

# Notices to Members

## May 2002

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## ACTION REQUESTED

## Corporate Financing

### SEC Approves Rule Change Requiring Members To File Information With The Corporate Financing Department Through Its Electronic Filing System

## 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 Representative
- Legal & Compliance
- Operations
- Senior Management
- Systems

## KEY TOPICS

- Corporate Financing
- Electronic Form Filing

## Executive Summary

On April 9, 2002, the Securities and Exchange Commission (SEC or Commission) approved amendments to NASD Conduct Rule 2710 (the Corporate Financing Rule or Rule) that require members that file information on public offerings of securities with the Corporate Financing Department (Department) to use the Department's electronic filing system, the Corporate Offerings Business Regulatory Analysis System (COBRA). In addition, the amendments provide that all documents that are filed with the SEC through its Electronic Data Gathering and Retrieval System (EDGAR) will be treated as filed with the National Association of Securities Dealers, Inc. (NASD® or Association). Members that participate in public offerings in which the offering documents are not required to be filed with the SEC through EDGAR would continue to be required to file the offering documents in paper format. However, such members would also have to provide certain information through COBRA.

The Department currently inputs information from manual filings into the COBRA database. On June 30, 2002, the Department will convert all of the offerings in the COBRA database into COBRADesk, the Web-based application that filers use to file with the Department. This conversion will enable filers to make amendments and revisions to filings that are under review in the Department by using COBRADesk. In addition, the conversion will provide members with access to information regarding all of their filings since January 2000, which will be included in COBRADesk. After June 30, 2002, all amendments and revisions to filings under

review in the Department must be made using COBRADesk.

The effective date of the electronic filing requirements for new offerings is July 12, 2002. Any manual filings subject to the electronic filing requirements made after the June 30 conversion date, but prior to July 12, 2002, will be accepted, but the filer will be required to re-file the offering using COBRADesk in order to make amendments or revisions to the filing, and so that the information can be stored in the COBRADesk database. The Department will not accept any manual filings that are required to be filed electronically under the Rule after July 12, 2002.

See Attachment A to view the text of the Rule amendments.

Questions about this *Notice* should be directed to LaNita Tyler or Kemba Walker, Corporate Financing Department, NASD Regulation, Inc., at (240) 386-4623.

## Background

The Department receives thousands of packages and letters each year in paper format from underwriters and their counsel. In June 1999, the Department deployed COBRA to permit members and their counsel to file information electronically and to permit the staff to access any documents filed with the SEC through EDGAR. Since its implementation, COBRA has improved the efficiency of the review process, decreased review time, and reduced the amount of paper correspondence and documents that members must file with the Department. The system has operated as a faster and more efficient mechanism for communication between filers and NASD Regulation.

## NASD Notice to Members 02-26

On April 30, 2001, the Department converted COBRADesk to a Web-based application. Web COBRADesk was developed to provide users with an improved and technologically enhanced version of the COBRADesk application. The system is free of charge and requires no special equipment. Web COBRADesk eliminates the need for members to file registration statements with the Department if a registration statement has been filed with the SEC using EDGAR. Filers simply provide the Department with an EDGAR accession number when they file the original registration statement, subsequent amendments, and the final prospectus.

On April 9, 2002, the SEC approved amendments to NASD Conduct Rule 2710 regarding electronic filings with the Department. The NASD proposed amending the Rule to: (1) require that members file certain information on offerings subject to Rules 2710, 2720, and 2810 through COBRADesk; (2) provide that all public offering documents that are filed with the Commission through EDGAR will be treated as filed with the Association; and (3) reduce the number of offering documents that are required to be filed with the Association for members that file manually instead of electronically through EDGAR.

### Accessing Web COBRADesk

Firms must be registered to access COBRADesk. To access Web COBRADesk, use the following URL:

<https://cobra.nasdr.com>

Firms that are not currently registered to access Web COBRADesk should perform the following steps:

1. Select a person to act as the coordinator for the firm.
2. The Department will issue a unique identifier (firm ID) to each firm. The firm's coordinator can request this identifier by sending an e-mail to the Department at [nasdrcorpfin@nasd.com](mailto:nasdrcorpfin@nasd.com). Coordinators should provide in the e-mail the firm's name, address, coordinator's name, phone number, and e-mail address. Once the information provided has been reviewed and accepted, the Department will send an e-mail to the coordinator containing the firm's ID.
3. Individual users can register by submitting a completed registration form located at [https://cobra.nasdr.com/cdsk\\_register.asp](https://cobra.nasdr.com/cdsk_register.asp). The firm's ID and coordinator's name must be provided for each registration submitted. Please keep the user name and password you select in a secure place; it will be required to logon to the system.
4. A confirmation will be sent via e-mail to each user that acknowledges the Department's acceptance and the user's ability to access COBRADesk.
5. Logon to COBRADesk at <https://cobra.nasdr.com>. Enter the user name and password chosen at registration.

### Submitting Filing Fees

There are two payment methods available for electronic filers. Payments may be made through a wire transfer or by submitting a check to the Department's lockbox. Checks should not be sent directly to the Department. If you are paying through a wire transfer, please use the following information:

#### Beneficiary Bank:

Riggs Bank NA

#### Beneficiary Bank Address:

808 17th Street, NW  
Washington, DC 20006

#### Beneficiary Name:

NASD Regulation

#### Beneficiary Account #:

08676152

#### Routing Number:

054000030

#### Reference Number:

**YOU MUST PROVIDE ISSUER NAME AS IT APPEARS ON THE OFFERING DOCUMENT OR THE ASSIGNED CORPORATE FINANCING DEPARTMENT FILING ID.**

If you are paying the filing fee by check, make the check payable to NASD Regulation, Inc., and mail it to our lockbox at:

*NASD Regulation, Inc.  
P.O. Box 777-W9205  
Philadelphia, PA 19175-9205*

If your check is being delivered to the bank via courier or overnight mail, use the following address:

*NASD Regulation, Inc.  
W9205  
c/o Mellon Bank, Rm. 3490  
701 Market Street  
Philadelphia, PA 19106*

### Non-SEC Filed Documents

Subparagraph (b)(5)(B) of Rule 2710 has been amended to provide that all documents that are filed with the SEC through the EDGAR system will be treated as filed with the Association. Members that do not file documents with the SEC through EDGAR (e.g., F-1, F-3, F-10,<sup>1</sup> Offering Circulars, etc.) still have a filing obligation, and are required to submit multiple copies of any requisite documents in paper format.

Underwriting documents such as the Underwriting Agreement, Letter of Intent, Selected Dealers Agreement, and other agreements describing proposed compensation and underwriting terms and arrangements may be submitted to the Department's e-mail at [nasdrcorpfin@nasd.com](mailto:nasdrcorpfin@nasd.com). One copy of Non-SEC Filed Documents should be submitted in Microsoft Word format. The document name is to consist of the Department File ID, followed by the type of document (e.g., 2001-0101-001 MasterUWA). If a revised offering document is submitted to the Department, the document name should consist of the Department File ID, followed by an alphabet and type of document (e.g., 2001-0101A Master UWA). The e-mail must supply the name of the analyst assigned to review the offering. The Basic Information – Documents – Non SEC Filed Documents grid in COBRADesk must be updated in your offering and submitted electronically, prior to the e-mail being sent to the Department. Responses to comment letters must be submitted by completing the appropriate screens in COBRADesk. Letters will not be accepted by e-mail.

### Browser Standards

The browser standards required for accessing Web COBRADesk are Netscape Navigator 6.0 or greater and Microsoft Internet Explorer 5.5 or greater. Browser upgrades are available free of charge through the respective Netscape and Microsoft Web Sites. An application designed for the Web must be supported by the current browsers to ensure maximum performance, reliability, flexibility, privacy, and security. Web COBRADesk's layout, screens, dialog boxes, scroll bars, list boxes, grids, and links conform to the latest browser versions.

### Training

Department staff members are dedicated to assisting filers when they access and navigate Web COBRADesk. The Department will sponsor training sessions at the NASD's training facilities in Rockville, Maryland, and third-party training facilities in New York City. Training in New York will be held June 24-26, and training in Rockville, Maryland, will be held July 9-11. A nominal fee of \$75 will be charged to offset the cost of the facilities. For more information about the training session, including an online registration form, visit the Web COBRADesk Web Page at [www.nasdr.com/cobradesk.asp](http://www.nasdr.com/cobradesk.asp).

The Department will also provide assistance to members and their counsel who have questions and are unfamiliar with the system. If you are interested in participating in one of the training sessions, please let us know by sending an e-mail to [nasdrcorpfin@nasd.com](mailto:nasdrcorpfin@nasd.com) by May 29, 2002. Preferences regarding dates and times for the training sessions will be assigned in the order that the e-mail requests are received by the Department.

### Endnote

- 1 On September 28, 2001, the SEC published for comment proposed amendments that would require foreign private issuers and foreign governments to file electronically through the EDGAR system their securities documents, including registration statements under the Securities Act of 1933 and registration statements, reports and other documents under the Securities Exchange Act of 1934.

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**ATTACHMENT A**

Proposed new language is underlined; proposed deletions are in brackets.

**2710. CORPORATE FINANCING RULE - UNDERWRITING TERMS AND ARRANGEMENTS**

(a) No Change

(b) Filing Requirements

(1)-(4) No Change

(5) Documents to be Filed

(A) The following documents relating to all proposed public offerings of securities that are required to be filed under subparagraph (b)(4) above shall be filed with the Association for review:

([A]i) [Five (5)] Three copies of the registration statement, offering circular, offering memorandum, notification of filing, notice of intention, application for conversion and/or any other document used to offer securities to the public;

([B]ii) Three [(3)] copies of any proposed underwriting agreement, agreement among underwriters, selected dealers agreement, agency agreement, purchase agreement, letter of intent, consulting agreement, partnership agreement, underwriter's warrant agreement, escrow agreement, and any other document which describes the underwriting or other arrangements in connection with or related to the distribution, and the terms and conditions relating thereto; and any other information or documents which may be material to or part of the said arrangements, terms and conditions and which may have a bearing on the Association's review;

([C]iii) [Five (5)] Three copies of each pre-and post-effective amendment to the registration statement or other offering document, one copy marked to show changes; and three [(3)] copies of any other amended document previously filed pursuant to subparagraphs ([A]i) and ([B]ii) above, one copy marked to show changes; and

([D]iv) Three [(3)] copies of the final registration statement declared effective by the Commission or equivalent final offering document and a list of the members of the underwriting syndicate, if not indicated therein, and one [(1)] copy of the executed form of the final underwriting documents and any other document submitted to the Association for review.

(B) All documents that are filed with the Commission through the Commission's Electronic Data Gathering and Retrieval System shall be treated as filed with the Association.

