customers could not be dissuaded from selling, the order tickets would sometimes disappear, unexecuted, into the sales manager's "magic drawer."

The names of the 10 brokers disciplined by the NASD, and the sanctions imposed against them, are as follows:

Vincent Vaccaro - Censure; Permanent Bar; \$100,000 Fine; \$161,624 Restitution;

Vincent Carella - Censure; Permanent Bar; \$100,000 Fine; \$135,983 Restitution;

William Scuteri - Censure; Permanent Bar; \$100,000 Fine; \$223,200 Restitution;

Robert Paulson - Censure; Permanent Bar; \$100,000 Fine; \$82,006 Restitution;

Brian Kearney - Censure; Permanent Bar; \$100,000 Fine; \$64,410 Restitution;

Timothy Matthews - Censure; Permanent Bar; \$100,000 Fine; \$135,706 Restitution;

Michael Cohn - Censure; Permanent Bar; \$100,000 Fine; \$94,341 Restitution;

Diana Coblin - Censure; Two-Year Suspension; \$100,000 Fine; \$152,347 Restitution;

Joseph Ferrante - Censure; Six-Month Suspension; \$25,000 Fine; \$75,577 Restitution;

Claudia Silver - Censure; 30-Day Suspension; \$12,500 Fine; \$13,323 Restitution.

The Committee's decision regarding Vaccaro and Carella is final after 45

days, unless the matter is appealed to the NAC, or called for review by the NAC. The sanctions are not effective during this period. If the decision is appealed or called for review, the sanctions against Vaccaro or Carella may be increased, decreased, modified, or reversed. The decisions and sanctions imposed against the remaining eight brokers are the result of settlements submitted and approved after the disciplinary hearing was completed, and as such, they are now final.

This matter was investigated and prosecuted by NASD Regulation's Denver District Office and Enforcement Department in Washington, D.C. Assistance was also provided by NASD Regulation's Corporate Finance Department. NASD Regulation wishes to express its appreciation to the U.S. Attorney's Office for the Southern District of New York and the Northeast Regional Office of the SEC for their cooperation and assistance in this matter.

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# For Your Information

## **Member Firms Now May Submit EDGAR Documents On Computer Disks To Meet The Information Requirements Of SEC Rule 15c2-11 And NASD Marketplace Rule 6740**

Member firms may now demonstrate compliance with Securities and Exchange Commission (SEC) Rule 15c2-11 and National Association of Securities Dealers, Inc. (NASD®) Marketplace Rule 6740 by submitting one copy of EDGAR documents on

computer disk, in lieu of two paper copies of the EDGAR documents. EDGAR documents should be provided on 3.5 inch computer disks and should be in .TXT format. When documents containing the required information are not available through EDGAR, the member firm must continue to provide two paper copies of the requisite documents.

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# Join us for the 1999 Spring and Fall Securities Conferences.

At these events, you will learn about and discuss the latest developments in the securities industry. Also you will hear from industry experts and NASD Regulation leadership, explore regulatory issues, and much more.

Watch your mail for a conference brochure and registration materials. Questions? Call the NASD at (202) 728-8383 or visit the NASD Regulation Web Site.

[www.nasdr.com](http://www.nasdr.com)

## 1999 NASD Regulation Spring Securities Conference

May 19 - May 21  
*New Orleans, LA*

## 1999 NASD Regulation Fall Securities Conference

October 20 - October 22  
*Seattle, WA*



# Special NASD Notice to Members 99-32

NASD Regulation Requests Comment On Proposed Rules Regarding Approval Procedures For Day-Trading Accounts, Including Appropriateness Determinations, And Disclosure Of Risks Of Day-Trading Activities; **Comment Period Expires May 31, 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

NASD Regulation, Inc. (NASD Regulation®) is requesting comment from members and other interested parties on proposed rules that would require a firm that has recommended a day-trading strategy to an individual to approve the individual's account for day trading. As part of the account approval process, the firm would be required to determine that the strategy is appropriate for the customer and to provide a disclosure statement to the customer discussing the risks of day trading.

A companion *Special Notice to Members* issued today, *Special Notice to Members 99-33*, discusses current margin requirements and steps that firms are taking to increase maintenance margin requirements for certain volatile stocks. *Special Notice to Members 99-33* also solicits comment on the use of margin during volatile market conditions, as well as the use of margin by individuals engaging in day-trading activities.

