Notices to Members

March 2002

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

INFORMATIONAL

Dispute Resolution

NASD Dispute Resolution To Consolidate Western Region March 4, 2002

SUGGESTED ROUTING

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

- Executive Representatives
- Legal & Compliance

KEY TOPICS

- Arbitration/Mediation
- Dispute Resolution Regional Offices

Executive Summary

On March 4, 2002, the NASD Dispute Resolution, Inc. (NASD DR) Western Region will consolidate its San Francisco and Los Angeles Regional Offices into one Regional Office in Los Angeles. The consolidated Western Regional Office will administer arbitrations and mediations in the San Francisco, Los Angeles, San Diego, Honolulu, Anchorage, Seattle, Portland, Oregon, Salt Lake City, and Las Vegas hearing locations. The decision to consolidate the two California offices is a business decision based on NASD DR's ongoing efforts to improve efficiency and to provide better service and consistency.

The Western Regional Office of NASD DR will close its San Francisco Office and consolidate it with its Los Angeles Office on March 4, 2002. The Los Angeles Office will administer all arbitration and mediation claims assigned to the San Francisco Office. San Francisco will remain as one of the nine hearing locations administered by the Western Region. Judith Hale Norris, Associate Vice President and Director of the Western Region, will relocate to Los Angeles to head the office. She has managed the Western Region since 1986. To accommodate the consolidation of the two offices, NASD DR has acquired additional space at One California Plaza, 300 South Grand Avenue, Los Angeles, California 90071, its present Los Angeles location. The main telephone number is (213) 613-2680. The fax number is (213) 613-2677.

Questions/Further Information

Questions regarding this *Notice* may be directed to Judith Hale Norris, Associate Vice President and Director, NASD DR Western Region, at (213) 613-2680.

Discussion

Linda D. Fienberg, President, NASD DR, and George Friedman, Executive Vice President, NASD DR, regularly review operational and business needs throughout the year. In July 2000, NASD DR became an independent subsidiary of the National Association of Securities Dealers, Inc. (NASD®), an action that required executive management to maintain a balanced, self-sustaining fiscal posture. Since the San Francisco Regional Office lease will expire in April 2002, senior management in 2000 analyzed the economic feasibility of maintaining two NASD DR offices in California. Due to the increased cost of rent in the San Francisco area, other associated overhead costs, the lower overall operating cost of the Los Angeles Regional Office, and anticipated technological efficiencies resulting from the deployment of a new case management computer system, senior management determined to consolidate the Western Region into one office in Los Angeles at 300 South Grand Avenue, NASD DR's current Los Angeles facility.

The decision was announced to the San Francisco staff nearly a year in advance. All employees were strongly encouraged to relocate to the Los Angeles office and assume their same jobs. Judith Hale Norris and other experienced San Francisco staff

members will join the Los Angeles Office, assuring continuity of case administration. NASD DR has offered severance packages and out-placement assistance to those employees unable to relocate to Los Angeles.

The Western Region looks forward to continuing to provide the same level of service to the investing public, members, arbitrators, and mediators.

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INFORMATIONAL

Option Contracts

Alerting Customers To Adjustments To Option Contracts

SUGGESTED ROUTING

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

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

KEY TOPICS

- Options
- Options Self-Regulatory Council

Executive Summary

NASD Regulation is providing this *Notice* on behalf of the Options Self-Regulatory Council. This *Notice* advises broker/dealers to review or develop procedures as necessary to alert their customers of adjustments to their option contracts caused by corporate actions.

Questions/Further Information

Questions about this *Notice* may be directed to Gary L. Goldsholle, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8104.

Discussion

The Options Self-Regulatory Council (OSRC)[1] has recently become aware that some broker/dealers may not be informing customers about adjustments to their options contracts that arise from corporate actions. The OSRC advises broker/dealers to review or develop procedures as necessary to alert their customers of adjustments to their option contracts caused by corporate actions.

Trading in options entails certain risks and is not suitable for all investors. To help ensure that options customers understand these risks, the rules of the options exchanges and other self-regulatory organizations (SROs) require members to deliver the options risk disclosure document entitled “Characteristics and Risks of Standardized Options” at or prior to the time a customer’s account is approved for options trading. Broker/dealers must provide customers with revised versions of the disclosure document as it is amended.

The options risk disclosure document discusses the effect that corporate actions, such as a stock dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, reclassification or similar event in respect to an underlying security, or a merger, consolidation, dissolution or liquidation of the issuer of the underlying security, may have on the terms of an options contract. As a general rule, corporate actions can result in an adjustment in the number of shares underlying an options contract or the exercise price, or both. Adjustments to options contracts are done to maintain fairness, so that the terms of the contract reflect the corporate action.

Adjustments to the terms of listed options contracts are governed by the rules of The Options Clearing Corporation (OCC). The OCC is the issuer of listed options and also provides clearance and settlement facilities. The OCC has a series of general adjustment rules to account for corporate actions. Adjustments to options contracts are made by a committee of those SROs on which the particular contract is traded on a case-by-case basis or by following statements of policy or interpretations having general application to specified types of events. The determinations of adjustments to particular contracts are disseminated to each options exchange as they are made. The OCC also provides information about adjustments to contracts on its Web Site at *http://www.optionsclearing.com/market/info_memos.jsp*.

Each options exchange, in turn, provides for the dissemination of information concerning these adjustments to specific option contracts to the exchange's members.

The OSRC is concerned that broker/dealers may not be passing on the specific information about contract adjustments to their affected options customers. Although broker/dealers provide notice to customers of the risks of corporate actions on their options contracts generally through the options risk disclosure document, the OSRC believes that broker/dealers should consider additional steps to ensure that customers are informed of particular adjustments to options contracts they hold. Failure to provide customers with information concerning adjustment to an options contract may violate the rules of an options exchange or SRO, including Just and Equitable Principles of Trade. Accordingly, the OSRC advises broker/dealers to review their procedures, or develop procedures as necessary, to alert customers of adjustments to their options contracts.

Endnotes

1 The OSRC is a committee comprised of representatives from the options exchanges and other SROs that was created pursuant to a plan of delegation under Exchange Act Rule 17d-2 (17d-2 Plan). The 17d-2 Plan was established to reduce regulatory duplication of options-related sales practice matters for firms that are currently members of two or more SROs. The purpose of the OSRC is to administer the 17d-2 Plan and to address options-related sales practice matters in a common forum. The members of the OSRC are: the American Stock Exchange; the Chicago Board Options Exchange; the Chicago Stock Exchange; the International Securities Exchange; the National Association of Securities Dealers, Inc.; the New York Stock Exchange; the Pacific Exchange; and the Philadelphia Stock Exchange.

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INFORMATIONAL

FIPS Changes

Fixed Income Pricing System[SM] Additions, Changes, And Deletions As Of **January 22, 2002**

SUGGESTED ROUTING

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

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

KEY TOPICS

- FIPS

As of January 22, 2002, the following bonds were added to the Fixed Income Pricing System (FIPS[SM]).

Symbol	Name	Coupon	Maturity
AEN.GF	AMC Entertainment Inc.	9.875	02/01/12
BCC.GH	Boise Cascade Corp.	7.500	02/01/08
COF.GD	Capital One Financial Corp.	8.750	02/01/07
CHK.GJ	Chesapeake Energy Corp.	8.375	11/01/08
STZ.GB	Constellation Brands Inc.	8.125	01/15/12
DMN.GB	Dimon Incorporated	9.625	10/15/11
ECSR.GD	EchoStar DBS Corp.	9.125	01/15/09
EQST.GA	Equistar Chemicals LP	6.500	02/15/06
EQST.GB	Equistar Chemicals LP	9.125	03/15/02
EQST.GC	Equistar Chemicals LP	7.550	02/15/26
GPS.GA	GAP Inc.	5.625	05/01/03
GPS.GB	GAP Inc.	6.900	09/15/07
GT.GA	Goodyear Tire & Rubber Co.	6.625	12/01/06
GT.GB	Goodyear Tire & Rubber Co.	7.000	03/15/28
GT.GC	Goodyear Tire & Rubber Co.	6.375	03/15/08
GT.GD	Goodyear Tire & Rubber Co.	8.125	03/15/03
GT.GE	Goodyear Tire & Rubber Co.	8.500	03/15/07
GT.GF	Goodyear Tire & Rubber Co.	7.857	08/15/11
HPCS.GB	Horizon PCS Inc.	13.750	06/15/11
HNBK.GA	Hornbeck-Leevac Marine Svs Inc.	10.625	08/01/08
MAXZ.GA	Maxus Energy Corp.	9.375	11/01/03
MAXZ.GB	Maxus Energy Corp.	9.375	11/01/03
MRHO.GB	Meristar Hospitality Oper Partnership LP	9.125	01/15/11
MIKN.GA	Mikohn Gaming Corp.	11.875	08/15/08
REEL.GA	Regal Cinemas Corp.	9.375	02/01/12
SLR.GC	Solectron Corp.	9.625	02/15/09
CWMR.GA	William Carter Co.	10.875	08/15/11

As of January 22, 2002, the following bonds were deleted from the Fixed Income Pricing System.