**(6) Information Required to be Filed**

(A) Any person filing documents [pursuant to subparagraph] that are required to be filed under paragraph (b)(4) above shall provide the following information with respect to the offering through the Association's electronic filing system:

(i) an estimate of the maximum public offering price;

(ii) an estimate of the maximum underwriting discount or commission; maximum reimbursement of underwriter's expenses, and underwriter's counsel's fees (except for reimbursement of "blue sky" fees); maximum financial consulting and/or advisory fees to the underwriter and related persons; maximum finder's fees; and a statement of any other type and amount of compensation which may accrue to the underwriter and related persons;

(iii) a statement of the association or affiliation with any member of any officer, director or security holder of the issuer in an initial public offering of equity securities, and with respect to any other offering provide such information with respect to any officer, director or security holder of five percent or more of any class of the issuer's securities, to include:

a. the identity of the person;

b. the identity of the member and whether such member is participating in any capacity in the public offering; and

c. the number of equity securities or the face value of debt securities owned by such person, the date such securities were acquired, and the price paid for such securities.

(iv) a statement addressing the factors in subparagraphs (c)(4)(C) and (D), where applicable;

(v) a detailed explanation of any other arrangement entered into during the 12-month period immediately preceding the filing of the offering, which arrangement provides for the receipt of any item of value and/or the transfer of any warrants, options, or other securities from the issuer to the underwriter and related persons; [and]

(vi) a detailed explanation and any documents related to the modification of any item of compensation subsequent to the review and approval of such compensation by the Association;<sup>1</sup> and

(vii) any other information required to be filed under this Rule.

(B) Any person filing documents pursuant to paragraph (b)(5) above shall [file with the Association written notice] notify the Association through its electronic filing system that the offering has been declared effective or approved by the Commission or other agency no later than one business day following such declaration or approval or that the offering has been withdrawn or abandoned within three business days following the withdrawal decision to abandon the offering.

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<sup>1</sup> Subparagraphs (i) - (vi) are proposed to be amended in SR-NASD-2000-04. See Securities Exchange Act Release Nos. 42619 (April 4, 2000), 65 FR 19409 (April 11, 2000); 44044 (March 6, 2001), 66 FR 14949 (March 14, 2001).

## INFORMATIONAL

# Membership And Registration Rules

Series 22, 27, 28, 39,  
55, And 82 Modified

## SUGGESTED ROUTING

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

- Legal & Compliance
- Operations
- Registration
- Training

## KEY TOPICS

- Direct Participation Programs Limited Principal (Series 39)
- Direct Participation Programs Limited Representative (Series 22)
- Equity Trader Limited Representative (Series 55)
- Financial and Operations Limited Principal (Series 27)
- Introducing Broker/Dealer Financial and Operations Limited Principal (Series 28)
- Private Securities Offerings Limited Representative (Series 82)
- NASD Rules 1022(b), (c), and (e)
- NASD Rules 1032(c), (f), and (h)
- Qualification Examinations

## Executive Summary

NASD Regulation, Inc. (NASD Regulation) has modified the examination programs for the Direct Participation Programs Limited Representative (Series 22), the Financial and Operations Limited Principal (Series 27), the Introducing Broker/Dealer Financial and Operations Limited Principal (Series 28), the Direct Participation Programs Limited Principal (Series 39), the Equity Trader Limited Representative (Series 55), and the Private Securities Offerings Limited Representative (Series 82).<sup>1</sup> The changes are reflected in study outlines that will soon be available on the NASD Regulation Web Site ([www.nasdr.com](http://www.nasdr.com)). The changes will appear in examinations administered starting on August 1, 2002.

## Questions/Further Information

Questions concerning this *Notice to Members* may be directed to one of the following persons in NASD Regulation's Testing and Continuing Education Department: Karen Bescher at (240) 386-4677; Eva Cichy at (240) 386-4680; Carole Hartzog at (240) 386-4678; Nicole Hillman at (240) 386-4681; or Elaine Warren at (240) 386-4679.

## Background And Discussion

Committees of industry representatives (including compliance officers, sales managers, and training personnel), together with NASD Regulation staff, recently reviewed the Series 22, 27, 28, 39, 55, and 82 examination programs. As a result of their review, NASD Regulation has revised these examinations to reflect changes in relevant laws, rules, and regulations covered by the examinations, and, in some cases, to reflect more accurately the duties and

responsibilities of the individuals who are taking these examinations. Several examinations have been modified to include sections on recently implemented Securities and Exchange Commission (SEC) and NASD rules. Two of the examinations were reformatted into one-part examinations. Also, the method for scoring one of the examinations has been modified.

## Series 22

The Series 22 examination is a limited representative qualification examination for a person associated with a member whose activities in the investment banking and securities business are limited solely to the solicitation, purchase, and/or sale of equity interests in or debt of direct participation programs.

NASD Regulation has reorganized the substantive sections of the Series 22 examination and has allocated questions to each section as follows: Investment Entities for Direct Participation Programs, 12 questions; Types of Direct Participation Programs, 11 questions; Offering Practices Applicable to Direct Participation Programs, 14 questions; Tax Issues Applicable to Direct Participation Programs, 20 questions; Regulation of Direct Participation Programs, 32 questions; and Factors to Consider in Evaluating Direct Participation Programs, 11 questions. The Series 22 examination will remain a 2 1/4-hour, 100 multiple-choice question examination with 70% as the passing score.

## Series 27

The Series 27 examination qualifies an individual to function as a limited principal responsible for matters involving a member's financial and operational management. A Series 27 principal may

serve as a member's chief financial officer.

NASD Regulation has reformatted the Series 27 examination. Previously, the Series 27 examination was a two-part test graded on a 140-point system. The first part included 100 multiple-choice questions (each worth one point) and the second part, which was worth 40 points, required individuals to perform computations based on financial information in a member's trial balance. Individuals taking the examination may have received partial credit for answers to computational questions in the second part. NASD Regulation has changed the format of the Series 27 examination and has made it a one-part examination with a total of 145 multiple-choice questions (each worth one point). No partial credit will be given for any answers.

NASD Regulation also has reorganized the substantive sections of the Series 27 examination and has allocated questions to each section as follows: Keeping and Preservation of Records and Broker/Dealer Financial Reporting Requirements, 16 questions; Net Capital Requirements, 44 questions; Customer Protection, 37 questions; Municipal Securities Rulemaking Board Regulations, 10 questions; Federal Reserve Board Regulations, 8 questions; Uniform Practice Rules, 15 questions; and Other Relevant Regulations and Interpretations, 15 questions. The Series 27 examination will remain a 3 1/2-hour examination and the passing score for the examination will continue to be 70%.

### **Series 28**

The Series 28 examination qualifies an individual to function as a limited principal responsible for matters involving an introducing member's financial and operational

management. A Series 28 principal may serve as an introducing member's chief financial officer.

NASD Regulation has reformatted the Series 28 examination. Previously, the Series 28 examination was a two-part test graded on a 100-point system. The first part included 75 multiple-choice questions (each worth one point) and the second part, which was worth 25 points, required individuals to perform computations based on financial information in a member's trial balance. Individuals taking the examination may have received partial credit for answers to computational questions in the second part. NASD Regulation has changed the format of the Series 28 examination and has made it a one-part examination with a total of 85 multiple-choice questions (each worth one point). No partial credit will be given for any answers.

NASD Regulation also has reorganized the substantive sections of the Series 28 examination and has allocated questions to each section as follows: Keeping and Preservation of Records and Broker/Dealer Financial Reporting Requirements, 15 questions; Net Capital Requirements, 36 questions; Customer Protection, 10 questions; and Other Relevant Regulations and Interpretations, 24 questions. Additionally, NASD Regulation has reduced the testing time for the Series 28 examination to 2 hours from 3 hours. The passing score for the examination will continue to be 70%.

### **Series 39**

The Series 39 examination qualifies an individual to function as a limited principal responsible solely for a member's activities with respect to equity interests in or the debt of direct participation programs.

NASD Regulation has changed the method for scoring the Series 39 examination. Previously, the Series 39 examination was graded based on two passing scores. Individuals taking the examination were required to obtain a score of 70% on the substantive section relating to compliance with financial responsibility rules and a score of 70% on the remaining substantive sections. Individuals who failed either part were required to retake the Series 39 examination. NASD Regulation has combined both parts and will now require a 70% passing score for the combined portion.

NASD Regulation also has reorganized the substantive sections of the Series 39 examination and has allocated questions to each section as follows: Structure and Regulation of Direct Participation Program Offerings, 47 questions; Sales Supervision, General Supervision of Employees, Regulatory Framework of NASD, 31 questions; and Compliance with Financial Responsibility Rules, 17 questions. NASD Regulation has reduced the total number of multiple-choice questions to 95 from 100. The testing time for the Series 39 examination will remain at 2 hours.

### **Series 55**

The Series 55 examination is required, with certain limited exceptions, for registered representatives who are engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, with respect to transactions in equity, preferred or convertible debt securities effected otherwise than on a securities exchange. There is an exception from the requirement for the Series 55 examination for any person associated with a member whose

trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act of 1940 and that controls, is controlled by, or is under common control with the member.

NASD Regulation has reorganized the substantive sections of the Series 55 examination and has allocated questions to each section as follows: Nasdaq and Over-The-Counter Markets, 45 questions; Nasdaq Automated Execution and Trading Systems, 9 questions; Trade Reporting Requirements, 18 questions; and General Industry Standards, 28 questions. Consequently, NASD Regulation has increased the total number of multiple-choice questions on the Series 55 examination to 100 from 90. The Series 55 examination will remain a 3-hour examination and the passing score for the examination will continue to be 70%.

### Series 82

The Series 82 examination is a limited representative qualification examination for a person associated with a member whose activities in the investment banking and securities business are limited to effecting sales as part of a primary private securities offering pursuant to Section 3(b), 4(2) or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder. The Series 82

examination does not qualify a registered representative to effect sales of municipal or government securities, equity interests in or the debt of direct participation programs, or resales of or secondary market transactions in private placement securities.

NASD Regulation has reorganized the substantive sections of the Series 82 examination and has allocated questions to each section as follows: Characteristics of Corporate Securities, 13 questions; Regulation of The Market for Registered and Unregistered Securities, 45 questions; Analyzing Corporate Securities, 15 questions; and Handling Customer Accounts and Industry Regulations, 27 questions. The Series 82 examination will remain a 2 1/2-hour, 100 multiple-choice question examination with 70% as the passing score.

### Availability Of Study Outlines

The study outlines for the revised examination programs will be available in June 2002 from the NASD Regulation Qualifications Web Page at [http://www.nasdr.com/5200\\_explan.htm](http://www.nasdr.com/5200_explan.htm).

### Endnote

- 1 These changes were submitted to the SEC (for immediate effectiveness) on April 10, 2002 in rule filings SR-NASD-2002-52 (Series 22), SR-NASD-2002-48 (Series 27), SR-NASD-2002-47 (Series 28), SR-NASD-2002-50 (Series 39), SR-NASD-2002-51 (Series 55), and SR-NASD-2002-49 (Series 82).

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**INFORMATIONAL**

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**Certificates  
Of Deposit**

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**Member Obligations  
Regarding Long-Term  
Or Brokered Certificates  
Of Deposit****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
- Trading
- Operations
- Senior Management

**KEY TOPICS**

- Long-Term or Brokered Certificates of Deposit

**Executive Summary**

Members increasingly have been offering to customers a number of non-traditional certificate of deposit (CD) products. Typically, these products are long-term CDs offered by “deposit brokers” that carry a maturity date of more than one year, are callable at the discretion of the issuer, and trade in a secondary market. In certain circumstances, these products are securities. Irrespective of whether a particular CD product is a security, members must ensure that their registered representatives are properly trained and informed about the products, and that customers receive adequate disclosure of risk factors. Members are advised to carry CD products at fair market value on customer account statements.