Questions concerning this *Special Notice* may be directed to Patrice M. Gliniecki, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8014.

## Discussion

The increased popularity of day trading by individuals poses unique investor protection concerns. Individuals engaging in day-trading activities often trade their accounts aggressively, hoping to profit from intra-day price movements in securities. However, the ability to engage effectively in day trading requires not only sufficient capital, but also a sophisticated understanding of securities markets and trading techniques. Even sophisticated investors engaging in day-trading activities should be aware that the risk of loss of capital can be very high. For persons

without this sophistication, the risk of loss can be even higher.

To address these concerns, NASD Regulation is soliciting comment on two proposed rules that would clarify and enhance the responsibilities of members that recommend day trading to individuals. The text of the proposed rules follows this *Special Notice*.

## Proposed Approval Procedures For Day-Trading Accounts

The proposed rules would require a member that has recommended an "intra-day trading strategy" to a customer who is a natural person to approve that customer's account for day trading prior to effecting an initial day-trading transaction for the customer. The proposed rules would define an "intra-day trading strategy" as "an overall trading strategy characterized by the regular transmission by a customer of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities." The account approval would be required to be in a written document, which would be subject to the National Association of Securities Dealers, Inc. (NASD® or Association) general recordkeeping requirements.

To approve a customer's account for day trading, the member would be required to determine that an intra-day trading strategy is appropriate for the customer. In making this determination, the member would be required to "exercise diligence to ascertain the essential facts relative to the customer." This would expressly include a review of the customer's financial situation, investment experience, and investment objectives. For purposes of the proposed rules, day trading generally would not be appropriate for someone of limited resources and investment or trading experience, and low risk tolerance.

## Proposed Risk Disclosure Statement

The proposed account approval procedures also would require the member, prior to effecting an initial day-trading transaction, to provide a disclosure statement to the customer discussing the unique risks posed by this activity. The disclosure statement would include several points that a customer should consider before engaging in day trading, including that the customer should be prepared to lose all of the funds that he or she uses for day trading and that day trading on margin may result in losses beyond the initial investment. The proposed rules also would allow a firm to develop an alternative risk disclosure statement, provided that the alternative statement was substantially similar to the mandated disclosure statement and was filed with, and approved by, the NASD's Advertising Department.

The proposed rules do not define the term "recommendation" in the context of day-trading activities. In general, a member would be recommending a day-trading strategy for purposes of the proposed rules if it affirmatively promoted day trading through advertising, training seminars, or direct outreach programs, and an individual engaged in day trading in response to these solicitations. The fact that customers of a firm generally were engaged in day trading would reinforce a determination that the firm had promoted itself in this way. However, merely providing general investment research or having a Web site that allows the multiple entry of intra-day purchases and sales of the same securities would not constitute a recommendation under the proposal.

## Alternative Approaches

NASD Regulation is interested in receiving views as to alternative approaches to addressing the investor protection concerns raised by individuals engaging in day-trading activities. For example, the proposal could be revised to apply to a broader range of firms. In particular, the proposed requirements could apply to any firm that promotes day trading in any manner, rather than be limited to those firms that have "recommended" an intra-day trading strategy to an individual.

In addition, the proposal could be revised to reach additional categories of customers, such as any customer that indicates an intent to engage in day-trading activities. The scope of the proposal also could be restricted to reach only those persons that a firm individually solicits to engage in a day-trading strategy. Moreover, an alternative to the proposal would be to require that risk disclosure statements be provided to every individual who opens an on-line trading account.

## Request For Comment

NASD Regulation encourages members and other interested parties to comment on all aspects of the proposed rules. We also specifically solicit comment on the following issues:

1. Do the proposed rules target the appropriate activity given that they are directed at firms that recommend, through general advertisements, seminars, etc., day-trading strategies to individuals? To what extent are individuals engaging in day trading as a result of efforts by firms to promote this activity? By what other means are individuals being persuaded, or otherwise electing, to engage in day trading?

2. Should the proposed rules address a broader scope of firm activities? For example, should all firms that advertise or promote day trading in any manner be subject to the proposal, regardless of whether a particular individual engages in day trading in response to the firm's actions?

3. Should the proposed rules require that any representations as to the profitability of an intra-day trading strategy be reasonably based on actual prior historical results?