Symbol	Name	Coupon	Maturity
AAM.GA	Aames Financial Corp.	10.500	02/01/02
ARTT.GA	Advanced Radio Telecom	14.000	02/15/07
AMSD.GB	American Standard Inc.	9.250	12/01/16
GOAL.GA	Ascent Entertainment Group Inc.	11.875	12/15/04
BSC.GA	Bear Stearns Co. Inc.	8.250	02/01/02
BWS.GA	Brown Shoes Inc. New	9.500	10/15/06
CUID.GA	Cambridge Industries Inc.	10.250	07/15/07
CKE.GA	Carmike Cinemas Inc.	9.375	02/01/09
CTYA.GB	Century Communications Corp.	9.750	02/15/02
CCE.GA	Coca-Cola Enterprises	7.875	02/01/02
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
COL.GH	Columbia/HCA Healthcare Corp.	6.910	06/15/05
COL.GJ	Columbia/HCA Healthcare Corp.	7.690	06/15/25
COL.GK	Columbia/HCA Healthcare Corp.	7.500	11/15/95
EDV.GB	Con Edison Inc.	6.625	02/01/02
FAMR.GA	Family Restaurants Inc.	9.750	02/01/02
FWAV.GA	First Wave Marine Inc.	11.000	02/01/08
GMA.GA	GENMA	6.000	02/01/02
GCS.GA	Gray Communications Sys Inc.	10.625	10/01/06
HMX.GA	Hartmarx Corp.	10.875	01/15/02
HCA.GA	HCA Inc.	8.750	09/01/10
HCA.GB	HCA Inc.	0.000	09/19/02
HCA.GC	HCA Inc.	7.875	02/01/11
HCA.GD	HCA Inc.	7.125	06/01/06
HPCA.GB	Hospital Corp. Amer	0.000	06/01/02
MVER.GB	Macsaver Financial Svs Inc.	7.400	02/15/02
MER.GA	Merrill Lynch Inc.	8.000	02/01/02
MOKC.GA	Morrison Knudsen Corp.	11.000	07/01/10
PKS.GA	Premier Parks Inc.	9.750	01/15/07
DGX.GA	Quest Diagnostics Inc.	10.750	12/15/06
SHW.GA	Sherwin-Williams Co.	6.500	02/01/02
SPSH.GA	Stop & Shop Cos Inc. New	9.750	02/01/02

As of January 22, 2002 changes were made to the symbols of the following FIPS bonds:

New Symbol	Old Symbol	New Name/Old Name	Coupon	Maturity

There were no symbol changes for this time period.

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

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

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INFORMATIONAL

Auditor Independence

SEC Review of Auditor Independence Rules

SUGGESTED ROUTING

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

- Executive Representatives
- Legal & Compliance
- Senior Management

KEY TOPICS

- Auditor Independence

Executive Summary

In November 2000, the Securities and Exchange Commission (SEC) completed a comprehensive review of outside services that auditors provide to their audit clients, and as a result, amended the auditor independence rules in Regulation S-X. In the final version of Release 33-7919 (the Release), published in February 2001, the SEC described the amendments as a "modernization" of its existing rules. The SEC's actions were prompted primarily by the increasing proportion of revenue that larger audit firms were generating from non-audit services, and the extent to which such services were being provided to their audit clients.

While the SEC's rules regarding auditor independence apply to all broker/dealers, the amendments are particularly relevant to NASD members as the SEC strictly limits the circumstances in which an auditor is permitted to provide accounting and bookkeeping services to an audit client without impairing his or her independence. Generally, the SEC prohibits an auditor from providing accounting and bookkeeping services to its audit client to avoid placing the auditor in the position of auditing his or her own work. The SEC permits an auditor to perform certain financial system services, only if the client has explicitly acknowledged its responsibility to actively maintain, monitor, and evaluate the financial information and reporting system.

During 2001, NASD Regulation conducted certain reviews that showed that an auditor's independence with respect to its broker/dealer client was impaired. The staff required broker/dealers to restrict the nature of the services obtained from their accountant or employ a different and independent outside auditor. To provide background and guidance on auditor independence to our member firms, this *Notice* discusses the issues considered by the SEC and summarizes specific amendments we believe most relevant to NASD members. It also discusses the American Institute of Certified Public Accountants' (AICPA) current rules regarding certain auditor independence issues to highlight certain conclusions reached by the SEC. Finally, in this *Notice*, we focus on criteria that firms should consider in determining whether an auditor's independence may be impaired. The NASD Regulation staff will use the same criteria in determining whether an auditor's independence is impaired in any given situation.

We emphasize that with respect to broker/dealers, the SEC's rules regarding auditor independence take precedence over guidelines established by any other organization. Member firms are encouraged to read all or portions of the SEC's Release if they encounter complex circumstances or fact patterns regarding an auditor's involvement with the audit client.

Questions/Further Information

Members should direct any questions on the issues discussed in this *Notice* to Andrew Labadie at (202) 728-8397 or Susan DeMando at (202) 728-8411, Member Regulation, NASD Regulation.

Background

According to SEC Rule 17a-5(f)(3), an accountant must be independent to render an audit opinion on a broker/dealer's financial statements. The rule states that with regard to independence, the

auditor needs to comply with the provisions of Rules 2-01(b) and (c) of Regulation S-X. In February 2001, the SEC amended its rules regarding auditor independence. The amendments apply to any auditor whose client files audited financial statements with the SEC, and consequently are applicable to any accountant who provides audit services to a broker/dealer. Among other things, the SEC was concerned with situations where an auditor, based on the full scope of the business relationship with an audit client, would not be considered capable of issuing an independent audit opinion regarding the client's financial statements. In particular, the SEC emphasized that *an audit firm cannot be in a position in which it is, or appears to be, auditing its own work*. This circumstance could arise if an auditor were to perform accounting and bookkeeping services, or design and implement financial information systems to such an extent that it contributes substantively in the creation and maintenance of the audit client's books and records.[1]

The AICPA has guidelines in its Code of Professional Conduct regarding an auditor's performance of non-audit services for an audit client. The guidelines emphasize that an auditor's independence could be impaired with respect to the audit client if the auditor was, or would appear to be, serving the audit client in a managerial capacity. The SEC took the AICPA's approach one step further, indicating that if an auditor is involved substantially in creating the audit client's books and records, he or she could be considered to effectively control or appear to control, the client's accounting process and preparation of the financial statements. The SEC believes that, "keeping the books is a management function, the performance of which [by the auditor] leads to an inappropriate mutuality of interests between the auditor and the audit client." As a result of the SEC's amendments, the AICPA is planning to revise its guidelines, especially those sections pertaining to an auditor's performance of non-audit services for an audit client. A brief description of the SEC's amended rules and the AICPA's current guidelines in its Code of Professional Conduct is provided in the following section to assist NASD members in evaluating whether an auditor is independent.

Two Perspectives

In the section of the Release discussing "Bookkeeping or Other Services Related to the Audit Client's Accounting Records or Financial Statements," the SEC concluded that the auditor could only provide bookkeeping services on an exceptional basis for the audit client without impairing independence. Specifically, the auditor can provide such services, "…in emergency or other unusual situations, provided the accountant does not undertake any managerial actions or make any managerial decisions…" or for a foreign division or subsidiary of the audit client, where the services are limited and the foreign subsidiary or affiliate is small relative to the client's operations.[2]

With respect to an auditor's involvement in the design and implementation of financial information systems for an audit client, the SEC and the AICPA are, to a great extent, in accord. The SEC indicated that, "…an accountant is not independent of an audit client if the accountant is directly or indirectly operating, or supervising the operation of, the audit client's information system or managing the audit client's local area network." Yet, the auditor is permitted to, "…design or implement a hardware or software system that *aggregates source data* underlying the financial statements or *generates information* that is significant to the audit client's financial statements, taken as a whole…" if the client's management maintains an effective internal control system and has personnel capable of managing the design and implementation of a financial information and reporting system. [Emphasis added.]

In the section on Independence, paragraph 101-3 of the Code of Professional Conduct, the AICPA indicates that "an accountant in public practice who performs for a client services requiring independence may also perform other financial services for that client. "…[Yet], care should be taken *not to perform management functions or make management decisions* for an audit client, *the responsibility for which remains with the client's board of directors and management."* [Emphasis added.]

According to the AICPA, independence would *not be impaired* if the auditor were to perform the following bookkeeping services for an audit client:

a. record transactions for which management has determined or approved the appropriate account classification, or post transactions, which have been classified by management, to the client's general ledger;

b. prepare financial statements based on information in the trial balance;

c. post client-approved entries to a client's trial balance; propose standard, adjusting,

or correcting journal entries or other changes affecting the financial statements of the client; and

d. provide data processing services.

Yet, the AICPA would consider independence to *be impaired* if in performing the above services the accountant were to:

a. determine or change journal entries, account codings or classification for transactions, or other accounting records without obtaining client approval;

b. authorize or approve transactions;

c. prepare source documents or originate data; or

d. make changes to source documents without client approval.

While the SEC considered the AICPA's guidelines appropriate, it believed that the existing rules – its own and those of the accounting profession – needed to better account for the structural changes in the provision of accounting services. We believe this is borne out by the comprehensive nature of its review.[3] Citing examples where the amounts paid by a firm to its auditor for non-audit services dwarfed the costs of the audit, the SEC questioned, and continues to question, whether the quality of the audit and the objectivity of the auditor were and are being compromised by the accounting profession's emphasis in expanding consultative services with both audit and non-audit clients.