**Questions/Further Information**

Members may direct questions about this *Notice* to Philip Shaikun, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., or Kosha Dalal, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8071.

**Background And Information**

Traditional CDs typically are issued by a bank directly to a customer, carry a fixed interest rate over a fixed duration of time, and are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$100,000 against insolvency by the depository institution. As such, they are generally considered by the investing public to be a simple and conservative product that carries few risks. Increasingly, members have been soliciting customers with more complex and risky products that are sometimes

referred to as “long-term” CDs.<sup>1</sup> These CDs generally have a maturity of several years – in some cases, 20 years – and sometimes carry a higher yield. But they may also have any number of additional features that affect the rate of return and degree of risk for purchasers: for example, they may have variable interest rates, may be callable by the issuing bank, sometimes trade in a secondary market, and are subject to transaction costs not typically associated with a traditional CD. Importantly, these long-term CDs carry market risk to their principal value, unlike traditional bank CDs.

These products are sometimes sold by “deposit brokers” that may subdivide a bank-issued “master CD” and alter the terms before selling the new CDs to customers. Deposit brokers also may provide certain expertise and skills, such as marketing, the ability to identify attractive CDs, and maintenance of a secondary market, that may be important to the return and risk of the product. Since federal deposit insurance runs between the customer and the *issuing* institution, these unconventional CD products may not provide federal deposit insurance coverage for the investor. In particular, depending on the product’s structure, the investor may only have an unsecured, uninsured claim against the deposit broker. Customers’ entitlement to federal deposit insurance may also be dependent upon the deposit broker keeping adequate records of ownership.

Depending on various factors, these CD products can, as a legal matter, be securities. Regardless of whether a product is a security, members must ensure that their registered representatives understand the products and adequately

disclose to customers the products' characteristics and risk factors. NASD Regulation advises members to account for these CD products at fair market value on customer account statements.

### **Risk Factors**

Members must disclose to prospective purchasers all material risks associated with long-term CD products and should distinguish those risks from those that apply to traditional CDs. NASD Regulation has brought disciplinary actions against firm and individuals involving disclosure of risks in connection with the sale of these CD products.

#### **1. Loss of Principal**

Traditional CDs are purchased directly from the issuing bank. They come in fixed denominations for a fixed duration and pay a set interest rate at regular intervals. The issuing bank usually will impose a penalty if a purchaser redeems the CD before maturity. The terms of the CD make explicit the penalty, typically a loss of interest earned and/or a modest loss of principal.

By comparison, a customer who purchases a long-term CD from a brokerage firm or deposit broker could risk a greater loss of principal if the CD is sold before maturity. This is because the deposit broker is generally just a custodian of the CD on behalf of the issuing bank. As such, a customer cannot simply redeem the CD early and pay an early withdrawal penalty. Instead, the deposit broker must sell the CD in the secondary market. Two primary market factors may cause a significant loss of principal in these circumstances. First, fluctuations in interest rates may affect

the value of the CD. Generally, as with other long-term fixed income investments, when interest rates rise, the market value of a long-term CD declines. In addition, changes in market interest rates will affect whether step-down or step-up features come into play, and whether a CD issuer will exercise its call option.<sup>2</sup> Second, there may be limited liquidity for these products due to the small size of the secondary market. Indeed, there is no guarantee of the continued existence of a secondary market for some of these products. When transactions do occur in the secondary market, sellers generally will incur a transaction cost, such as a commission to the broker/dealer.

Customers should also be informed whether the CDs are registered with the Depository Trust Corporation (DTC). Most CDs are registered with the DTC as "master CDs." The issuing bank, assisted by a member firm, registers the master CD with DTC and it is then assigned a CUSIP number. In general, the master CD is divided into units of \$1,000 for sale to customers. After registration, the CDs are eligible for DTC's book-entry delivery and custody services, which enable clearing and settlement of CD transactions in customer accounts in the same manner as securities held by DTC. The CDs may also be transferred to accounts at other member firms. CDs that are not registered with DTC have additional risks since customers must depend upon the CD brokers to maintain accurate documentation of transactions, record ownership of the CDs in their books and with the issuing banks, make interest payments and collect their principal when the CDs reach maturity. If a CD broker becomes insolvent or cannot make

good on its obligations for other reasons, customers may not be able to collect interest or principal payments and the CDs may be subjected to claims from the broker's creditors. The risk of owning non-DTC eligible CDs is significantly increased if the CD broker purchases CDs from banks and then fractionalizes them for sale to customers. These risks should be disclosed to customers.

For these reasons, long-term CDs generally are inappropriate products for customers who have a short-term investment horizon or who may need the principal before maturity. In any event, it is essential that customers be informed of the face maturity date of any CD, even where, as discussed below, the CD has call features that may effectively shorten that maturity period. All of these material risk factors, when present, must be disclosed to a prospective purchaser.

#### **2. Call features**

Long-term CDs often include a provision that allows the issuing bank to "call" the CD prior to maturity at a specified price. Members and their registered representatives must explain in detail any call features of the CD product, particularly where, as is often the case with long-term CDs, the call option is solely at the discretion of the issuer and the customer does not receive a corresponding option to "put" the CD back to the issuer at a set price. Purchasers should be told that under certain market conditions—*i.e.*, when falling interest rates would cause the CD to trade at a premium in the secondary market—the issuer likely will exercise its call option, as it can obtain deposits at lower interest rates.

Long-term CDs that contain step-down interest rates and call provisions are less favorable to investors than traditional CDs without those features. This fact also should be disclosed to investors.

### **3. Insurance**

Federal deposit insurance generally covers deposits of up to \$100,000 in the aggregate for each depositor in each bank, thrift, or credit union. Therefore, the purchaser of an insured CD is insured against insolvency of the *issuing* depository institution. In certain circumstances, deposit brokers may be considered the depositor for federal insurance purposes. Therefore, members that act as deposit brokers must keep adequate books and records to establish the chain of ownership of any brokered CD products. Failure to maintain such books and records may be a violation of SEC and NASD rules and regulations and can jeopardize the ability of a customer to establish entitlement to federal deposit insurance in the event of a depository institution's insolvency.

Also, federal deposit insurance does not protect purchasers against insolvency of deposit brokers. Consequently, if the long-term CD product being offered is dependent upon certain conduct by the deposit broker—*e.g.*, using expertise to locate attractive CDs, marketing, or maintaining a secondary trading market—purchasers incur additional risk with respect to the broker that must be disclosed. For example, if the deposit broker purchases the

CD from the issuing depository institution and then sells portions of the CD to investors, the investor may have *no* insurance coverage at all. In addition, customers should be informed that should they choose to sell a long-term CD in the secondary market prior to its maturity date, there is no insurance coverage for any principal losses incurred.

### **Training**

NASD Regulation expects registered persons to understand the characteristics and risk factors associated with all investment products, including unconventional CDs, before soliciting customers. NASD Regulation recommends that firms review their compliance programs, supervisory procedures, and continuing education offerings to ensure that registered persons are properly trained and educated about these products. Audits, compliance meetings, and continuing education programs should include a discussion of these products.

### **Account Statements**

NASD Regulation advises firms to price CDs at fair market value on customer account statements. NASD Regulation has observed that some members continue to price long-term CDs at par value on account statements. While NASD Regulation recognizes that pricing data on these instruments sometimes can be difficult to obtain, members should diligently endeavor to accurately price the CDs on customer account statements. Carrying CDs at par

could be materially misleading if values have significantly eroded. Members may include both par value and market value on account statements if an explanation of each is also provided.

There is no single method to determine the market value of long-term CDs. Members can obtain estimated values from several sources, including commercial pricing services. Some members rely on their fixed-income trading desks to determine a market value, while others have developed computerized valuation models to ascertain a theoretical market price. NASD Regulation recommends that members disclose to customers that the values of CDs on account statements are estimated and that their actual value may differ if customers elect to sell their CDs in the secondary market.

In the event that a member cannot obtain a reasonable market valuation for CDs in customer accounts, NASD Regulation recommends that the member segregate those CDs on the account statement and include a disclosure on the account statement covering the following points:

- the secondary market for CDs is generally illiquid;
- an accurate market value could not be determined by the member firm;
- the actual value of the CDs may be different from their purchase price; and
- a significant loss of principal could result if CDs are sold prior to maturity.

### Endnotes

- 1 There also are available other non-traditional CDs, including those with returns that are linked to market indices or benchmark interest rates, such as the S&P 500 or LIBOR.
- 2 For example, if market interest rates decrease, the issuer typically exercises a call option, if available, and refunds the principal. Thus, the customer no longer obtains the higher rate of interest and may have to reinvest the principal at the now lower available interest rate. On the other hand, if the market interest rates increase, the customer will bear the risk of loss in selling the instrument in the secondary market. In a step-down CD, the interest rate will be lowered at stated intervals if market interest rates have fallen. If market interest rates rise, the customer again bears the risk of loss of principal value.

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## INFORMATIONAL

# OATS

## NASD Regulation Provides Guidance On Order Audit Trail System 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.*

- Internal Audit
- Legal and Compliance
- Operations
- Senior Management

## KEY TOPICS

- Order Audit Trail System

## Executive Summary

NASD Regulation, Inc. (NASDR) is issuing this *Notice to Members* as part of its continuing efforts to provide members with guidance on requirements relating to the Order Audit Trail System (OATS), NASD Rules 6950 through 6957 (the OATS Rules). In particular, NASDR is reminding members of their supervisory responsibilities under the OATS Rules and NASD Rule 3010, which requires members to establish a supervisory system and develop and maintain written supervisory procedures.

Questions concerning this *Notice* should be directed to NASDR's Market Regulation Department at (240) 386-5126 or NASDR's Office of General Counsel at (202) 728-8071.

## Background

Members have a variety of ways in which they may comply with the OATS Rules. For example, a member may develop or purchase a proprietary system for OATS reporting; it may enter into a Reporting Agent agreement with another member or other party to report on its behalf under Rule 6955(c); it may manually report OATS information through NASDR's Web interface; or it may use any combination of these and other methods. Under all of these scenarios, the member receiving the order for Nasdaq® securities is responsible for complying with the OATS Rules.

Through its review and examination process, NASDR has found numerous instances where members have not complied with the OATS Rules as a result of technological problems with automated systems or errors on the part of Reporting Agents.

Although members may consider such OATS reporting problems outside their immediate control, the member remains ultimately responsible for OATS compliance and cannot contract or otherwise shift away this responsibility. In such instances, the member's supervisory system becomes crucial to ensure that the OATS requirements are being met. Thus, in accordance with Rule 3010, all members must establish and maintain a supervisory system that is designed to ensure compliance with the OATS Rules.<sup>1</sup> A well designed and implemented supervisory system is particularly important when a member is using a Reporting Agent to comply with the requirements of the OATS Rules to ensure that the third party is conducting OATS activities as agreed upon and in compliance with the rules.