4. Should the proposed rules reach a broader range of individuals? For example, should any individual that expresses an intent to engage in day trading be covered by the rules?

5. Should the proposed rules (or similar rules) apply only to new customers? How should existing customers be treated?

6. Should the proposed rules set forth a definition of "recommendation"? If so, what types of activities should constitute a recommendation in the context of day trading?

7. Is the proposed definition of an "intra-day trading strategy" appropriate?

8. Should the proposed rules prescribe with greater specificity the actions that a firm needs to take in order to fulfill its obligations under the rules? Are there additional elements that a firm should consider in order to assess the appropriateness of a day-trading strategy for an individual? For example, should a member be required to determine the source of funds that an individual intends to use for day-trading activities?

9. Are there additional issues that should be addressed in the proposed risk disclosure statement? Should customers be required to sign or

otherwise acknowledge receipt of the risk disclosure statement? Should the proposed rules permit a firm to prepare its own disclosure statement regarding the risks of day trading?

10. Are there other alternative approaches that would achieve the regulatory goal of addressing the investor protection concerns raised by day trading?

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 **May 31, 1999**. Before becoming effective, any rule change 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.

## Text Of Proposed Rules

### Rule 2360. Approval Procedures for Intra-Day Trading Accounts

(a) No member that has recommended an intra-day trading strategy to a customer who is a natural person shall effect a transaction for or on behalf of such customer for this purpose, unless, prior to effecting the first of such transactions, the member has:

- (1) approved the customer's account for an intra-day trading strategy in accordance with the

procedures set forth in paragraph (b); and

(2) provided the customer with a copy of the disclosure statement required by Rule 2361.

(b) In order to approve a customer's account for an intra-day trading strategy, a member shall determine that the intra-day trading strategy is appropriate for the customer. In making this determination, the member shall exercise diligence to ascertain the essential facts relative to the customer, including his or her financial situation, investment experience, and investment objectives.

(c) Each member subject to this rule shall make a record setting forth the basis on which the member approves the customer's account under paragraph (a) and shall preserve such record in accordance with Rule 3110(a).

(d) For purposes of this rule, the term "intra-day trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities.

### Rule 2361. Intra-Day Trading Strategy Disclosure Statement

(a) Except as provided in paragraph (b), no member that has recommended an intra-day trading strategy to a customer who is a natural person shall effect a transaction for or on behalf of such customer for this purpose, unless, prior to effecting the first of such transactions, the member has provided to the customer, in writing or electronically, the following disclosure statement:

You should consider the following points before engaging in day

trading activities. For purposes of this notice, "day trading" means the transmission by you of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities.

- **Day trading is extremely risky.** You should be prepared to lose all of the funds that you use for day trading. In particular, you should not fund day trading activities with retirement savings, student loans, second mortgages, emergency funds, funds set aside for purposes such as education or home ownership, or funds required for current income to meet your living expenses.

- **Be cautious of claims of large profits from day trading.** You should be wary of advertisements or other statements that emphasize the potential for large profits in day trading. Day trading can also lead to large and immediate financial losses.

- **Day trading requires knowledge of securities markets.** Day trading requires in-depth knowledge of the securities markets and trading techniques and strategies. In attempting to profit through day trading, you must compete with professional, licensed traders employed by securities firms. You should have appropriate experience before engaging in day trading.

- **Day trading requires knowledge of a firm's operations.** You should be familiar with a securities firm's business practices, including the operation of the firm's order execution systems and procedures. You should confirm that a firm has adequate systems capacity to permit customers to engage in day trading activities.

• **Day trading may result in your paying large commissions.** Day trading may require you to trade your account aggressively, and you may pay commissions on each trade. The total daily commissions that you pay on your trades may add to your losses or significantly reduce your earnings.

• **Day trading on margin or short selling may result in losses beyond your initial investment.** When you day trade with funds borrowed from a firm or someone else, you can lose more than the funds you originally placed at risk. A decline in the value of the securities that are purchased may require you to provide additional funds to the firm to avoid the forced sale of those securities or other securities in your account. Short selling as part of your day trading strategy also may lead to extraordinary losses, because

you may have to purchase a stock at a very high price in order to cover a short position.