Guidelines

While the amendments were driven primarily by the relationships between larger accounting firms and their clients with broad public ownership, they apply to all firms which file audited financial statements with the SEC. Thus broker/dealers regardless of size, and their respective auditors are affected by the new rules. Broker/dealers that either cannot afford or choose not to employ personnel to perform accounting functions, need to obtain bookkeeping and accounting services from accountants who are not controlled by the broker/dealer's auditor. As a way to clarify the respective duties and responsibilities of the auditor and audit client, broker/dealers should obtain an engagement letter from their auditor that explicitly outlines the nature and scope of the auditor's or accountant's services, and states categorically that both parties recognize that the broker/dealer is responsible for maintaining the integrity of its accounting system and preparing and presenting its financial statements.

Based upon the preceding discussion, the following examples should aid NASD members in determining whether an auditor's independence might be impaired.

Indications that an auditor is *not* independent:

In addition to performing the audit, the auditor:

1. posts, classifies, or codes the original entry of client transactions;

2. reconciles subsidiary ledgers to records of original entry;

3. prepares periodic accruals and related adjustments on an on-going basis;

4. reconciles client records to bank statements;

5. resolves open fails;

6. monitors information flow leading to preparation of financial records;

7. prepares general ledger and/or financial statements; or

8. supervises such tasks.

Also, if the member firm does not engage an employee who is capable of actively managing the firm's accounting functions and preparing its financial statements, and the member uses its auditor to provide accounting and bookkeeping services, the question arises as to whether the firm is reliant on its auditor for the maintenance and management of its financial records. If so, the auditor would *not* be independent of the firm.

In contrast, the following activities, in and of themselves, do not indicate that the auditor is **not** independent.

The auditor limits his or her activities to:

1. observing the member's business operations;

2. inquiring about the nature and extent of the member's accounting practices and procedures;

3. reviewing documents of original entry;

4. verifying completeness of subsidiary and general ledgers;

5. questioning reconciliation differences and open fails;

6. testing automated systems for completeness and reliability;

7. performing and documenting analytical review of firm's operations and financial condition; and

8. determining the representational faithfulness of the member firm's financial statements.

Annually, members are encouraged to review the services provided by their outside auditors to ensure that the auditor's independence is not impaired. We strongly recommend that the member obtain an engagement letter from the auditor outlining the services to be provided and the respective responsibilities of both parties. The engagement letter should also include a representation from the auditor that he or she is either a certified public accountant duly registered or a public accountant entitled to practice in good standing under the laws of his or her place of residence or principal office. While the person or group performing the audit may be independent, neither the NASD nor the SEC will accept audited financial statements prepared by someone who is not qualified in accordance with SEC's Rule 17a-5.

Endnotes

1 The SEC's amendments also addressed "…rules for determining whether an auditor is independent in light of investments by auditors or their family members in audit clients, and employment relationships between auditors or their family members and audit clients." The revisions, if anything, are less restrictive than the AICPA's guidelines in its Code of Professional Conduct, and thus are likely to be less of an issue with respect to evaluating an auditor's independence with respect to the broker/dealer. The SEC sought to modernize these particular rules by, "…significantly reducing the number of audit firm employees and their family members whose investments in audit clients are attributed to the auditor for purposes of determining the auditor's independence, and shrinking the circle of family and former firm personnel whose employment impairs an auditor's independence." The SEC's goal with respect to these situations was to focus solely on those parties who could realistically affect the outcome of the audit.

2 With respect to such services, the final amended Rule 2-01 of Regulation S-X states,

" …(4) Non-audit services. An accountant is not independent if, at any point during the audit and professional engagement period, the accountant provides [any of] the following non-audit services to an audit client:

(i) Bookkeeping or other services related to the audit client's accounting records or financial statements.

(A) Any service involving:

(1) Maintaining or preparing the audit client's accounting records;

(2) Preparing the audit client's financial statements that are filed with the Commission or form the basis of financial statements filed with the Commission; or

(3) Preparing or originating source data underlying the audit client's financial statements.

(B) Notwithstanding paragraph (c)(4)(i)(A) [the above paragraph] of this section, the accountant's independence will not be impaired when the accountant provides these services:

(1) In emergency or other unusual situations, provided the accountant does not undertake any managerial actions or make any managerial decisions; or

(2) For foreign divisions or subsidiaries of an audit client, provided that:

(i) The services are limited, routine, or ministerial;

(ii) It is impractical for the foreign division or subsidiary to make other arrangements;

(iii) The foreign division or subsidiary is not material to the consolidated financial statements;

(iv) The foreign division or subsidiary does not have employees capable or competent to perform the services;

(v) The services performed are consistent with local professional ethics rules; and

(vi) The fees for all such services collectively (for the entire group of companies) do not exceed the greater of 1% of the consolidated audit fee or $10,000."

3 In the Executive Summary section of the Release, the Commission emphasized that, "…to promote investor confidence, we must ensure that our auditor independence requirements remain relevant, effective, and fair in light of significant changes in the profession, structural reorganizations of accounting firms, and demographic changes in society. There have been important developments in each of these areas since we last amended our auditor independence requirements in 1983.

"…the accounting industry has been transformed by significant changes in the structure of the largest firms. Accounting firms have woven an increasingly complex web of business and financial relationships with their audit clients. The nature of the non-

audit services that accounting firms provide to their audit clients has changed, and the revenues from these services have dramatically increased. In addition, there is more mobility of employees and an increase in dual-career families.

"…we are adopting rules, modified in response to almost 3,000 comment letters we received on our proposal, written and oral testimony from four days of public hearings (about 35 hours of testimony from almost 100 witnesses), academic studies, surveys and other professional literature."

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Disciplinary Actions

Disciplinary Actions Reported For March

NASD Regulation, Inc. (NASD Regulation℠) has taken disciplinary actions against the following firms and individuals for violations of National Association of Securities Dealers, Inc. (NASD®) rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of February 2002.

Firms Fined, Individuals Sanctioned

Dain Rauscher, Inc. (CRD #31184 Minneapolis, Minnesota) and Gary Franklin Hayden (CRD #240386, Registered Representative, Seattle, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $15,000. In addition, the firm and Hayden were jointly and severally liable for costs of the exchange of shares offered to public customers of $82,942.87 and Hayden was fined $15,000 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 Hayden recommended the purchase of Class B shares of growth funds to public customers and omitted to inform the customers that they would have benefited from investing in Class A shares because of the ability to receive discounts on sales charges of large purchases and the lower ongoing fees and expenses of the Class A shares.

The findings also stated that Hayden failed to disclose material facts necessary to make the statements made in the course of his recommendations not misleading, including a comparison of the 12b-1 fees, front-end sales charges, and the impact of time on these costs and charges; thus, the customers were not adequately informed of their investment options. The NASD determined that the firm failed to maintain adequate procedures to provide for the prompt review of large purchases of Class B mutual funds or otherwise provide specific tools or other supervisory policies to assist its sales practice supervisors in adequately assessing the suitability of Class B share purchases by public customers. Furthermore, the findings stated that the firm had no automated or manual system in place to detect mutual fund breakpoints, purchase limitations, or problematic patterns in Class B share purchases of mutual funds. Finally, the firm's written supervisory procedures gave no direction to branch office managers or other supervisors as to how to detect and prevent breakpoint problems, Class B share purchase suitability problems, and how to evidence their supervisory review.

Hayden's suspension began February 19, 2002, and concluded at the close of business March 4, 2002. **(NASD Case #C04020002)**

Pacific Crest Securities, Inc. (CRD #6619, Portland, Oregon) and Scott Edwards Sandbo (CRD #2410092, Registered Principal, Portland, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $10,000 and Sandbo was fined $45,000 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 the firm, acting through Sandbo, failed to ensure that Sandbo was properly registered as a principal when he was actively engaged in the management of the firm's business, or to remove him from active engagement in the management of the firm's business until properly registered. The findings also stated that the firm, acting through another individual, permitted the individual to act as a registered person when his registration status with the NASD was inactive due to his failure to complete the Regulatory Element of the NASD's Continuing Education Requirement. In addition, the NASD found that the firm used a non-compliant, non-synchronized, mechanical time stamp machine that failed to provide the "seconds" field to document the times of receipt and execution of customers' orders.