Given the different business models of members and that members can achieve compliance with NASD Rule 3010 through a variety of methods and systems, this *Notice* only addresses some of the general elements that members should consider in assessing the adequacy of their supervisory systems and written supervisory procedures regarding the OATS Rules. NASDR is not mandating any particular type or method of supervision, nor is it intending to provide a checklist of steps that if followed would constitute an adequate supervisory system. NASDR will continue to examine members' supervisory systems and written supervisory procedures and, where appropriate, initiate disciplinary action for failure to adopt, implement, and enforce appropriate supervisory procedures.

**Considerations For OATS Supervisory Systems And Procedures**

Provided below are recommended steps that members should consider incorporating into their OATS supervisory systems and procedures. Members that use a Reporting Agent to fulfill their reporting obligations also should review their Reporting Agent agreements to specify which, if any, supervisory activities will be performed by the Reporting Agent on behalf of the member. Members remain ultimately responsible for all supervisory activities, and therefore, must periodically review and assess the effectiveness of the Reporting Agent's activities.

- Daily clock synchronization to ensure that all business clocks (both computerized and mechanical stamping devices) are synchronized to within 3 seconds of the National Institute of Standards and Technology's atomic clock
- Daily review of the OATS Web Site to:
  1. Ensure all Firm Order Report (FORE) files are accepted<sup>2</sup>
  2. Identify and repair rejected Reportable Order Events (ROEs), ensuring repaired ROEs are resubmitted with the appropriate resubmit flag<sup>3</sup>
  3. Identify any ACT Matching deficiencies
  4. Identify Late Reports
  5. Receive communications from NASDR regarding OATS availability, announcements, software releases, etc.<sup>4</sup>

6. Update and maintain firm contact information
- Periodic reviews of accepted OATS data to ensure<sup>5</sup>:
    1. All reportable events are submitted to OATS
    2. Data fields contain accurate information
    3. ROEs are submitted in the correct time sequence (e.g., executions are not time-stamped prior to the receipt of a new order)
    4. Special Handling Codes are submitted correctly
    5. Account Type Codes are populated correctly
    6. Received Method Codes are populated correctly
    7. Routed Order IDs are passed properly to the Routing Firm from the Receiving Firm
    8. Data is properly reported under the member's MPID

**Common OATS Supervisory Deficiencies Noted During Reviews**

To assist members in developing adequate supervisory systems and procedures, NASDR staff has compiled below examples of supervisory deficiencies that are found most frequently during the course of OATS compliance reviews. Merely avoiding these practices in no way ensures that a member's supervisory systems or written procedures will be adequate. Avoiding these particular practices, however, may assist members in developing their supervisory systems and procedures.

- The written supervisory procedures merely recite the OATS Rules
- Failure to designate responsible supervisory personnel in the procedures
- Failure to describe the review process adequately
- Failure to document or enforce reviews
- Failure to specify the frequency of reviews
- Failure to monitor adequately the performance of Reporting Agents to which the member has delegated its OATS reporting responsibilities
- Failure to document supervisory systems in the written supervisory procedures
- Failure to update procedures within a reasonable period to reflect new regulatory requirements or procedures
- Failure to preserve and maintain written supervisory procedures that were in effect during past time periods in accordance with SEC Rules 17a-3 and 17a-4

Many of the topics mentioned in this *Notice* are discussed in detail in documents available on the NASDR Web Site. Members can access the documents by going to [www.nasdr.com](http://www.nasdr.com) and then clicking on OATS Information under Regulation Systems or by contacting the OATS Help Desk at 1-800-321-NASD.

### Endnotes

- 1 In addition, NASD Rule 3010(b) requires each member to establish, maintain, and enforce written supervisory procedures that are reasonably designed to achieve compliance with applicable NASD Rules. See also *NASD Notice to Members 99-45*, NASD Provides Guidance On Supervisory Responsibilities (June 1999).
- 2 Each member should be certain that the number of New Order, Route, and Execution Reports is consistent with the member's expectations.
- 3 Each member should review closely any Reporting Agent agreements into which it has entered to establish whether the member or its Reporting Agent is responsible for the repair and resubmission of any rejected data.
- 4 To ensure it receives all pertinent OATS announcements and other relevant information in a timely manner, each member must add its e-mail address to the Firm Administration page on the OATS Web interface. Although NASDR generally will communicate pertinent OATS information to the membership via e-mail, all announcements and other important information will be made available on the OATS Web Site.
- 5 If a Reporting Agent is submitting data on a member's behalf, it is the member's responsibility periodically to obtain from its Reporting Agent a complete set of OATS data submitted on its behalf in order to perform the above outlined review or to validate that its Reporting Agent is monitoring the accuracy of data submitted on its behalf.

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## INFORMATIONAL

### FIPS Changes

Fixed Income  
Pricing System<sup>SM</sup>  
Additions, Changes,  
And Deletions As Of  
March 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 March 22, 2002, the following bonds were added to the Fixed Income Pricing System (FIPS<sup>SM</sup>).

Symbol	Name	Coupon	Maturity
ARGI.GE	American Restaurant Group Inc.	11.500	11/01/06
ARKL.GA	Armkel LLC/Armkel Fin	9.500	08/15/09
AV.GA	Avaya Inc.	11.125	04/01/09
CQB.GJ	Chiquita Brands International	10.560	03/15/09
CAIK.GB	Collins & Aikman Floor Cover Inc.	9.750	02/15/10
DTYF.GA	Duty Free International Inc.	7.000	01/15/04
FST.GE	Forest Oil Corp.	8.000	12/15/11
HGR.GB	Hanger Orthopedic Group Inc.	10.375	02/15/09
NWRK.GA	Nortel Networks LTD	6.125	02/15/06
PLPH.GA	PlastiPak Holdings Inc.	10.750	09/01/11
RFSP.GA	RFS Partnership/2002	9.750	03/01/12
SRP.GA	Sierra Pacific Resources	8.750	05/15/05
SPF.GF	Standard Pacific Corp.	9.250	04/15/12
SFY.GB	Swift Energy Co.	9.375	05/01/12
TRRA.GA	Terra Capital Inc.	12.875	10/15/08
VGSY.GA	Vanguard Health Systems Inc.	9.750	08/01/11
WRC.GC	Westport Resources Corp.	8.250	11/01/11
XTO.GC	XTO Energy Inc.	7.500	04/15/12

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

Symbol	Name	Coupon	Maturity
UHAL.GA	Amerco	7.200	04/01/02
ESRX.GA	Express Scripts Inc.	9.625	06/15/09
JEFF.GA	JeffBanks Inc.	8.750	04/01/06
KMP.GA	Kinder Morgan Energy Partners LP	0.000	03/22/02
MCLD.GA	McLeodUSA Inc.	10.500	03/01/07
MCLD.GB	McLeodUSA Inc.	9.250	07/15/07
MCLD.GC	McLeodUSA Inc.	8.375	03/15/08
MCLD.GD	McLeodUSA Inc.	9.500	11/01/08
MCLD.GE	McLeodUSA Inc.	8.125	02/15/09
MCLD.GF	McLeodUSA Inc.	12.000	07/15/08
MCLD.GG	McLeodUSA Inc.	11.500	05/01/09
MCLD.GH	McLeodUSA Inc.	11.375	01/01/09
MIL.GA	Millipore Corp.	7.200	04/01/02
NEM.GA	Newmont Mining Corp.	8.625	04/01/02
NI.GA	Northern Ind Pub Service	7.500	04/01/02
JCP.GA	Penney (JC)	7.250	04/01/02
SLYM.GC	Sealy Mattress Co.	9.875	12/15/07
STO.GL	Stone Container Corp.	11.875	08/01/16

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**NASD Notice to Members 02-30**

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

<u>New Symbol</u>	<u>Old Symbol</u>	<u>New Name/Old Name</u>	<u>Coupon</u>	<u>Maturity</u>
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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.

# Disciplinary Actions

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## Disciplinary Actions Reported For May

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

### **Firm Expelled, Individual Sanctioned**

**CapBay Financial Services (CRD #32395, Roseville, California) and Stephen Charles Kircher (CRD #823868, Registered Principal, Loomis, California)** submitted a Letter of Acceptance, Waiver, and Consent in which they were fined \$100,000, jointly and severally. The firm was expelled from NASD membership and Kircher was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that, in connection with the purchase and sale of securities, the firm, acting through Kircher, charged excessive markups based on its contemporaneous cost in principal transactions with its retail customers resulting in gross dollar proceeds to the firm. The NASD also found that the firm, acting through Kircher, effected transactions for customer accounts in the securities of a penny stock without providing customers with the disclosures required under section 15g of the Securities Exchange Act of 1934. The findings also stated that the firm and Kircher failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve

compliance with applicable securities laws, regulations, and NASD rules relating to penny stock transaction disclosure requirements and markup requirements in a dominated and controlled market. **(NASD Case #CMS020043)**

### **Firm Fined, Individual Sanctioned**

**Kunz & Cline Investment Management, Inc. (CRD #37196, Salt Lake City, Utah) and Kevin Dee Kunz (CED #1274540, Registered Representative, Fruit Heights, Utah)** were censured and fined \$20,000, jointly and severally, and Kunz was fined \$5,000, individually. In addition, Kunz was suspended from association with any NASD member in any capacity for 30 days and in a principal capacity for one year, such suspensions to run concurrently. Moreover, Kunz must requalify in a representative capacity within 90 days of the conclusion of his suspension as a representative or cease to function in such capacity until he requalifies, and to requalify in a principal capacity before functioning in such capacity after the conclusion of his principal suspension. Furthermore, the firm was suspended from participation in any public or private offering of a security in the capacities of underwriter, primary placement, or sales agent until such time as it retains an independent consultant to review the adequacy and completeness of the firm's operational, compliance, and supervisory procedures pertaining to participation in such offerings in such capacities, and the firm demonstrates to the NASD that it has implemented any recommendations of the consultant. The Securities and Exchange Commission (SEC) imposed the sanction following

appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that the firm, acting through Kunz, sold securities pursuant to private placement memoranda containing material misrepresentations and omissions, and sold securities that were neither registered with the SEC nor exempt from registration, and Kunz compensated an unregistered person in connection with the sale of securities.