(b) In lieu of providing the disclosure statement specified in paragraph (a), a member that has recommended an intra-day trading strategy to a customer who is a natural person may provide to the customer, in writing or electronically, prior to effecting the first of such transactions, an alternative disclosure statement, provided that:

(1) The alternative disclosure statement shall be substantially similar to the disclosure statement specified in paragraph (a); and

(2) The alternative disclosure statement shall be filed with the Association's Advertising Department (Department) for review at least 10 days prior to use (or such shorter period as the

Department may allow in particular circumstances) for approval and, if changes are recommended by the Association, shall be withheld from use until any changes specified by the Association have been made or, if expressly disapproved, until the alternative disclosure statement has been refiled for, and has received, Association approval. The member must provide with each filing the anticipated date of first use.

(c) For purposes of this rule, the term "intra-day trading strategy" means an overall trading strategy characterized by the regular transmission by a customer of multiple intra-day electronic orders to effect both purchase and sale transactions in the same security or securities.

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# Special NASD Notice to Members 99-33

NASD Regulation Advises  
Members About  
Maintenance Margin  
Requirements For Certain  
Volatile Stocks And Solicits  
Comment On Margin  
Practices; **Comment Period  
Expires May 31, 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

During the past several months, many stocks, particularly of companies that sell products or services via the Internet (Internet issuers), have experienced sharp increases in both price volatility and trading volume. These extreme market conditions raise concerns regarding the use of margin accounts by individuals to trade volatile stocks. NASD Regulation, Inc. (NASD Regulation®) is issuing this *Special Notice* to provide members, as well as investors, with information about current margin requirements and steps taken by the industry to increase maintenance margin requirements for certain volatile stocks. This *Special Notice* also solicits comment from members and other interested parties on issues relating to the use of margin during volatile market conditions, as well as the use of margin by individuals engaging in day-trading activities.

In a companion *Special Notice to Members* issued today, *Special Notice to Members 99-32*, NASD Regulation solicits comment on two proposed rules that would require a member that has recommended a day-trading strategy to an individual to approve the individual's account for day trading, including determining that the strategy is appropriate for the individual, and to deliver a disclosure statement on the risks of day trading.

Questions concerning this *Special Notice* may be directed to Patrice M. Gliniecki, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8014.

## Discussion

In recent months, there has been a sharp increase in the price volatility of many stocks, particularly those of Internet issuers. This volatility in price has been coupled with record trading volumes in many of these stocks. While many factors have contributed

to the development of these market conditions, one significant factor is the role played by rapid advances in technology, which have provided customers with easier and less costly access to the securities markets. Customers are now able to trade their accounts far more actively than in the past, and members are often flooded with customer orders for certain individual stocks or groups of stocks (e.g., stocks of Internet issuers).

To address concerns raised by current market conditions, NASD Regulation recently issued *Notice to Members 99-11*, which suggests disclosures that firms can make to educate customers about the risk of price and volume volatility, and discusses steps that have been taken by some firms to respond to this volatility.<sup>1</sup> In a companion *Notice to Members, Notice to Members 99-12*, NASD Regulation provided guidance to firms on the operation of their order execution systems and procedures during extreme market conditions.<sup>2</sup>

As volatile market conditions continue, questions are raised regarding the risks posed to firms and to investors, and the relationship of margin to those risks. A sudden change in the market value of a security may result in an unexpected margin call, and a customer's failure to meet the call may cause the firm to liquidate the securities in the account. The financial consequences of a margin call or an account liquidation may be most severe to customers with small accounts, and small accounts may be more likely to be subject to liquidation. In addition, the forced sale of securities in margin accounts may further contribute to volatility.

Questions regarding investor protection and disclosure practices also arise as firms become involved

in the extension of credit between customers. In some instances, customers are making loans to other customers to finance securities trades, and some customers are guaranteeing each other's margin accounts. Member firms sometimes arrange for these loans or guarantees between customers or arrange loans for customers from other sources. Customers incur additional finance charges when credit is arranged, and they face additional credit risks when they extend credit to other customers.

Discussions with firms about their responses to volatility indicate that many firms have adopted special procedures with respect to margin. For instance, as further detailed below, many firms have increased maintenance margin requirements for selected groups of highly volatile stocks.<sup>3</sup> However, with markets at historically high levels, concerns remain with the amount of funds that customers are borrowing to trade securities, and the manner in which credit is being extended by various sources. Accordingly, this *Special Notice* discusses current margin requirements and certain firm practices when extending credit to customers, and solicits comment on these important issues.<sup>4</sup>

### **Current Margin Requirements**

Federal Reserve Board Regulation T governs the extension of credit to customers by broker/dealers and includes provisions concerning the initial margin requirements for most types of securities transactions. In general, Regulation T requires 50 percent initial margin for long purchases of marginable equity securities. In addition, Regulation T requires 150 percent margin for short sales of equity securities, of which 100 percent can be from sales proceeds.