Sandbo's suspension began February 18, 2002, and concluded at the close of business March 1, 2002. **(NASD Case #C3B020001)**

Firm And Individual Fined

Magna Securities Corp. (CRD #30935, New York, New York) and Patricia Ann Winans (CRD #1526364, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined $22,500, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and the entry of findings that the firm, acting through Winans, permitted individuals to act in a capacity that required registration while their registration status with the NASD was inactive due to their failure to complete the Regulatory Element of NASD's Continuing Education Requirement. The findings also stated that the firm, acting through Winans, failed to complete a training needs analysis and to develop a written training plan as required by the Firm Element of the NASD's Continuing Education Requirement. **(NASD Case #C10020005)**

Firms Fined

American United Life Insurance Company (CRD #1075, Indianapolis, Indiana) submitted an Offer of Settlement in which the firm was censured and fined $25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it distributed advertising materials and sales literature for variable annuity contract products that contained material omissions, unbalanced representations, or misrepresentations. The findings also stated that the firm failed and neglected to establish, maintain, and enforce adequate written supervisory procedures governing the review, approval, and distribution of advertising materials and sales literature relating to variable annuity contract products. **(NASD Case #C05010011)**

Ascend Financial Services, Inc., n/k/a Securian Financial Services, Inc. (CRD #15296, St. Paul, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain, and enforce adequate written supervisory procedures relating to the supervision of registered representatives who were general agents of the insurance company affiliated with the firm. **(NASD Case #C05020004)**

C. E. Unterberg, Towbin (CRD #24790, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $20,000, required to pay $22,219.94, plus interest, in restitution to investors, and ordered to revise its written supervisory procedures concerning firm quote compliance. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings also stated that the firm, as a registered market maker in securities, failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, and upon presentment, failed to honor its published quotation. In addition, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning firm quote compliance. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with the applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020003)**

Global Capital Securities Corporation (CRD #16184, Englewood, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $17,500, and required to pay $3,888.69, plus interest, in restitution to investors. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions; failed to report transactions in eligible securities to the Automated Confirmation Transaction Service℠ (ACT℠) within 90 seconds after execution; failed to report an accurate execution price to ACT; and reported a nonexistent transaction to ACT. The findings also stated that the firm failed to show the correct time of execution and/or the correct time of entry on the memorandum of brokerage orders and failed to preserve for a period of not less than three years, the first two in an accessible place, the memorandum of brokerage orders. **(NASD Case #CMS020011)**

Gruntal & Co., L.L.C. (CRD #372, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $42,500, required to pay $928.13, plus interest, in restitution to customers, and required to revise its written supervisory procedures concerning the reporting of transactions in high-yield corporate debt securities to the NASD. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT, last-sale reports of transactions in Nasdaq National Market (NNM) and Nasdaq SmallCap℠ securities, and failed to designate through ACT such last-sale reports as late. The findings also stated that the firm failed to report to ACT the correct time of execution in transactions in NNM securities and failed to report to ACT a transaction in an NNM security that it was required to report. Furthermore, the NASD found that the firm failed to contemporaneously or partially execute customer limit orders in Nasdaq securities after it traded each security for its own market making account at a price that would have satisfied each customer's limit order; failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions; and, when acting as a principal for its own account, failed to provide written notification disclosing to its customers the reported price.

The NASD also determined that the firm failed to display immediately customer limit orders in Nasdaq securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer for each such security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each such security, and the size of the order represented more than a de minimis amount in relation to the size associated with the firm's bid or offer in each such security; when it acted as principal for its own account, failed to provide written notification disclosing to its customers the correct reported trade price and to disclose to its customers that it was a market maker in each such security; and failed to disclose on customer confirmations the correct symbol indicating whether the transactions were buy or sell transactions. The NASD also determined that the firm failed to provide written notification disclosing to its customers its correct capacity in the transactions; failed to provide written notification disclosing to its customers that the transaction was executed at an average price; failed to maintain a record of a customer confirmation; failed to report to ACT the correct symbol indicating whether the firm executed a transaction in an eligible security in a principal or agency capacity; and failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt, or cross for transactions in eligible securities.

In addition, the NASD found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning trading and market making functions, best execution, the Limit Order Protection Interpretation, the Limit Order Display Rule, customer confirmation disclosure, the SEC's One Percent Rule, rules applicable to the Small Order Execution System, the rule applicable to locked or crossed markets, and the rules applicable to short sales and front running. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with the applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written

supervisory procedures should be documented at the firm. **(NASD Case #CMS020008)**

J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $14,000, and required to revise its written supervisory procedures. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that the firm failed to report to ACT the contra side executing broker transactions in eligible securities. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning the following: ACT compliance, best execution, limit order protection, limit order display, firm quote rule, the SEC's One Percent Rule, the registration of traders and supervisors, trade reporting, books and records, locked and crossed markets, pricing convention, size convention, coordination of quotes, late and inaccurate trade reporting, exchange of proprietary information, improper collaboration and coordination, the failure to honor quotes, harassment, short sales, and Order Audit Trail System (OATS). Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with the applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented. **(NASD Case #CMS020004)**

J. Alexander Securities, Inc. (CRD #7809, Los Angeles, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $40,000, and required to revised its written supervisory procedures with respect to trade reporting compliance. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT, last-sale reports of transactions in NNM, Nasdaq SmallCap, and OTC Equity securities and failed to designate through ACT such last-sale reports as late. The findings also stated that the firm failed to report the time of execution through ACT; failed to show on memorandum late last-sale reports in NNM, Nasdaq SmallCap, and OTC Equity securities reported outside of normal market hours with the ".T" modifier; and failed to report the time of execution through ACT in last-sale reports in NNM, Nasdaq SmallCap, and OTC Equity securities reported more than 90 seconds after execution.

Furthermore, the NASD found that the firm failed to show the correct time of execution, the correct order entry time, the correct price of execution, the execution price, an order entry time, and that the orders were sales transactions. In addition, the findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning trade-reporting compliance. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with the applicable rules, a statement of the steps that such person should take to ensure compliance, a statement as to how often such person should take such steps, and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020005)**

Roth Capital Partners, LLC (CRD #15407, Newport Beach, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $25,000, and required to pay $7,367, plus interest, in restitution to customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. **(NASD Case #CMS020014)**

Sanders Morris Harris Inc. (CRD #20580, Houston, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $10,000, and required to revise its written supervisory procedures concerning firm quote compliance. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that as a registered market maker in securities, it failed to execute orders presented at the firm's published bid or published offer in an amount up to its published quotation size, and, upon

presentment, failed to honor its published quotation. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning firm quote compliance. Specifically, the firm's supervisory system did not include written supervisory procedures providing for a statement as to how enforcement of such written supervisory procedures should be documented at the firm. **(NASD Case #CMS020001)**

The Third Market Corporation (CRD #30181, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined $16,000, and required to revise its written supervisory procedures relating to short sales and OATS. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it purchased an eligible security at or below the price at which it held an unexecuted limited price order to purchase such security for a customer. The findings also stated that the firm failed to display immediately customer limit orders in its public quotation, when each such order was at a price that would have improved its bid or offer in each such security. Also, the NASD determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning short sales and OATS. Specifically, the firm's supervisory system did not include written supervisory procedures providing for the identification of the person responsible at the firm to ensure compliance with the applicable rules; a statement of the steps that such person should take to ensure compliance; a statement as to how often such person should take such steps; and a statement as to how enforcement of such written supervisory procedures should be documented at the firm. Furthermore, the findings stated that the firm failed to synchronize and maintain the synchronization of its business clocks used for recording the date and time of events that must be recorded pursuant to NASD By-Laws or rules to the time source designated by the NASD in conformity with the procedures prescribed by the NASD. **(NASD Case #CMS020012)**

Wachovia Securities, Inc. (CRD #431, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined $35,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that its supervisory system failed to detect unsuitable activity in the accounts of public customers because the firm failed to follow its written supervisory procedures pertaining to the review and monitoring of customer account activity. **(NASD Case #C07020001)**

Individuals Barred Or Suspended

George Anaya, Jr. (CRD #2830436, Registered Representative, Jupiter, Florida) submitted an Offer of Settlement in which he was fined $40,000, including the disgorgement of $20,000 of commissions received, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Anaya reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Anaya consented to the described sanctions and to the entry of findings that he engaged in a course of excessive and unsuitable trading in the account of a public customer. The findings also stated that Anaya failed to respond to NASD requests to appear and give testimony.

Anaya's suspension began February 19, 2002, and will conclude at the close of business February 18, 2004. **(NASD Case #C07010064)**

John Robert Bacon (CRD #4064268, Registered Representative, Deerfield Beach, Florida) was barred from association with any NASD member in any capacity and required to pay $5,000 in restitution to a public customer. The sanctions were based on findings that Bacon received checks totaling $5,000 made payable to him from a public customer to be invested. Rather than establish an account and make the investment as instructed, Bacon converted the funds to his own use and benefit. In addition, Bacon failed to respond to NASD requests for information. **(NASD Case #C07010074)**

Richard Theodore Bredhoff (CRD #1425420, Registered Representative, East Windsor, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Bredhoff consented to the described sanction and to the entry of findings that he effected the sale of unregistered shares of common stock to his member firm's customers. The NASD also

found that Bredhoff, on behalf of a member firm, sold shares of a penny stock prior to receiving a manually executed and dated written statement from any of the unaccredited investors. The findings also stated that a member firm, acting through Bredhoff, utilized the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital. Furthermore, the NASD found that a member firm, acting through Bredhoff, filed a false and misleading FOCUS report and permitted individuals to engage in the investment banking or securities business and/or function as representatives and/or principals with the firm without properly qualifying and/or registering in the appropriate capacities. In addition, the findings stated that Bredhoff failed to respond completely to NASD requests for documents and information. **(NASD Case #C9B020005)**

Jeffrey Charles Bruteyn (CRD #2575306, Registered Principal, Dallas, Texas) submitted an Offer of Settlement in which he was fined $15,000 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Bruteyn reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Bruteyn consented to the described sanctions and to the entry of findings that he executed purchase transactions in the account of a public customer without the customer's prior knowledge or consent. The findings also stated that Bruteyn guaranteed a public customer's account against loss in exchange for the customer granting Bruteyn discretionary authority over her account. The NASD also found that Bruteyn failed to follow a customer's instructions to terminate the margin agreement on her account, to use only the cash in her account to make investments, not to borrow against her securities account to make investments, and to liquidate the customer's securities account. The findings further stated that Bruteyn represented to the customer that he had followed the customer's instructions when, in fact, he continued to execute margin transactions in the customer's account.