The firm and Kunz have appealed this decision to the Court of Appeals, and the sanctions are not in effect pending consideration of the appeal. **(NASD Case #C3A960029)**

#### **Firm And Individual Fined**

**Alpine Securities Corporation (CRD #14952, Salt Lake City, Utah) and Virgil Mark Peterson (CRD #1094640, Registered Principal, Alpine, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally, and Peterson was fined \$10,000, individually. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Peterson, failed to establish adequate written supervisory procedures reasonably designed to detect and prevent the sale of unregistered securities by associated persons. The NASD also found that Peterson failed to take the requisite supervisory steps to ensure that a former registered representative's sales of stock complied with Section 5 of the Securities Act of 1933, or that the registered representative was validly relying on an exemption from registration thereunder. **(NASD Case #C3A020017)**

#### **Firms Fined**

**Adolph Komorsky Hoffman & Associates, Ltd. (CRD #30838, Tarrytown, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it paid compensation to individuals who should have been registered as foreign associates. The findings also stated that the firm reallocated to customer accounts shares of a stock that the firm had bought in error and failed to provide the customers with the best execution. The NASD also found that the firm failed to disclose to customers on confirmations that it entered into consulting agreements with the issuer of four securities and received compensation from the issuer. **(NASD Case #C11020016)**

**Broadview International, LLC (CRD #27265, Fort Lee, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$7,000, jointly and severally, and fined \$5,000, individually. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, acting through a registered representative, it permitted individuals to perform duties as registered persons while their registration status with the NASD was inactive due to their failure to timely complete the regulatory element of the NASD's continuing education rule. **(NASD Case #C9B020026)**

**Donald & Co. Securities Inc. (CRD #7776, Tinton Falls, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which it was censured and fined

\$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to properly include on Automated Confirmation Transaction Service<sup>SM</sup> (ACT<sup>SM</sup>) reports that the firm was acting in an agency capacity and failed to promptly execute customer limit orders. The findings stated that the firm reported proprietary and customer short sale transactions through ACT without a short sale modifier, and long sale transactions were reported as short. The NASD also found that the firm executed proprietary short sale transactions in Nasdaq National Market<sup>®</sup> (NNM<sup>®</sup>) securities, at or below the current inside bid, when the current inside bid was below the preceding inside bid in the security. In addition, the findings stated that the firm executed proprietary and customer short sale transactions and failed to maintain a written record of the affirmative determination made for such orders, and failed to prepare and maintain memoranda of securities transaction orders. Furthermore, the NASD determined that the firm failed to disclose to the customers certain required information in connection with transactions where the firm acted as principal. The NASD also found that the firm failed to establish, maintain, and enforce written procedures to supervise all aspects of the firm's activities, particularly its registration of representatives as Equity traders, locked and crossed markets procedures, and compliance with the NASD's Order Audit Trail System<sup>SM</sup> (OATS<sup>SM</sup>). **(NASD Case #C05020013)**

**Morgan Stanley & Company, Inc. (CRD #8209, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent

in which the firm was censured and fined \$22,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to display 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 in 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 change in relation to the size associated with the firm's bid or offer in each such security. The NASD also found that the firm executed short sale transactions and failed to report each of these transactions to ACT with a short sale modifier. **(NASD Case #CMS020053)**

**Morgan Stanley DW, Inc. (CRD #7556, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$25,500, and required to revise its written supervisory procedures concerning the reporting of short interest and options positions. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to file reports with the NASD of positions of standardized option contracts and failed to report its short interest positions to the NASD for securities. The findings stated that the firm submitted short interest position reports that included inaccurate short interest dates. The NASD also determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning the reporting of short

interest and options positions to the NASD. **(NASD Case #CMS020050)**

**Salomon Smith Barney, Inc. (CRD #7059, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$62,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, without making reasonable efforts to avoid a locked or crossed market by executing transactions with all market makers whose quotations would be locked or crossed, it entered a bid or ask quotation in the Nasdaq Stock Market that caused a locked and crossed market condition to occur in each instance. The NASD also found that the firm caused a locked or crossed market condition prior to the market opening by entering a bid (ask) quotation that locked or crossed another market maker's quotations without immediately thereafter sending through SelectNet<sup>®</sup> to the market maker whose quote it locked or crossed a Trade-or-Move Message that was at the receiving market maker's quoted price and whose aggregate size was at least 5,000 shares. The findings stated that the firm was a party to a locked or crossed market condition prior to the market opening and received a trade-or-move message in each instance through SelectNet and failed to fill the incoming message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. In addition, the NASD determined that the firm executed short sale transactions and failed to report these transactions to ACT with the correct short sale modifier, and executed long sale transac-

tions and incorrectly reported each of these transactions to ACT with a short sale modifier. **(NASD Case #CMS020040)**

### **Individuals Barred Or Suspended**

**Glen Thomas Adams, Jr. (CRD #2480113, Registered Representative, Collegetown, Pennsylvania)** 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 Adams reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Adams consented to the described sanctions and to the entry of findings that he signed an insurance policy delivery receipt with the purported signature of a public customer and submitted such document to an insurance company without the authorization of the customer and without the policy being delivered to the customer. The findings also stated that Adams created a purported copy of a blank voided personal check of a public customer and submitted it to the insurance company for the purpose of establishing an automatic bank draft program to pay the premiums on the customer's insurance policy. Such document was false in that it was a copy of a check from Adams' own bank account that had been graphically altered to insert the customer's name and address.

Adams' suspension began April 15, 2002, and will conclude at the close of business October 14, 2002. **(NASD Case #C9A020012)**

**Shika Emmanuel Ademu-John (CRD #4214226, Registered Representative, Franklin Park, New Jersey)** 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 Ademu-John reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ademu-John consented to the described sanctions and to the entry of finding that he willfully failed to timely amend his Uniform Application for Securities Industry Registration or Transfer (Form U-4) to disclose material facts.

Ademu-John's suspension began May 6, 2002, and will conclude at the close of business November 5, 2002. **(NASD Case #C9B020023)**

**Paul O. Amosun (CRD #4390075, Associated Person, Lewisville, 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 Amosun reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Amosun consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on a Form U-4.

Amosun's suspension began April 15, 2002, and will conclude at the close of business October 14, 2002. **(NASD Case #C05020008)**

**James Lee Bassa, Jr. (CRD #2913362, Registered Representative, Pompano 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, Bassa consented to the described sanction and to the entry of findings that he caused four checks to be issued against a client account without the client's authorization, forged the customer's endorsement on two of them, and deposited the checks into a bank account under his control, thereby converting \$43,300 from a client account to his own use and benefit. The findings also stated that Bassa provided the customer with altered account statements misrepresenting the activity in the account in an effort to conceal the conversion. **(NASD Case #C07020017)**

**Joseph Michael Beninato, Sr. (CRD #2309007, Registered Representative, Edison, New Jersey)** 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 two months. The fine must be paid before Beninato reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Beninato consented to the described sanctions and to the entry of finding that he engaged in private securities transactions without prior written notice to, and approval from, his member firms in that he effected promissory note transactions.

Beninato's suspension began April 15, 2002, and will conclude at the close of business June 14, 2002. **(NASD Case #C9B020022)**

**John Austin Bennett (CRD #2283625, Registered Representative, Seffner, 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, Bennett consented to the described sanction and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, and receiving authorization from, his member firm. The findings also stated that Bennett utilized sales communications that violated various NASD advertising and communications standards. In addition, the NASD found that Bennett participated in an undisclosed outside business activity. **(NASD Case #C07020016)**

**Stephen Lawrence Bialon (CRD #1212221, Registered Representative, Marlton, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 business days, and ordered to disgorge \$5,400 in commissions in partial restitution to public customers. Without admitting or denying the allegations, Bialon consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Bialon's suspension began May 6, 2002, and will conclude at the close of business June 17, 2002. **(NASD Case #C9A020014)**

**John Vincent Bianchini (CRD #1581616, Registered Representative, Fayetteville, New York)** 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 10 business days. Without admitting or denying the allegations, Bianchini consented to the described sanctions and to the entry of findings that he purchased, or caused to be purchased, without the prior knowledge, consent, or authorization of a public customer, additional shares of stock in the customer's account.

Bianchini's suspension began April 15, 2002, and concluded at the close of business April 26, 2002. **(NASD Case #C11020014)**

**William Bernard Cain (CRD #1393538, Registered Representative, Emporia, Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 90 days. The fine must be paid before Cain reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cain consented to the described sanctions and to the entry of findings that he willfully failed to amend promptly his Form U-4 to disclose a material fact.

Cain's suspension began April 15, 2002, and will conclude on July 13, 2002. **(NASD Case #C07020020)**

**Sheila Marie Cali (CRD #3082147, Associated Person, Columbia, South Carolina)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Cali willfully converted \$1,698.15 received from public customers to pay insurance premiums. **(NASD Case #C07010075)**

**Vladimir Jaime Carvallo (CRD #2184457, Registered Principal, Melville, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Carvallo consented to the described sanctions and to the entry of findings that he failed to respond timely to NASD requests for information and documents regarding customer complaints.

Carvallo's suspension began April 22, 2002, and will conclude at the close of business May 21, 2002. **(NASD Case #C10020032)**

**Nicholas Joseph Cianciaruso (CRD #2574972, Registered Representative, Staten Island, New York)** submitted an Offer of Settlement in which he was fined \$5,600, which includes disgorgement of commissions received of \$600, and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Cianciaruso reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Cianciaruso consented to the described sanctions and to the entry of findings that he falsely represented, or allowed to be represented, on a member firm's brokerage records, that he was the registered representative for two of the firm's customers when, in fact, the registered representative for both accounts was another firm's registered representative. The NASD also found that, despite the fact that the other registered representative was the representative for the accounts, Cianciaruso signed his name to customer

agreement forms and falsely identified himself as the "Account Executive" for the accounts. The findings also stated that there were several securities transactions effected in the accounts and the firm paid commissions to Cianciaruso based on these transactions. The findings also included that Cianciaruso never had any communications with the customers in connection with any of the transactions but, despite this, all of the trade confirmations falsely identified him as a registered representative for the transactions; he was aware that the trade confirmations falsely identified him as the registered representative who effected the trade, but he took no steps to ensure that the firm's records accurately identified the correct registered representative for the accounts.

Cianciaruso's suspension began May 6, 2002, and will conclude at the close of business November 5, 2002. **(NASD Case #C9B010103)**

**Stanley Henry Cohen (CRD #50189, Registered Representative, Jericho, New York)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Cohen consented to the described sanction and to the entry of findings that he failed to respond truthfully, accurately, non-deceptively, and/or completely during an NASD on-the-record interview. The findings also stated that Cohen prepared a statement incorporated into an MC-400 application submitted by his member firm that contained false, inaccurate, misleading, and incomplete statements regarding his job functions and/or role during his association with his member firm. In addition, the findings stated

that Cohen appeared before the NASD's Statutory Disqualification Committee and failed to provide truthful, accurate, non-deceptive, and/or complete information. Furthermore, the NASD found that Cohen, who was subject to statutory disqualification, continued to be associated with a member firm without the approval of the SEC and/or the NASD and in violation of an SEC order, and engaged in activities requiring registration as a registered representative even though he was not registered as such with the NASD. The NASD also determined that Cohen failed to update his Form U-4 to reflect the fact that he was the subject of an NASD investigation and/or that he might be named in an NASD disciplinary action. **(NASD Case #C10990158)**

**Charles Howard Collins (CRD #51126, Registered Representative, Columbus, Ohio)** 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, Collins consented to the described sanction and to the entry of findings that he participated in outside business activity, for compensation, and failed to provide his member firm with prompt written notice of his activities. **(NASD Case #C8B020006)**

**Jack Colombo (CRD #2098181, Registered Representative, Miami Lakes, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Colombo reassociates with any

NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Colombo consented to the described sanctions and to the entry of findings that he engaged in outside business activities and failed to provide prompt written notice of his employment with another firm to his member firm.