National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Rule 2520 imposes additional margin requirements on customer accounts.<sup>5</sup> Rule 2520 generally requires maintenance margin of 25 percent of the current market value for all long positions in marginable equity securities, meaning that the equity must not fall below 25 percent of the current market value of the securities in the account. For a short securities position where the stock sells at \$5 per share or above, Rule 2520 requires maintenance margin of \$5 per share or 30 percent of the current market value of the stock, whichever amount is greater. In addition, for a short securities position where the stock sells at less than \$5 per share, a customer must maintain margin of \$2.50 per share or 100 percent of the current market value, whichever amount is greater. Where the same security is carried long and short by the same customer, Rule 2520 permits maintenance margin of five percent of the current market value of the long security.

Rule 2520 also permits customers to guarantee each other's accounts for maintenance margin purposes.<sup>6</sup> In cross-guaranteed accounts, the amount of maintenance margin excess in one account may be used to offset a maintenance margin deficit in the other cross-guaranteed account. In addition, if the cross-guaranteed accounts are long and short the same securities, including the same number of shares, the maintenance margin requirement on the combined positions is five percent. Day trading is also recognized by Rule 2520 through the definitions of "day-trading," "day-trader," and certain specified margin requirements.<sup>7</sup> Under these provisions, a day trader may need to deposit additional equity in his or her account to satisfy a day-trade margin call.

Members also may establish their own margin requirements (referred to as "house" requirements), provided that they are at least as stringent as the requirements under Regulation T and Rule 2520. Members also may temporarily raise their margin requirements in response to market conditions.

### **Increased Maintenance Margin**

In light of current market conditions, some members have elected to increase their maintenance margin requirements for certain volatile stocks to help ensure that the equity in each customer account is sufficient to cover the large swings in the price of the stocks. In general, the firms have increased the amount of equity that must be maintained in margin accounts for long positions in these stocks to between 40 percent and 100 percent. In addition, the firms often have raised their maintenance margin requirements on short positions to an even greater degree than on long positions.

### **Identifying Stocks For Increased Maintenance Margin**

Firms have considered a variety of parameters in identifying the stocks that will be subject to increased maintenance margin requirements. A particularly useful approach is to calculate the volatility of the stock and impose more stringent requirements on stocks that are highly volatile. In this context, one appropriate way to measure volatility is to calculate the standard deviation of the relative daily return of a given stock over a specified time period, such as three months (which would capture an entire quarterly earnings cycle).<sup>8</sup>

Firms also may identify stocks for more stringent maintenance margin requirements by reviewing customer accounts to assess trading activity in a particular stock, as well as the firm's aggregate risk exposure to the

stock. This type of analysis should be performed in conjunction with calculating the volatility of the stock. Other factors firms may consider in reviewing their margin requirements during extraordinary market conditions include price fluctuations (such as a recent sharp rise or decline in price), the degree to which trading in a stock is concentrated in a small number of Market Makers, or an issuer's market capitalization or industrial code classification. Firms also have indicated that they regularly review and, where appropriate, revise the lists of stocks that are subject to increased maintenance margin requirements.

NASD Regulation believes that increasing the maintenance margin requirements to be applied to certain stocks is an appropriate response to extreme volatility in those stocks. Discussions with firms have indicated that customers generally have not been transferring their accounts to other firms in response to increased margin requirements for volatile stocks. In this regard, NASD Regulation believes that a firm's decision to adopt such measures should not be influenced by the possible short-term competitive effects. Moreover, NASD Regulation will continue to monitor actions taken by members to adjust maintenance margin requirements in response to market volatility, and the effects of those actions, to determine whether changes to NASD rules may be warranted.