Bruteyn's suspension began February 19, 2002, and will conclude at the close of business August 18, 2003. **(NASD Case #C06010029)**

Stephen Daniel Carcaterra (CRD #2674226, Registered Representative, Seabright, New Jersey) was suspended from association with any NASD member in any capacity for 30 business days for engaging in private securities transactions and barred from association with any NASD member in any capacity for failure to appear. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Carcaterra participated in a private securities transaction without giving his member firm prior written notice. The findings also stated that Carcaterra failed to respond to an NASD request to appear for an on-the-record interview.

Carcaterra's bar became effective December 13, 2001. **(NASD Case #C10000165)**

Pat James Cenicola (CRD #855316, Registered Representative, Hackensack, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to pay $54,000 in disgorgement of commissions in partial restitution to the customers. The restitution amounts must be paid before Cenicola reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cenicola consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. **(NASD Case #C9B020003)**

Ramon Todd Chimelis (CRD #1632927, Registered Representative, Maitland, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Chimelis consented to the described sanction and to the entry of findings that he failed to respond to NASD requests for information. **(NASD Case #C07010088)**

John Right Crawford (CRD #710758, Registered Supervisor, High Point, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Crawford consented to the described sanction and to the entry of findings that he received approximately $29,294 of funds from an investment club for

investment purposes, failed to deposit the funds as directed, and converted the funds to his own use and benefit. **(NASD Case #C07020004)**

Anthony Francis DeCarlo (CRD #2568723, Registered Representative, Woodbridge, New Jersey) submitted an Offer of Settlement in which he was fined $10,000 and suspended from association with any NASD member in any capacity for one year. Without admitting or denying the allegations, DeCarlo consented to the described sanctions and to the entry of findings that he reimbursed a public customer for the surrender charge incurred without the knowledge or approval of his member firm. The NASD also found that DeCarlo provided false and/or misleading testimony during an NASD on-the-record interview.

DeCarlo's suspension began March 4, 2002, and will conclude at the close of business March 3, 2003. **(NASD Case #C9B010085)**

Daren John DeLuca (CRD #1675213, Registered Representative, Howell, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $27,000, representing disgorgement of net commissions, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before DeLuca reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, DeLuca consented to the described sanctions and to the entry of findings that he exercised control over the account of a public customer and effected numerous and excessive securities transactions in the account, in a manner that was inconsistent with the customer's investment objectives. The NASD found that DeLuca recommended and engaged in purchase and sale transactions in the account of a public customer and did not have reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer on the basis of her financial situation, investment objectives, and needs.

DeLuca's suspension began February 19, 2002, and will conclude August 18, 2002. **(NASD Case #C9B020001)**

Donald Matthew Dirren (CRD #1409432, Registered Representative, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $10,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Dirren reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dirren consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer (Form U-4).

Dirren's suspension began February 19, 2002, and will conclude at the close of business February 19, 2003. **(NASD Case #C3A020003)**

Dennis A. Dudnik (CRD #2805579, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $7,610, including the disgorgement of $110 in commissions received, and suspended from association with any NASD member in any capacity for 20 days. Without admitting or denying the allegations, Dudnik consented to the described sanctions and to the entry of findings that he failed to execute a public customer's order to sell shares of stock. The NASD also found that Dudnik purchased and sold shares of stocks in the accounts of public customers without their authorization.

Dudnik's suspension began February 19, 2002, and concluded March 10, 2002. **(NASD Case #C9B020004)**

Jack Michael Ferraro (CRD #709674, Registered Principal, Scarborough, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $25,000 and suspended from association with any NASD member in any capacity for 180 days. Without admitting or denying the allegations, Ferraro consented to the described sanctions and to the entry of findings that he failed to provide written notice to his member firm that he had engaged in business activities, for compensation, outside the scope of his employment with his firm. The findings also stated that Ferraro failed to inform clients for whom he had discretionary trading authority and purchased shares of stock in three companies that he had helped raise money for, and had been compensated by, these companies.

Ferraro's suspension began February 19, 2002, and will conclude August 17, 2002. **(NASD Case #CAF020003)**

Jeremiah Richard Fink (CRD #3173563, Registered Representative, New Lenox, Illinois) submitted a Letter of Acceptance, Waiver, and Consent

in which he was suspended from association with any NASD member in any capacity for 15 business days. In light of the financial status of Fink, no monetary sanction has been imposed. Without admitting or denying the allegations, Fink consented to the described sanction and to the entry of findings that he exercised discretion in the account of a public customer without having obtained prior written authorization from the customer and prior written approval of the account as discretionary by his member firm.

Fink's suspension began March 4, 2002, and will conclude at the close of business March 22, 2002. **(NASD Case #C8A020005)**

Cavin Wayne Galtieri (CRD #3051437, Registered Representative, Austin, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Galtieri reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Galtieri consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U-4.

Galtieri's suspension began February 19, 2002, and will conclude August 18, 2002. **(NASD Case #C06010049)**

Candice Anna Gill (CRD #801714, Registered Representative, Chandler, Arizona) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gill consented to the described sanction and to the entry of findings that she falsified new account information for public customers. Specifically, the NASD determined that Gill recommended that the customers purchase various limited partnerships. However, based on their financial situations, the customers did not qualify for the limited partnerships as set out in the Offering Memoranda. The NASD findings stated that in order to qualify the customers for the investments and thereby consummate the transactions, Gill inserted false financial information including annual income, net worth, and liquid net worth on subscription documents and new account information to qualify the customers for the recommended investments. The findings also stated that Gill sold illiquid limited partnership interests to public customers without having reasonable grounds for believing that the recommendations were suitable for each customer based on other security holdings, financial situations, and needs. **(NASD Case #C3A020004)**

Dmitry Gorodetsky (CRD #3074712, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $10,185, including the disgorgement of $185 of commissions received, and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Gorodetsky consented to the described sanctions and to the entry of findings that he failed to execute a public customer's order to sell shares of stock. The NASD also found that Gorodetsky purchased and sold shares of stocks in the accounts of public customers without their authorization.

Gorodetsky's suspension began March 4, 2002, and will conclude at the close of business April 2, 2002. **(NASD Case #C9B020004)**

Luther Allen Hanson (CRD #1956960, Registered Representative, Charlestown, West Virginia) was fined $79,105.62, suspended from association with any NASD member in any capacity for six months, and required to requalify by exam as a general securities representative within six months. The NAC imposed the sanctions following the review of an OHO decision. The sanctions were based on findings that Hanson engaged in private securities transactions without providing prior written notice to, and obtaining written approval from, his member firm.

Hanson's suspension began January 21, 2002, and will conclude July 20, 2002. **(NASD Case #C9A000027)**

Robert John Hilgers (CRD #1200193, Registered Representative, Barrington, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and required to pay $50,035 in disgorgement. The disgorgement must be paid before Hilgers reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hilgers consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to, or receiving written permission from, his

member firm to participate in the transactions. **(NASD Case #C3A020005)**

James Howard Jones (CRD #731895, Registered Representative, Indianapolis, Indiana) submitted an Offer of Settlement in which he was fined $2,500 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Jones reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jones consented to the described sanctions and to the entry of finding that he received a $5,735 check from a public customer to purchase shares in a variable annuity product. The NASD found that Jones failed to apply the funds as directed, and without the knowledge and authorization of the customer, used the funds for his own benefit or for some purpose other than the benefit of the customer.

Jones' suspension began January 22, 2002, and will conclude at the close of business July 21, 2003. **(NASD Case #C8A010037)**

Fereadoon Kalantari (CRD #1611327, Registered Representative, Jonesboro, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $90,000, including the disgorgement of $84,537.55 of commissions received, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Kalantari reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kalantari consented to the described sanctions and to the entry of findings that he engaged in outside business activities for compensation, failed to provide prompt written notice to his firm, and failed to amend his Form U-4 to add this affiliation.

Kalantari's suspension began February 19, 2002, and will conclude at the close of business February 18, 2003. **(NASD Case #C07020003)**

Linda Lee Kangur (CRD #4351780, Associated Person, West Chester, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $5,000 and suspended from association with any NASD member in any capacity for 30 business days. The fine must be paid before Kangur reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kangur consented to the described sanctions and to the entry of findings that she willfully failed to disclose a material fact on a Form U-4.