Colombo's suspension began April 1, 2002, and concluded at the close of business April 30, 2002. **(NASD Case #C07020014)**

**Charles Farrell Cubellis (CRD #58254, Registered Representative, Citrus Heights, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was suspended from association with any NASD member in any capacity for 10 business days and suspended from recommending the purchase of any penny stock to public customers for one year. In light of the financial status of Cubellis, no monetary sanctions have been imposed. Without admitting or denying the allegations, Cubellis consented to the described sanctions and to the entry of findings that he effected transactions for public customer accounts in a common stock, and received an undisclosed sales credit or commission of 33 percent of the customer purchase price. The NASD determined that the prices charged to the customers were excessive and unfair. The findings also stated that Cubellis effected penny stock transactions for public customers without providing the customers with the required disclosures.

Cubellis' suspension in any capacity began April 15, 2002, and concluded at the close of business

April 26, 2002, and his suspension for recommending penny stocks began April 15, 2002, and will conclude at the close of business April 14, 2003. **(NASD Case #CMS020045)**

**Dennis Michael Dinsmore (CRD #1956277, Registered Representative, Basking Ridge, New Jersey)** 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 business days. The fine must be paid before Dinsmore reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dinsmore consented to the described sanctions and to the entry of finding that he misrepresented his educational background on several documents that he submitted to an NASD member.

Dinsmore's suspension began April 1, 2002, and will conclude at the close of business May 10, 2002. **(NASD Case #C9B020021)**

**Steven Vincent Domenico (CRD #1643791, Registered Representative, Alpharetta, Georgia)** 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 business days. Without admitting or denying the allegations, Domenico consented to the described sanctions and to the entry of findings that he caused the telephone numbers of public customers in a member firm's computer system to be altered without authorization so that the numbers in the computer were incorrect.

Domenico's suspension began May 6, 2002, and will conclude at the close of business June 17, 2002. **(NASD Case #C07020019)**

**James Henry Drowne (CRD #2132586, Registered Representative, North Falmouth, Massachusetts)** submitted a Letter of Acceptance, Waiver, and Consent in which he was ordered to pay \$96,400, plus interest, in restitution to public customers, and barred from association with any NASD member in any capacity. The restitution must be paid before Drowne reassociates with any NASD member or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Drowne consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. The NASD also found that, while registered with a member firm, Drowne engaged in outside business activities that he failed to disclose to his member firm. **(NASD Case #C11020013)**

**Reagan Taylor Dugas (CRD #3077624, Registered Representative, Orange, 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 60 days. The fine must be paid before Dugas reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Dugas consented to the described sanctions and to the entry of findings that he participated in a private securities transaction without providing prior notice, written or otherwise, to his member firm

describing the proposed transaction, his role therein, and whether he had received, or might receive, selling compensation in connection with the transaction.

Dugas' suspension began May 6, 2002, and will conclude July 4, 2002. **(NASD Case #C06010040)**

**Alfred Vincent Ferraro, Jr. (CRD #1121059, Registered Representative, Wayne, New Jersey)** submitted an Offer of Settlement in which he was fined \$9,670, which includes disgorgement of commissions received of \$2,172, and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Ferraro reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ferraro consented to the described sanctions and to the entry of findings that he signed the name of his branch manager on customers' new account applications for investments in variable contracts and a mutual fund without the manager's knowledge or consent.

Ferraro's suspension began May 6, 2002, and will conclude at the close of business May 5, 2003. **(NASD Case #C9B010073)**

**Bradley Albert Garmhausen (CRD #2333003, Registered Representative, Traverse City, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,170, which includes the disgorgement of commissions received of \$1,170, and suspended from association with any NASD member in any capacity for one month. The fine must be paid before Garmhausen reassociates with any NASD member following

the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Garmhausen consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, and failed to give written notice to, and receive written approval from, his member firm prior to engaging in such activities.

Garmhausen's suspension began May 6, 2002, and will conclude at the close of business June 5, 2002. **(NASD Case #C8A020016)**

**Annabelle Garvey (CRD #3271562, Registered Representative, Merced, California)** 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, Garvey consented to the described sanction and to the entry of findings that she misappropriated \$5,000 from the bank account of a public customer and converted the funds to her own use and benefit. **(NASD Case #C01020002)**

**John Roger Giddens (CRD #2863912, Registered Representative, Macon, Georgia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$3,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Giddens reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Giddens consented to the described sanctions and to the entry of findings that he engaged in private

securities transactions without providing prior written notice to, or receiving authorization from, his member firm.

Giddens' suspension began April 1, 2002, and will conclude at the close of business September 30, 2002. **(NASD Case #C07020013)**

**Adam David Gitstein (CRD #1884208, Registered Representative, New York, New York) and Ray Vahab (CRD #1041775, Registered Principal, New York, New York)** were barred from association with any NASD member in any capacity. The sanctions were based on findings that Gitstein engaged in excessive and unsuitable trading in the account of a public customer and failed to respond truthfully during an NASD on-the-record interview. The findings also stated that Vahab failed to properly supervise Gitstein and failed to prevent, discover, or correct Gitstein's excessive trading. The NASD also found that Vahab failed to respond to NASD requests for information. Furthermore, the NASD found that Gitstein fabricated order tickets and Vahab provided the NASD with photocopies of the fabricated order tickets, representing that they were photocopies of the original order tickets completed by Gitstein at the time of the transactions. **(NASD Case #C10010105)**

**Maurizio Virginio Grammatica (CRD #1845020, Registered Representative, Sarasota, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Grammatica reassociates with any NASD member following the suspension or before requesting relief from any statutory

disqualification. Without admitting or denying the allegations, Grammatica consented to the described sanctions and to the entry of findings that he falsified customer new account forms for the purpose of facilitating trading by an unregistered representative, thereby assisting the individual in committing registration violations.

Grammatica's suspension began April 1, 2002, and will conclude June 30, 2002. **(NASD Case #C07020007)**

**Kevin Edward Greene (CRD #1804494, Registered Representative, Orlando, Florida)** 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 10 business days. Without admitting or denying the allegations, Greene consented to the described sanctions and to the entry of findings that he exercised discretionary power in the account of a public customer without obtaining prior written authorization from the customer and without having the account accepted as discretionary by his member firm.

Greene's suspension began April 1, 2002, and concluded at the close of business April 12, 2002. **(NASD Case #C07020011)**

**James Stanley Halligan (CRD #2284780, Registered Representative, Middlefield, Connecticut)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,000, required to disgorge commissions in the amount of \$3,000, and suspended from association with any NASD member in any capacity for six months. The fine and disgorgement amount must be paid before Halligan reassociates with any NASD member following the suspension or before request-

ing relief from any statutory disqualification. Without admitting or denying the allegations, Halligan consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. The NASD also found that Halligan engaged in outside business activities without prior written notice to his member firm.

Halligan's suspension began April 15, 2002, and will conclude at the close of business October 14, 2002. **(NASD Case #C11020015)**

**Michael James Harmeyer (CRD #1985323, Registered Representative, Boynton 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, Harmeyer consented to the described sanction and to the entry of findings that he received \$9,500 in cash from a public customer for investment purposes, commingled the customer's funds with his own in his personal bank and securities accounts, and executed options transactions in his securities account on behalf of a public customer, thereby making improper use of the customer's funds. **(NASD Case #C05020012)**

**Roderick Alexander Harmon, II (CRD #1708990, Registered Representative, Scotch Plains, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was ordered to pay \$682, plus interest, in restitution to a public customer and barred from association with any NASD member in any capacity. The restitution must be paid before Harmon reassociates with any NASD member or before request-

ing relief from any statutory disqualification. Without admitting or denying the allegations, Harmon consented to the described sanctions and to the entry of findings that he accepted life insurance premium payments from a public customer and used those funds for his own use and benefit without the customer's knowledge, authorization, and consent. The NASD also found that Harmon engaged in outside business activities without prior written notice to, or approval from, his member firm. **(NASD Case #C9B020019)**

**Keith Thomas Heinze (CRD #1342926, Registered Representative, Big Bend, Wisconsin)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 18 months. Heinze must provide satisfactory proof of payment that commissions in the amount of \$63,936 have been disgorged and returned to the issuer. Without admitting or denying the allegations, Heinze consented to the described sanctions and to the entry of findings that he failed and neglected to provide prior written notice to, and obtain prior written authorization from, his member firm to engage in private securities transactions, in which he offered and sold securities for compensation in the form of promissory notes.

Heinze's suspension began May 6, 2002, and will conclude at the close of business November 5, 2003. **(NASD Case #C8A010066)**

**Wesley C. Hendrickson (CRD #2989470, Registered Representative, Fresno, California)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and

required to disgorge \$191,625, plus interest, in commissions earned. Satisfactory proof of payment of disgorgement, plus interest, must be made before Hendrickson reassociates with any NASD member. Without admitting or denying the allegations, Hendrickson consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to, and receiving written approval from, his member firms. The findings also stated that Hendrickson, in connection with an NASD request for information, provided the NASD with a document that contained incomplete and inaccurate information. **(NASD Case #C01010008)**

**Alan Michael Hovey (CRD #2758420, Registered Representative, Cathedral City, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hovey consented to the described sanction and to the entry of findings that he executed, or caused to be executed, an unauthorized mutual fund transaction in a public customer's account, and that, in order to effect the unauthorized transaction, he forged the customer's signature on a Universal Switch Letter without the customer's knowledge, authorization, or consent. **(NASD Case #C02020011)**

**Stephen Alexander Hunter, II (CRD #2642890, Registered Representative, Roseville, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000, suspended from association with any NASD member in any capacity for 12 business days, suspended

from recommending the purchase of any penny stock to public customers for one year, and required to take and pass the series 24 general securities principal exam within six months. Failure to take and pass the Series 24 exam shall result in Hunter's suspension from association with any NASD member in any capacity until he passes the exam. Without admitting or denying the allegations, Hunter consented to the described sanctions and to the entry of findings that he effected transactions for customer accounts and received an undisclosed sales credit or commission of 33 percent of the customer purchase price, therefore charging the customers prices that were excessive and unfair. The findings also stated that Hunter effected transactions for customer accounts in a penny stock security without providing customers with the disclosures required under Section 15g of the Exchange Act.

Hunter's suspension in any capacity began April 1, 2002, and concluded at the close of business April 16, 2002. His suspension for recommending penny stocks began April 1, 2002, and will conclude at the close of business March 31, 2003. **(NASD Case #CMS020044)**

**Karl Francis Jesaitis, Jr. (CRD #2067945, Registered Representative, New York, New York)** submitted an Offer of Settlement in which he was fined \$30,000 and suspended from association with any NASD member in any capacity for two years. The fine must be paid before Jesaitis reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Jesaitis consented to the described

sanctions and to the entry of findings that he exercised discretionary authority in the account of a public customer without obtaining the customer's prior written authorization and his member firm's written acceptance of the account as discretionary. The findings also stated that Jesaitis settled a public customer's complaint without informing and obtaining authorization from his member firm. In addition, Jesaitis provided the NASD with false, deceptive, inaccurate, and/or incomplete testimony during an on-the-record interview.

Jesaitis' suspension began May 6, 2002, and will conclude at the close of business May 5, 2004. **(NASD Case #C10010137)**

**Sean Kathenes (CRD #2278583, Registered Representative, Livingston, 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 six months. The fine must be paid before Kathenes reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kathenes consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in a public customer's account without the customer's prior knowledge, authorization, or consent.