### **Disclosure Of Credit Terms To Customers**

In reviewing margin procedures, firms also should confirm that they are providing appropriate disclosure of credit terms to customers with margin accounts. Under the federal securities laws, brokers that extend

credit to customers to finance securities transactions are required to furnish, in writing, specified information regarding the terms of the loan.<sup>9</sup>

These disclosures must be made on both an initial and periodic basis. For instance, at the time a customer opens a margin account, a broker must provide the customer with a written statement disclosing, among other things, the annual rate of interest, the method of computing interest, and what other credit charges may be imposed. These initial disclosures help to ensure that the customer understands the terms and conditions of the margin loan and allow the customer to compare available credit terms.<sup>10</sup> A firm also is required to provide periodic (at least quarterly) written statements to the customer, which disclose such information as opening and closing balances, total interest charges, and other charges resulting from the extension of credit.

### **Request For Comment**

NASD Regulation encourages members and other interested parties to comment on the issues discussed in this *Special Notice*, including whether adjusting NASD margin requirements for certain stocks is an appropriate means of addressing volatility in the securities markets. In addition, we seek comment on the following issues:

1. Should margin requirements applicable to a securities transaction or account differ based on the size of a customer's account? In particular, should margin requirements be more stringent for small accounts, given that the financial consequences of a margin call to the holder of a small account may be more severe? If so, should there be any exemptions to

such a heightened margin requirement for small accounts? What would be an appropriate definition of "small account"?

2. Should margin requirements be linked to volatility? If so, how should this approach work?

3. Should the ability of customers to guarantee each other's accounts for maintenance margin purposes be eliminated or restricted? For instance, should rules require that cross-guaranteed accounts be owned or controlled by the same customer in order to receive special maintenance margin treatment? What would be the effect of any such revisions? Should the five percent maintenance margin treatment for perfectly offsetting long and short positions between cross-guaranteed accounts be eliminated or revised?

4. How important is margin to day-trading activities? Are the current margin requirements applicable to day-trading accounts appropriate? If not, how should the current requirements be revised?

5. Should customers be required to make margin deposits during the day in order to account for intra-day risk exposure? If so, what should those margin requirements be, and should margin deposits be made prior to additional trading taking place?

6. Are customers receiving adequate disclosure of the credit terms of margin transactions? When a firm arranges loans for customers from other sources, are customers receiving adequate disclosure of the credit terms of the loans? Are the persons or entities making the loans receiving adequate disclosure of the risks and terms of the loans?

Comments should be mailed to:

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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 no later than **May 31, 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.

## Endnotes

<sup>1</sup>*NASD Notice to Members 99-11*, NASD Regulation Issues Guidance Regarding Stock Volatility (Feb. 1999).

<sup>2</sup>*NASD Notice to Members 99-12*, NASD Regulation Issues Guidance Concerning The Operation Of Automated Order Execution Systems During Turbulent Market Conditions (Feb. 1999).

<sup>3</sup>See *NASD Notice to Members 99-11* (Feb. 1999) for additional discussion of margin requirements for volatile stocks.

<sup>4</sup>NASD Regulation also recently issued investor guidance on the use of margin accounts and the risks involved with trading securities on margin. See NASD Regulation's Web Site at [www.nasdr.com](http://www.nasdr.com).

<sup>5</sup>While often thought of as a "maintenance" margin rule, Rule 2520 also contains initial margin requirements. Initial margin is the greater of the amount specified in Regulation T or the maintenance margin specified in Rule 2520.

<sup>6</sup>See *NASD Notice to Members 98-102*, Calculating Margin For Day-Trading And Cross-Guaranteed Accounts (Dec. 1998), for further discussion of margin requirements for cross-guaranteed accounts. When calculating Regulation T margin, cross guarantees have no effect.

<sup>7</sup>See *id.* for further discussion of margin requirements for day-trading accounts.

<sup>8</sup>The relative daily return of a stock can be derived from the closing price (or the bid-ask mid-point) of an issue each day during the specified time period. Using the closing price, the daily relative return would be the percent price change between the most recent closing price and the previous day's closing price. For example, a stock that closes at \$10 on Monday and at \$11 on Tuesday has a relative daily return for Tuesday of 10 percent. Once this daily relative return has been calculated for each of the trading days during the specified time period, a firm can calculate the standard deviation (or dispersion) of these returns to determine the volatility of the issue.

<sup>9</sup>See Rule 10b-16 under the Securities Exchange Act of 1934. Brokers also are subject to the general anti-fraud provisions of the federal securities laws.

<sup>10</sup>See Securities Exchange Act Release No. 8773 (Dec. 8, 1969) (adopting Rule 10b-16).

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