Kangur's suspension began February 19, 2002, and will conclude at the close of business April 1, 2002. **(NASD Case #C9A020004)**

Nicholas Nicolaou (CRD #2901449, Associated Person, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Nicolaou consented to the described sanction and to the entry of findings that he engaged in the investment banking or securities business and/or functioned as a representative and/or principal with a former member firm without properly qualifying and/or registering in the appropriate capacities. **(NASD Case #C9B020007)**

John Perez (CRD #1093871, Registered Representative, Alhambra, California) was barred from association with any NASD member in any capacity and required to pay $5,000 in restitution to a public customer. The sanctions were based on findings that Perez received $5,000 from public customers to be invested and, rather than make the investment as instructed, he converted the funds for his own use and benefit. In addition, Perez failed to respond to NASD requests for information. **(NASD Case #C07010067)**

Michael Pizzulli (CRD #2478300, Registered Representative, Millstone, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000, including the disgorgement of $230 in commissions earned, and suspended from association with any NASD member in any capacity for five business days. Without admitting or denying the allegations, Pizzulli consented to the described sanctions and to the entry of findings that he executed an unauthorized purchase transaction of shares of stock in the account of a public customer, without the customer's prior knowledge or consent.

Pizzulli's suspension began March 4, 2002, and concluded at the close of business March 8, 2002. **(NASD Case #C9B020008)**

Jay R. Rice (CRD #1832274, Registered Representative, Salt Lake City, Utah) was fined $130,363, suspended from

association with any NASD member in any capacity for 12 months, ordered to requalify by examination in all capacities for engaging in private securities transactions, and fined $5,000 and suspended from association with any NASD member in any capacity for 10 business days for the failure to disclose information on a Form U-4. The sanctions were based on findings that Rice participated in private securities transactions without providing prior written notification to, or receiving approval from, his member firm to participate and to receive compensation, and for failing to disclose material information on his Form U-4.

Rice's suspensions began February 4, 2002, and will conclude at the close of business February 4, 2003. **(NASD Case #C3A010005)**

William Ferd Schaufert (CRD #412722, Registered Representative, Cincinnati, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Schaufert consented to the described sanctions and to the entry of findings that he engaged in a securities transaction away from his member firm and failed to provide his firm detailed written notice of the transaction, his role therein, and to obtain permission from the firm to engage in the transaction.

Schaufert's suspension began March 4, 2002, and will conclude at the close of business April 2, 2002. **(NASD Case #C8B020002)**

Jose Luis Serrano, Jr. (CRD #2616498, Registered Representative, Chicago, Illinois) was fined $5,000 and suspended from association with any NASD member in all capacities for one year for forgery, and barred from association with any NASD member in any capacity for failing to respond. The fine shall be due and payable prior to Serrano's reentry into the securities business. The sanctions were based on findings that Serrano forged a public customer's name on a form without the authorization or consent of the customer. In addition, Serrano failed to respond to NASD requests for information.

Serrano's bar became effective January 7, 2002. **(NASD Case #C8A010050)**

Douglas Adam Sheinberg (CRD #1912229, Registered Representative, Del Ray Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sheinberg consented to the described sanction and to the entry of findings that he effected transactions in the account of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C10020008)**

Jerry Herbert Shulak (CRD #1993089, Registered Representative, Scottsdale, Arizona) submitted an Offer of Settlement in which he was fined $10,000 and suspended from association with any NASD member in any capacity for 31 days. Without admitting or denying the allegations, Shulak consented to the described sanctions and to the entry of finding that he engaged in excessive trading in the account of public customers.

Shulak's suspension began March 4, 2002, and will conclude at the close of business April 3, 2002. **(NASD Case #C3A010048)**

Alayna Michelle Slaughter (CRD #4365152, Registered Representative, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Slaughter consented to the described sanction and to the entry of findings that she willfully failed to disclose a material fact on a Form U-4. The findings also stated that Slaughter failed to respond to NASD requests for information. **(NASD Case #C04020003)**

Anthony Salvatore Socci (CRD #1863263, Registered Representative, Trumbull, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined $5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Socci consented to the described sanctions and to the entry of findings that, without the knowledge or consent of a public customer, he forged the customer's signature to a form, authorizing an insurance company to debit the customer's checking account for the purpose of paying insurance premiums.

Socci's suspension began February 19, 2002, and will conclude May 18, 2002. **(NASD Case #C11020005)**

Nick James Spatola (CRD #3053271, Associated Person, Morganville, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Spatola consented to the described sanction and to the entry of findings that he engaged in the investment banking or securities business and/or functioned as a representative and/or principal with a former member firm without properly qualifying and/or registering in the appropriate capacities. **(NASD Case #C9B020006)**

Genifer Claudia St. Ange (CRD #2615002, Associated Person, Union, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which she was fined $5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before St. Ange reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, St. Ange consented to the described sanctions and to the entry of findings that she altered an annuity application for a public customer by taking an annuity application that the customer had completed for an earlier annuity investment and changing the information thereon and submitting such application for processing without the customer's knowledge or consent.

St. Ange's suspension began February 19, 2002, and will conclude at the close of business February 19, 2003. **(NASD Case #C9B020002)**

Richard Goodwin Whitley (CRD #1195472, Registered Representative, Monroe, North Carolina) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Whitley consented to the described sanction and to the entry of findings that he caused checks totaling $7,700 to be issued as loans against the insurance policy of a public customer without the customer's authorization, obtained the proceeds of the checks, and then converted the proceeds for his own use and benefit. **(NASD Case #C07020002)**

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.

Vernard Benny Green, Jr. (CRD #2831764, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that he made purchases in the individual retirement accounts of public customers without reasonable grounds for believing that the purchases were suitable for the customers on the basis of their investment objectives, other security holdings, and financial situation and needs. The complaint also alleges that, in connection with the purchase and sale of securities in the accounts of public customers, Green, directly or indirectly, by the use of any means or instrumentalities of interstate commerce or of the mails, or of any facility of any national securities exchange, employed artifices, devices, or schemes to defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit. In addition, the complaint alleges that Green effected transactions in, or induced the purchase or sale of, securities by means of a manipulative, deceptive, or other fraudulent device or contrivance. Furthermore, the complaint alleges that Green failed to respond to NASD requests to provide documents and/or information. **(NASD Case #C10010164)**

Richard Scott Gregory (CRD #2837455, Registered Representative, Dallas, Texas) was named as a respondent in an NASD complaint alleging that he executed a purchase transaction in the account of a public customer without the customer's prior knowledge or authorization. **(NASD Case #C06010045)**

Chet C. Harris (CRD #2770791, Registered Representative, Brooklyn, New York) was named as a respondent in an NASD complaint alleging that, in connection with the sale and purchase of securities, Harris, directly or indirectly, by the use of any means or instrumentalities of interstate commerce or the mails, or of any facility of any national securities exchange, employed artifices, devices, or schemes to

defraud; made untrue statements of material fact or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices, or courses of business that operated or would operate as a fraud or deceit. The complaint also alleges that Harris effected transactions in, or induced the purchase or sale of, securities by means of a manipulative, deceptive, or other fraudulent device or contrivance. **(NASD Case #C10010166)**

Timothy Joseph O'Hare (CRD #2350627, Registered Representative, Long Beach, New York) was named as a respondent in an NASD complaint alleging that he effected transactions in the joint account of public customers without their prior knowledge, authorization, or consent. **(NASD Case #C10020004)**

David Phillip Scheyer (CRD #1362617, Registered Representative, Cincinnati, Ohio) was named as a respondent in an NASD complaint alleging that he received funds totaling at least $8,459.01 from members of the public, representing insurance premium payments, and failed to apply the payments to the applicable policies or in any other manner for the benefit of the members of the public. The complaint also alleges that Scheyer failed to respond to NASD requests for information. **(NASD Case #C8B020001)**

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

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

O'Donnell Securities Corp.
Mayfield Heights, Ohio
(January 22, 2002)

Shamrock Partners, Ltd.
Media, Pennsylvania
(January 23, 2002)

Individuals Barred Pursuant To NASD Rule 9544 For Failure To Provide Information Requested Under NASD Rule 8210. (The date the bar became effective is listed after the entry.)

Adkins, James R.
Prescott Valley, Arizona
(January 28, 2002)

Andrina, Robert I.
Seattle, Washington
(January 14, 2002)

Atienza, Jr., Prospero
Buena Park, California
(January 22, 2002)

Awes, Michael G.
Long Lake, Minnesota
(January 24, 2002)

Davis, Rodney J.
West New York, New Jersey
(January 15, 2002)

Farris, Lorette
Hempstead, New York
(January 25, 2002)

Grant, Holly V.
Tyler, Texas
(January 31, 2002)

Hartlieb, Michael
St. Petersburg, Florida
(January 15, 2002)

Hubbard, George
Virginia Beach, Virginia
(January 28, 2002)

Johnson, Eric K.
South Branch, New Jersey
(January 22, 2002)

Knopp, Brian D.
Vacaville, California
(January 24, 2002)

Lalle, Gregory
Clearwater, Florida
(January 22, 2002)

Lam, Thach N.
Westminster, California
(January 28, 2002)

Levin, Stephanie S.
New York, New York
(January 24, 2002)

Navard, Masoud H.
Columbus, Ohio
(January 14, 2002)

Nhekairo, Mabasha
Alpharetta, Georgia
(January 28, 2002)

Spector, Gary J.
Burbank, California
(January 22, 2002)

Stern, Howard B.
Boca Raton, Florida
(January 22, 2002)

Thomas, Mark Allen
St. Joseph, Missouri
(January 22, 2002)

Yacapraro, Jr., Joseph-Anthony
Coshocton, Ohio
(January 28, 2002)

Individuals Suspended Pursuant To NASD Rule 9541(b) For Failure To Provide Information Requested Under NASD Rule 8210. (The date the suspension began is listed after the entry.)