Kathenes' suspension began May 6, 2002, and will conclude at the close of business November 5, 2002. **(NASD Case #C9B010108)**

**Barry Alan Kaufman (CRD #2774898, Registered Representative, Boca Raton, Florida)** 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 10 business days. The fine must be paid before Kaufman reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Kaufman consented to the described sanctions and to the entry of findings that he exercised discretionary authority in a public customer's account without obtaining the customer's prior written authorization and his member firm's acceptance of the account as discretionary.

Kaufman's suspension began April 15, 2002, and concluded at the close of business April 26, 2002. **(NASD Case #C10020036)**

**Lloyd Knipe (CRD #1710703, Registered Representative, Franklin Square, New York)** submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 12 months. The fine must be paid before Knipe reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Knipe consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U-4.

Knipe's suspension began April 1, 2002, and will conclude at the close of business March 31, 2003. **(NASD Case #CLI010003)**

**Stephen John Larkin (CRD #733109, Registered Representative, Trenton, New Jersey)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000, suspended from association with any NASD member in any capacity

for two years, and ordered to disgorge \$52,000 in commissions in partial restitution to public customers. Without admitting or denying the allegations, Larkin consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm.

Larkin's suspension began May 6, 2002, and will conclude at the close of business May 5, 2004. **(NASD Case #C9A020015)**

**Edward Joseph Larsen (CRD #4403877, Associated Person, Lyndhurst, 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, Larsen consented to the described sanction and to the entry of findings that he willfully misrepresented and failed to disclose material facts on his Form U-4. **(NASD Case #C10020025)**

**Ji Hoon Lee (CRD #4408774, Registered Representative, Costa Mesa, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Lee reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lee consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on a Form U-4.

Lee's suspension began May 6, 2002, and will conclude at the close of business August 5, 2002. **(NASD Case #C02020015)**

**Philip Millar Leech (CRD #2351020, Registered Representative, Spring Lake, Michigan)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$6,395, which includes the disgorgement of \$395 in commissions, and suspended from association with any NASD member in any capacity for one month. The fine must be paid before Leech reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Leech consented to the described sanctions and to the entry of findings that he participated, for compensation, in a private securities transaction by participating in the sale of a security in the form of a viatical issued by a member of the public without giving written notice of his intention to engage in such activity to his member firm, and receiving written approval from his member firm, prior to engaging in such activities. The NASD also found that Leech maintained a Web site for the purpose of advertising without obtaining prior approval for use of the Web site from a principal of his member firms, and failed to file the advertising with NASD's Advertising/Investment Companies Regulation Department within 10 days of the first use or publication of the Web site.

Leech's suspension began April 15, 2002, and will conclude at the close of business May 14, 2002. **(NASD Case #C8A020012)**

**Jae Young Lim (CRD #1003677, Registered Representative, Fullerton, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allega-

tions, Lim consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. **(NASD Case #C02020012)**

**Joseph Anthony Marchisello (CRD #2322480, Registered Representative, Brooklyn, New York)** 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, Marchisello consented to the described sanction and to the entry of findings that he failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #C10020026)**

**Peter Thomas Matus (CRD #2675757, Associated Person, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$12,500 and suspended from association with any NASD member in any capacity for 18 months. The fine must be paid before Matus reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Matus consented to the described sanctions and to the entry of findings that he maintained two accounts at another member firm and did not disclose, in writing, to his member firm the existence of the two accounts at the other firm, nor did he notify the other firm, in writing, that he was associated with his member firm.

Matus' suspension began May 6, 2002, and will conclude at the close of business November 5, 2003. **(NASD Case #C3A020019)**

**Elizabeth Ann McCargar (CRD #2347346, Registered Representative, Folsom, California)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$2,500 and suspended from association with any NASD member in any capacity for 90 days. Without admitting or denying the allegations, McCargar consented to the described sanctions and to the entry of findings that she executed promissory notes for the purpose of recreating what she understood were previously executed promissory notes. The findings also stated that McCargar, in response to an NASD request for testimony, incorrectly testified that the promissory notes had been executed on or about the dates reflected on the notes.

McCargar's suspension began April 1, 2002, and will conclude June 29, 2002. **(NASD Case #CMS020036)**

**Terry Edwin McCormic (CRD #1443203, Registered Representative, Lady Lake, Florida)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$47,982, which includes disgorgement of \$42,982 in commissions earned, and suspended from association with any NASD member in any capacity for two years. The fine must be paid before McCormic reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, McCormic consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to, or receiving authorization from, his member firm.

McCormic's suspension began April 1, 2002, and will conclude at

the close of business March 31, 2004. **(NASD Case #C07020015)**

**William Keith McCrea (CRD #2234553, Registered Representative, Sun City West, Arizona)** 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, McCrea consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written notice of his activities to his member firm. **(NASD Case #C3A020014)**

**Shannon Mae McDermott (CRD #4129251, Registered Representative, Granby, Missouri)** was barred from association with any NASD member in any capacity. The sanction was based on findings that McDermott, without the knowledge or consent of a public customer, withdrew \$4,500 from the customer's bank account, deposited the cash funds into an account under her control, and used the funds to her own benefit or for some purpose other than the benefit of the public customer. The findings also stated that McDermott failed to respond to NASD requests for information. **(NASD Case #C04010037)**

**Timothy Melvin Murphy (CRD #1827456, Registered Representative, Orange, California)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Murphy consented to the described sanction and to the entry of findings that he received \$141,398.15 from public customers

for investment purposes, failed to apply the funds as directed, and, instead, without the customers' knowledge, authorization, or consent, misused the funds until a later time at which time he returned the funds to the customers. **(NASD Case #C02020013)**

**Susan Georgette Penn (CRD #1104422, Registered Principal, Huntington Station, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$5,000 and suspended from association with any NASD member in a principal capacity for five business days. The fine must be paid before Penn reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Penn consented to the described sanctions and to the entry of findings that a former member firm, acting through Penn, conducted a securities business while failing to maintain the minimum required net capital.

Penn's suspension began April 15, 2002, and concluded at the close of business April 19, 2002. **(NASD Case #C10020034)**

**Dean Petkanas (CRD #2001896, Registered Principal, Old Westbury, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in a principal and supervisory capacity for 30 days. Without admitting or denying the allegations, Petkanas consented to the described sanctions and to the entry of findings that he failed to establish and maintain adequate written supervisory procedures to address the monitoring of his member firm's market presence

in warrants and that proper procedures were implemented.

Petkanas' suspension began April 15, 2002, and will conclude at the close of business May 15, 2002. **(NASD Case #CAF020011)**

**Wayne Wendell Ratliff, III (CRD #1757408, Registered Principal, Morgantown, West Virginia)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Ratliff consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on a Form U-4 and failed to respond to NASD requests for information. **(NASD Case #C9A020011)**

**Steven Mark Reed (CRD #2642807, Registered Representative, Suisun, California)** 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 five business days. Without admitting or denying the allegations, Reed consented to the described sanctions and to the entry of findings that he recommended and engaged in purchase and sale transactions in the accounts of a public customer which involved mutual fund switching without having reasonable grounds for believing that these recommendations and resultant transactions were suitable for the customer based on her security holdings, financial situation, and needs.

Reed's suspension began May 6, 2002, and concluded at the close of business May 10, 2002. **(NASD Case #C06020002)**

**Brian Scott Robison (CRD #2609403, Registered Representative, Aurora, Colorado)** 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, Robison consented to the described sanction and to the entry of findings that he obtained funds from his member firm to which he was not entitled by submitting expense reports requesting reimbursement for expenses he did not incur, and by receiving and retaining the reimbursements, which he has since voluntarily repaid. **(NASD Case #C3A020015)**

**Deborah Ellen Romary (CRD #1112258, Registered Representative, Fort Wayne, Indiana)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$2,500, required to pay \$12,479, plus interest, in restitution to a public customer, which includes disgorgement of commissions of \$7,400.05, and suspended from association with any NASD member in any capacity for 10 business days. Romary must provide proof of payment of the restitution prior to reassociation with a member firm following the suspension or prior to any request for relief from statutory disqualification. Without admitting or denying the allegations, Romary consented to the described sanctions and to the entry of findings that she recommended to a public customer to transfer money from a variable annuity to a life variable annuity, resulting in a \$12,479 surrender charge to the customer. The NASD found that Romary made this recommendation without having a reasonable basis for the recommendation to exchange the variable annuity for the life variable annuity, when the products were

similar in some ways and identical in others, and without a material benefit to the customer.

Romary's suspension began April 15, 2002, and concluded at the close of business April 26, 2002. **(NASD Case #C8A020013)**

**Philip Lawrence Salice (CRD #2928448, Registered Principal, Bayshore, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 15 business days. Without admitting or denying the allegations, Salice consented to the described sanctions and to the entry of findings that he guaranteed a public customer, in writing, against loss.

Salice's suspension began May 6, 2002, and will conclude at the close of business May 24, 2002. **(NASD Case #C10020033)**

**Janet Lynne Schroder (CRD #1849962, Registered Representative, Florence, Kentucky)** submitted a Letter of Acceptance, Waiver, and Consent in which she was fined \$10,000, suspended from association with any NASD member in any capacity for six months, and required to pay \$15,500, plus interest, in restitution to public customers. Payment of the fine and satisfactory proof of payment of restitution is required before Schroder reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Schroder consented to the described sanctions and to the entry of findings that she participated in private securities transactions and engaged in business activity outside the scope of her relationship with her member firm without providing prior written notice to her firm.

Schroder's suspension began April 15, 2002, and will conclude at the close of business October 14, 2002. **(NASD Case #C05020011)**

**Barbara Lee Schuldt (CRD #4008311, Registered Representative, Chicago, Illinois)** 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, Schuldt consented to the described sanction and to the entry of findings that she obtained credit cards in the name of a public customer of his member firm's bank affiliate by completing credit card applications with the customer's personal information, which she verified through a branch bank. The NASD found that Schuldt used the credit cards on several occasions and signed the customer's name to credit charge slips, thereby incurring charges, without the knowledge or consent of the customer. **(NASD Case #C8A020017)**

**Stephanie Ann Scott (CRD #3121358, Registered Representative, Oklahoma City, Oklahoma)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Scott issued cashier checks to herself totaling \$520, and that in order to fund these checks, she advanced \$520 on the line of credit of a public customer without the customer's knowledge or consent. Scott negotiated one of the cashier checks for \$260 and destroyed remaining checks prior to negotiation, thereby wrongfully converting \$260. Scott also failed to respond to NASD requests for information. **(NASD Case #C05010042)**

**Damion S. Shoemaker (CRD #2897948, Registered Representative, Astoria, New York)** was barred from association with any NASD member in any capacity. The sanction was based on findings that Shoemaker filed materially inaccurate Forms U-4 and failed to respond to NASD requests for information. **(NASD Case #C10010108)**

**Jerome Remy Shore (CRD #2666255, Registered Representative, Baton Rouge, Louisiana)** 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 Shore reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations Shore consented to the described sanctions and to the entry of findings that he signed the names of public customers on a new account form without the knowledge or consent of the customers, and that he intentionally completed the form with an incorrect social security number and date of birth for one of the customers.