Macaluso, Susan
McAllen, Texas
(February 1, 2002)

Pierre, Petruce
Spring Valley, New York
(January 18, 2002)

Rooney, Patrick W.
Chula Vista, California
(January 10, 2002)

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

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

Bodenstein, Dennis
New York, New York
(January 11, 2002 - February 5, 2002)

Burke, Jr., John P.
Bozeman, Montana
(January 30, 2002)

Cerny, Timothy C.
Ft. Lauderdale, Florida
(January 28, 2002)

O'Malley, Michael P.
Madison, Wisconsin
(January 28, 2002)

Soler, Stephen
New York, New York
(January 25, 2002 - February 4, 2002)

NASD Regulation Expels First Federal Securities, Inc. And Bars Its Owner And President For False Membership Information

NASD Regulation, Inc., announced that it expelled First Federal Securities, Inc., of Las Vegas, NV, and barred its owner and President Kellie McKinzie for intentionally providing false information in connection with the firm's application for membership with the NASD.

First Federal applied for NASD membership in January 2001. In the application, McKinzie misrepresented that she was its sole owner and that there were no other principals affiliated with the firm. The firm and McKinzie specifically did not disclose that Jeffrey Schwertfeger, an Investment Company/Variable Contracts Products Representative, who was then the subject of an NASD Regulation disciplinary proceeding alleging sales practice violations, was affiliated with First Federal. McKinzie was aware at the time she filed the application for First Federal's membership that NASD Regulation considered this fact to be material to the application.

On March 15, 2001, McKinzie falsely reaffirmed to NASD Regulation that this individual was not affiliated with First Federal and four days later, NASD Regulation approved First Federal's membership. Subsequently, NASD Regulation obtained additional facts and determined that Schwertfeger was in fact in control of the management and policies of First Federal.

NASD Regulation found that the firm and McKinzie engaged in conduct inconsistent with just and equitable principles of trade. NASD Regulation barred McKinzie and expelled First Federal from association with an NASD member. The expulsion and bar were imposed through a settlement in which the firm and owner did not admit or deny the allegations.

NASD rules require that all information filed with respect to membership be complete, accurate and not otherwise misleading. In addition, an applicant is obligated to correct any inaccurate or misleading information given during the application process. Where, as here, if a firm is admitted to membership based on misleading or inaccurate information, NASD Regulation may bring a disciplinary action to bar the responsible individual and expel the firm from membership. NASD Regulation's Los Angeles District Office investigated this case.

For Your Information

Regulation Form Filing: New Firm Contacts Screen

Regulation Form Filing is a Web-based system for various applications used by member firms to report regulatory information to NASD Regulation. The applications include: FOCUS, Blue Sheets, Customer Complaints, Reg T/15c3-3 Extension Requests, and Short Interest Reporting.

Form Filing Account Administrators will be responsible for providing and maintaining the new Firm Contacts fields with the most current and accurate information.

This information is necessary in the event that an application's designated person needs to be notified of any system problems or for verification of information that was submitted by the member firm. The Form Filing contact information needs to be provided for each of the following systems, where applicable:

- Blue Sheets
- 3070 Customer Complaints
- FOCUS
- INSITE Firm Data Filing
- Market Volatility
- Reg-T & 15c3-3
- Shorts

The name, title, address, telephone number, fax number, and e-mail address for the firm's designated primary and secondary contacts should be provided for each application. In addition, in order to enable NASD Regulation to process Blue Sheets data requests in a timely manner, member firms should also provide and/or update the Blue Sheets contact information via e-mail to the Market Regulation Department at *bluesheets@nasd.com*.

For further information or if you have questions about the Web-based form filing regulation applications, call (800) 321-NASD, or send an e-mail to: *nasdregfiling@nasd.com*.

INFORMATIONAL

Revised Forms U-4 And U-5

SEC Approves Technical Changes To Forms U-4 And U-5 And Amendment To NASD Interpretive Material 8310-2; **Effective Date: March 18, 2002**

SUGGESTED ROUTING

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

- Continuing Education
- Legal & Compliance
- Operations
- Registered Representatives
- Registration
- Senior Management
- Training

KEY TOPICS

- Central Registration Depository System
- IM 8310-2
- Investment Adviser Representatives
- U-4
- U-5

Executive Summary

The Securities and Exchange Commission (SEC) has approved technical changes to Forms U-4 and U-5, effective March 18, 2002. The SEC also has approved an amendment to National Association of Securities Dealers, Inc. (NASD®) Interpretive Material (IM) 8310-2, which authorizes the NASD to release to the public disciplinary and other information on NASD members and their associated persons.

The revised forms are effective March 18, 2002. Copies of the new forms are available on the NASD Regulation Web Site at *www.nasdr.com*. Members are not required to "re-file" Forms U-4 and U-5 for their associated persons.

Questions concerning this *Notice* may be directed to Richard E. Pullano, Chief Counsel and Director, CRD/Public Disclosure, NASD Regulation, Inc., at (240) 386-4821; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8844.

Background And Discussion

The Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and the Uniform Termination Notice for Securities Industry Registration ("Form U-5") are used by NASD member firms (*i.e.*, broker/dealers) to register, transfer, and terminate the registration of their associated persons with self-regulatory organizations (SROs) and states, as appropriate. Broker/dealers have filed Forms U-4 and U-5 electronically to fulfill registration-related obligations of their associated persons since the implementation of Web CRD℠ in August 1999.[1] Investment adviser firms also use Forms U-4 and U-5 to fulfill state licensing obligations for investment adviser representatives (called "RAs" on the revised Forms U-4 and U-5), but until now, they have been required to submit those forms to individual states in hard copy.[2]

In July 2000, the SEC formally designated NASD Regulation as the entity to establish and maintain the Investment Adviser Registration Depository (IARD℠), a system designed to enable investment advisers to fulfill their registration-related obligations with federal and state regulators through an electronic Internet-based filing system.[3] In January 2001, NASD Regulation implemented the first phase of the IARD system, which allows investment adviser firms to file electronically Forms ADV and ADV-W, and amendments thereto. The second phase of the system, which will enable investment adviser representatives to register and terminate electronically their state registrations, is scheduled to be deployed on March 18, 2002, concurrent with the implementation of the revised Forms U-4 and U-5.

In connection with this second phase of the IARD system, NASD Regulation worked with representatives of the North American Securities Administrators Association (NASAA), the states, the broker/dealer and investment adviser communities and other SROs to craft changes to Forms U-4 and U-5 that: (1) accommodate the electronic submission of investment adviser representative filings in the IARD system; (2) establish procedures that enable broker/dealer and investment adviser firms that employ the same person to concur with information contained in Forms U-4 filed by the other firm

on that person; (3) clarify the filing instructions; (4) provide separate paper filing instructions for investment adviser representative filers and other state-only filers that do not use the CRD or IARD systems; (5) clarify items that have been confusing to filers; (6) make formatting and technical changes to Forms U-4 and U-5 that complete the transition from a paper-based filing model to an electronic-filing model; and (7) update form U-4 to add examination and registration categories not previously included. The SEC also approved a technical amendment to IM-8310-2(a), which addresses the NASD's release of information through the Public Disclosure Program, to reflect the correct reference to the disclosure section on Form U-4, which has changed from Item 23 to Item 14 on the revised Form U-4.

The approved Forms changes do not alter the reporting or disclosure requirements applicable to broker/dealers or their registered persons. Therefore, member firms are not required to "re-file" disclosure or administrative information for their associated persons.

This *Notice* highlights the changes included in the March 2002 Forms U-4 and U-5. Additional background and explanatory information may be found in the Securities Exchange Act of 1934 ("Exchange Act") Release No. 45531, the SEC release approving Forms U-4 and U-5 revisions.

❖ *Section Headers Replace Numbered Fields*

The numbered fields used in previous versions of the Forms U-4 and U-5 have been removed because the electronic interactive filing format used in the Web CRD and IARD systems presents information in a specified order, thereby eliminating the need for numbered data fields. Instead, the revised Forms U-4 and U-5 contain numbered "section headers" that clearly describe the types of information elicited or action required by the applicant or firm, with applicable subquestions contained within each section. Organizing the current fields into sections has changed the question numbers, but there are no substantive changes to the questions. Of note, Question 14 on Form U-4 replaces Question 23 as the "Disclosure Question," and contains subquestions numbered 14A, 14B, etc.[4]

❖ *Explanation of Terms and Specific Instructions*

The revised "Explanation of Terms" and "Specific Instructions" sections have been generally revised and simplified to include instructive language. The Explanation of Terms section includes seven new terms and an alphabetical list of definitions to better aid applicants and firms.[5] In addition, the Specific Instructions include directions for investment adviser representative-only applicants (*i.e.*, those individuals who are not also registered or seeking registration with a broker/dealer), as well as separate instructions for paper filers.

❖ *Private Residence Check Box*

The new "General Information" section contains a "private residence check box" that allows individuals to notify regulators that their office of employment address is a private residence. This feature was added to address privacy concerns raised by the investment adviser community in connection with the potential release to the public through open records laws or other programs of the home addresses of investment advisers who are sole practitioners operating out of their homes. Functionality within the CRD and IARD systems enables regulators to block the release of such information.

❖ *Fingerprint Information*

A new "Fingerprint Information" section replaces Question 8a on the 1999 Form U-4 and addresses procedures for submitting fingerprints to register with SROs and states. This section includes a representation affirming that an electronic filer who seeks registration with a broker/dealer is submitting or will promptly submit fingerprint cards consistent with SRO rules. The revised Form U-4 permits an applicant firm to represent that the subject of a filing is exempt from the fingerprint requirement if the applicant meets one or more of the exemptions established by Rule 17f-2 under the Exchange Act. In addition, this section also addresses the applicable scenarios for the filing of fingerprint cards by individuals who are filing only as investment adviser representatives, and who may not be required to submit fingerprint cards for one or more jurisdictions.

❖ *Dual Registration/Affiliated Firms*

Because the meaning of "dual registration" in Questions 9 and 10 on the 1999 Forms U-4 and U-5 caused some confusion for both regulators and member firms, the revised Forms U-4 and U-5 replace former Questions 9 and 10 with the "Registration with Unaffiliated Firms" and "Registration with Affiliated Firms" sections, respectively. The "Registration with Unaffiliated Firms" section states the majority view of "dual registration" within the states, *i.e.*, those individuals who answer this question affirmatively will be considered to be "dually registered." Individuals/

firms are instructed to consult applicable state or SRO rules to determine whether dual registrations are permitted. The "Registration with Affiliated Firms" section applies only to individuals registering with firms that are under common ownership or control.

❖ ***Registration Categories***

The revised Forms U-4 and U-5 include changes to the registration categories to accommodate the addition of, among others, the International Securities Exchange (ISE) as a new national securities exchange, and the new Private Placement (PR) position required by the Gramm-Leach-Bliley Act.[6]

❖ ***Professional Designations Section***

The revised Form U-4 adds Section 8, "Professional Designations," to enable an individual requesting registration as an investment adviser representative to seek a waiver from examinations if he or she currently maintains certain designations (*i.e.*, Certified Financial Planner, Chartered Financial Consultant, Personal Financial Specialist, Chartered Financial Analyst, or Chartered Investment Counselor).

❖ ***Signature and Acknowledgment Sections***

New Section 15 on Form U-4 enables individuals and appropriate signatories to go directly to designated signature fields to execute signatures electronically required by the Forms U-4 and U-5. Sections 15A and 15B address the individual/applicant's acknowledgment and consent and the firm/appropriate signatory's representations, both of which must be completed on all initial or Temporary Registration form filings. Section 15C addresses the Temporary Registration Acknowledgment, which must be completed for all temporary registrations. Section 15D has been added to address an individual/applicant's acknowledgment and consent to amendments to the disclosure questions or the Disclosure Reporting Pages (DRPs). Firms and appropriate signatories must complete Section 15E for all amendment form filings.

In addition, as discussed in more detail below, Section 15F, "Firm/Appropriate Signatory Concurrence," enables one firm to "concur" with, and thereby adopt as its own, a filing made by another firm with which an individual is also registered (*i.e.*, an individual registered with more than one broker/dealer and/or investment adviser firm). The concurrence filing provides firms with a faster, more efficient method of fulfilling their reporting obligations on an associated person who also is associated with another entity.

Section 8 of the revised Form U-5 addresses the signature requirements on that Form, including the firm acknowledgment in Section 8A and a new individual acknowledgment and consent in Section 8B. Although only appropriate signatories of firms are required to sign Form U-5 in the ordinary course of business, individuals who are the subject of Form U-5 may be required to submit signatures under two scenarios: (1) formerly registered individuals must submit to the CRD system address changes for two years following the termination of their registration under NASD rules;[7] and (2) registered or formerly registered individuals may file an Internal Review DRP-Part II to respond to a report on Form U-5 by that individual's previous employer that the individual is subject to an internal review. New Section 8B enables individuals submitting an address change or Internal Review DRP-Part II to attest that the information being submitted is accurate and complete.

Concurrence Filing Procedures

With the implementation of electronic filing for investment adviser representatives, investment advisers will be able electronically to submit Forms U-4 and U-5 to register and terminate the registrations of their representatives with appropriate state regulators. Individuals who are registered with both a registered investment adviser firm and a broker/dealer will share a single registration record on the CRD and IARD systems. As discussed above, the changes to Form U-4 allow a member broker/dealer to concur with a filing submitted by any other broker/dealer or investment adviser with which a registered person is also registered. Enabling member broker/dealers to concur with filings submitted by an investment adviser regarding a particular person will streamline the registration process and make it more efficient for members to comply with their reporting obligations on an associated person who also is associated with another entity.

To implement this new process, the CRD and IARD systems will automatically notify a member firm of the submission of a Form U-4 or amendment for one of its associated persons by another broker/dealer or an investment adviser that also employs that individual. The firm that is notified will then be able to review the information that has been

submitted and execute a "concurrence filing," which communicates to the CRD and IARD systems (and, therefore, all appropriate regulators) that it has adopted the filing as its own.[8]

In the event that multiple firms associated with any particular individual submit different DRPs on the same disclosure event, NASD Regulation staff will "flag" the affected record on the CRD and IARD systems to put regulators and the involved firms on notice that differences between the two filings exist. The "difference flag" will be set whenever there is a difference between the information provided in any of the fields eliciting objective factual information (*i.e.*, any of the DRP fields, with the exception of the last field on the DRP, which is reserved for the registered representative's summary or commentary on the event).[9]

Uniform Forms Reference Guide

In connection with the revised Forms U-4 and U-5, NASD Regulation has created a *Uniform Forms Reference Guide* to provide member firms and other users of the Forms U-4 and U-5 with resource and contact information. The *Reference Guide* is available on the *www.nasdr.com* Web Site.

Endnotes

1 In 1999, the SEC approved amendments to Forms U-4 and U-5 that included both technical and formatting changes in anticipation of the implementation of the Web CRD system and electronic filing. *See Securities Exchange Act Rel. No. 41560 (June 25, 1999), 64 FR 36059 (July 2, 1999)*. Also, *see Notice to Members 99-63*.

2 Registration/licensing categories for investment adviser representatives were added to Forms U-4 and U-5 in 1996 in anticipation of the processing of these and other non-member categories through the CRD system. *See Securities Exchange Act Rel. No. 37404 (July 5, 1996), 61 FR 36595 (July 11, 1996)*. Note that for technical reasons, the designation for investment adviser representatives has changed from "IAR" to "RA" on the revised Forms U-4 and U-5.

3 *See Investment Advisers Act of 1940 ("Advisers Act") Rel. 1888 (July 28, 2000), 65 FR 47809 (Aug. 3, 2000)*. As noted in the order, in 1996, Congress gave the SEC authority "to participate in an electronic system for the registration of investment advisers." As a result, Congress enacted Section 203(A)(d) of the Advisers Act, which enables the SEC to require investment advisers to file registration and other forms "through any entity designated [by the SEC] for that purpose" and to "pay the reasonable costs associated with [these] filings." A description of the IARD system is provided in *Advisers Act Rel. 1862 (Apr. 5, 2000), 65 FR 20524 (Apr. 17, 2000)*. Although the IARD system functions in a manner similar to the Web CRD system, NASD Regulation does not act as an SRO for investment advisers or investment adviser representatives.

4 The SEC also approved an amendment to IM-8310-2 to change the reference in paragraph (a)(4)(A) from Item 23 to Item 14 to accurately reflect the correct item number on the revised Form U-4.

5 The revised Forms U-4 and U-5 now define the following terms: *affiliated, applicant, designated entity, filing firm, firm, firm CRD number, and individual CRD number.*

6 The PR position was implemented in May 2001 as required by the Gramm-Leach-Bliley Act of 1999, which added a new subsection (j) to Section 15A of the Exchange Act and created a new NASD registration category for individuals engaged only in private securities offerings. *See Section 203, P.L. 102, Gramm-Leach-Bliley Act (Nov. 12, 1999)*.

7 *See* generally Article V, Section 4 of the NASD By-Laws, Forms U-4 and U-5.

8 Firms will receive notice filings for all Form U-4 filings that affect their associated persons who are also registered with another broker/dealer or investment adviser firm. Such firms would not be required to make concurrence filings where the Form U-4 amends information that is relevant only to the broker/dealer or investment adviser that initially filed the Form U-4 (*e.g.*, such firms will not have to submit concurrence filings for changes to registrations, office of employment address, etc. that are specific to the entity making the initial filing).

9 When a difference is flagged, NASD staff will alert the firms involved to request that they resolve the difference. If the firms are not able to reach an agreement within 30 calendar days, NASD staff will refer the matter to a state regulator and/or internal NASD department, as appropriate, based on the facts and circumstances of the situation, for review and resolution.

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