Shore's suspension began April 15, 2002, and will conclude at the close of business April 14, 2003. **(NASD Case #C05020010)**

**Cara Marie Smith (CRD #2391959, Registered Representative, Mesa Arizona)** submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Smith consented to the described sanction and to the entry of findings that she affixed the signatures of public customers on documents

that relate to the purchase of a variable annuity without the customers' knowledge or consent. The findings also stated that Smith failed to respond to NASD requests to appear for an on-the-record testimony. **(NASD Case #C8A010093)**

**Thomas Steinbach (CRD #1296164, Registered Representative, Mountain Lakes, New Jersey)** was barred from association with any NASD member in any capacity and ordered to pay \$20,000 in restitution to a public customer. The sanctions were based on findings that Steinbach, by use of the means or instrumentalities of interstate commerce, the mails, or any facility of any national securities exchange, employed a device, scheme, or artifice to defraud; made untrue statements of material fact or omitted to state material facts 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 a course of business which operated, or could operate, as a fraud or deceit upon persons by making misrepresentations and omissions in connection with an agreement to purchase options. In addition, Steinbach failed to respond to NASD requests for information. **(NASD Case #C9B010061)**

**Belinda Enriquez Swiatlowski (CRD #2935813, Registered Representative, Dublin, California)** 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, Swiatlowski consented to the described sanction and to the entry of findings that she failed to amend her Form U-4 to notify her

member firm and the NASD of a material fact. The findings also stated that Swiatlowski failed to respond to NASD requests for information and documentation. **(NASD Case #C01020004)**

**Steven William Taylor (CRD #867673, Registered Representative, Longmont, Colorado)** submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for one year. In light of the financial status of Taylor, no monetary sanction has been imposed. Without admitting or denying the allegations, Taylor consented to the described sanction and to the entry of findings that he failed to keep his Form U-4 current by filing, or causing to be filed, the required amendments.

Taylor's suspension began April 15, 2002, and will conclude at the close of business April 14, 2003. **(NASD Case #C3A010046)**

**Lee Douglas Tusberg (CRD #1208731, Registered Representative, Spokane, Washington)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Tusberg consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior written notice to, and approval from, his member firm. The findings also stated that Tusberg failed to respond to NASD requests for information. **(NASD Case #C3B010018)**

**Randall John Veselik (CRD #2258833, Registered Representative, Naperville, Illinois)** submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and

required to pay \$1,395,000, plus interest, in restitution to a public customer. Satisfactory proof of payment of restitution must be made before Veselik reassociates with any NASD member. Without admitting or denying the allegations, Veselik consented to the described sanctions and to the entry of findings that he participated in private securities transactions without providing prior written notice to his member firm. The findings also stated that Veselik failed to respond to an NASD request to appear for an on-the-record interview. **(NASD Case #C05020002)**

**Richard Zbigniew Zielony (CRD #721183, Registered Principal, Jacksonville, Oregon)** submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Zielony consented to the described sanction and to the entry of findings that he recommended transactions for the account of a public customer without having reasonable grounds for believing that such recommendations were suitable in light of the size and nature of the transactions, the margin interest costs, the holding periods, and the facts disclosed concerning the customer's other securities holdings, financial situation, investment objective, circumstances, and needs. The findings also stated that Zielony engaged in excessive trading in the account of a public customer in view of the customer's objectives, financial situation, and the nature of the customer's account. In addition, the NASD found that Zielony exercised discretionary power in a public customer's account without prior written authorization from the customer and acceptance in writing by his member firm of the

account as discretionary. **(NASD Case #C3B020006)**

### Individuals Fined

**Joseph Michael Angelone, Jr. (CRD #2313606, Registered Representative, New York, New York)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$10,000. Without admitting or denying the allegations, Angelone consented to the described sanctions and to the entry of findings that he failed to amend his Form U-4 to disclose material facts. **(NASD Case #C9B020025)**

**Frank James Gillen (CRD #2045276, Registered Representative, Salt Lake City, Utah)** submitted a Letter of Acceptance, Waiver, and Consent in which he was censured and fined \$25,000. Without admitting or denying the allegations, Gillen consented to the described sanctions and to the entry of findings that he sold shares of common stock that represented the founder shares he received when the stock was formed. The NASD found that Gillen relied upon Rule 144(k) as an exemption from registration under Section 5 of the Securities Act of 1933. However, since he was a control person at the time he sold the shares, Rule 144(k) was not available to him; therefore, he sold his shares in violation of Section 5 of the Securities Act of 1933. **(NASD Case #C3A020016)**

### Decision Issued

The following decision has been issued by the DBCC or the Office of Hearing Officers and has been appealed to or called for review by the NAC as of April 5, 2002. The findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed

by the NAC. Initial decisions whose times for appeal have not yet expired will be reported in the next *Notices to Members*.

**Gaylon Wayne LaBoa (CRD #3134751, Registered Representative, Atlanta, Georgia)** was barred from association with any NASD member in any capacity. The sanction was based on findings that LaBoa converted checks totaling \$2,700 received from a public customer to begin an investment account and failed to deposit any money into the account. The findings also stated that LaBoa failed to respond to NASD requests for an on-the-record interview.

LaBoa has appealed this decision to the NAC, and the sanction is not in effect pending consideration of the appeal. **(NASD Case #C07010007)**

### 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.

**Robert Andrew DiCarlo, Jr. (CRD #2837475, Registered Representative, Boca Raton, Florida)** was named as a respondent in an NASD complaint alleging that he effected unauthorized transactions in the accounts of public customers and failed to respond to NASD requests for

information. **(NASD Case #C07020012)**

**Lloyd Wade Securities, Inc. (CRD #39653, Dallas, Texas), David Lloyd Rutkoske (CRD #1496393, Registered Principal, Allen, Texas), and Michael Arthur Niebuhr (CRD #724449, Registered Principal, San Diego, California)** were named as respondents in an NASD complaint alleging that the respondents made use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell a security for which there was no registration statement in effect through the use of any prospectus or otherwise. The complaint also alleges that while the firm, acting through Rutkoske and Niebuhr, engaged in a distribution of securities, it was at the same time engaging in selling efforts with respect to the stock by purchasing shares on a principal basis and then selling the shares to public customers in solicited principal transactions in violation of Regulation M. In addition, the complaint alleges that the firm, acting through Rutkoske and Niebuhr, effected transactions in securities at prices that were not fair and reasonable, and charged retail customers undisclosed markups in excess of five percent of the firm's contemporaneous cost.

Furthermore, the complaint alleges that the respondents, by the use of the means or instrumentalities of interstate commerce, the mails, or of any facility of any national securities exchange, employed a device, scheme, or artifice to defraud; made untrue statements of material fact or omitted to state material facts 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 a course of business that operated as a fraud or deceit upon person in connection with transactions it effected in securities as principal. The complaint alleges that the firm charged public customers fraudulently excessive markups that were over 10 percent and \$100, totaling approximately \$285,900. In addition, the complaint alleges that the firm, as a market maker in an over-the-counter bulletin board (OTCBB) security, dominated and controlled the market for the security, and should have computed customer markups based upon its contemporaneous cost from other broker/dealers but failed to do so. Furthermore, the complaint alleges that Rutkoske and Niebuhr made the decision to make a market in the security and determined the markups that were excessive and fraudulent. Moreover, the complaint alleges that the firm and Rutkoske failed to respond to NASD requests for information. **(NASD Case #CAF020012)**

**Nelson Daniel Polite, Jr. (CRD #2698001, Registered Principal, Orlando, Florida)** was named as a respondent in an NASD complaint alleging that he entered into a written agreement with a public customer to trade his account and share profits earned in that account without prior written authorization from his member firm. The complaint also alleges that Polite failed to respond to NASD requests for information and documents. **(NASD Case #C07020021)**

**Joseph Anthony Sanchez (CRD #2393619, Registered Representative, Tampa, Florida)** was named as a respondent in an NASD complaint alleging that he sold and purchased, or caused to be sold and purchased, shares of stock for the account of a public

customer without the prior knowledge, authorization, or consent of the customer. The complaint also alleges that Sanchez failed to respond to NASD requests for documents and information. **(NASD Case #C9B020018)**

**Henry Shin a/k/a Yoo Ho (CRD #3210557, Registered Representative, Levittown, New York)** was named as a respondent in an NASD complaint alleging that he engaged in transactions in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Shin engaged in a pattern of deceptive conduct intended to deter or delay a public customer from taking any action including complaining to his member firm about unauthorized transactions. In addition, the complaint alleges that Shin engaged in activities involving options transactions while he was not qualified, and registered in the category or categories of registration related to options securities. Furthermore, the complaint alleges that Shin failed to respond to NASD requests for information. **(NASD Case #C10020027)**

### **Firm Suspended For Failure To Supply Financial Information**

The following firm was suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The action was based on the provisions of NASD Rule 8210 and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after the entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**Pars Securities, Inc.,**  
Ridgewood, New Jersey  
(March 6, 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.)**

**Alfonseca, Jr., Pedro J.,**  
Jamaica Plain, New York  
(March 6, 2002)

**Armenta, Joseph E.,**  
Phoenix, Arizona  
(March 20, 2002)

**Benelli, Rosemary,**  
Sun City Center, Florida  
(April 3, 2002)

**Brouillette, Jr., Ronald D.,**  
LaJolla, California  
(March 25, 2002)

**Chaplin, Don F.,**  
San Diego, California  
(March 28, 2002)

**Freedman, Richard O.,**  
New York, New York  
(March 6, 2002)

**Grau, Steven A.,**  
Lighthouse Point, Florida  
(April 2, 2002)

**Hathaway, II, William,**  
Virginia Beach, Virginia  
(March 20, 2002)

**Hemingway, Deidre K.,**  
Minneapolis, Minnesota  
(March 28, 2002)

**Humphreys, Kyle Wade,**  
Mesa, Arizona  
(March 21, 2002)

**Lowe, Anthony,**  
Atlanta, Georgia  
(March 19, 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.)**

**Ambrosio, Jeffrey M.,**  
Cleveland, Ohio  
(March 11, 2002)

**Hengst, Allen L.**  
(a/k/a Scott J. McKay Wolas),  
Orlando, Florida  
(March 4, 2002)

**Hsu, John S.,**  
Alhambra, California  
(March 27, 2002)

**Weinstock, Jason H.,**  
Van Nuys, California  
(April 1, 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.

**Lau, Chunpong,**  
Los Angeles, California  
(March 8, 2002 – March 12, 2002)

**Tye, Walter Alan,**  
Long Beach, New York  
(March 15, 2002 – April 17, 2002)

**NASD Regulation Censures And Fines Interactive Brokers For Market Systems Violations**

NASD Regulation announced that it censured and fined Interactive Brokers, L.L.C., \$230,000 for

multiple violations, including order routing, Order Audit Trail System (OATS) reporting, record keeping, and supervision violations. During a three-year period, Interactive Brokers violated NASD rules by mis-programming its order routing system so that customer orders that were routed through Nasdaq's SelectNet system to electronic communication networks (ECNs) were treated as "non-negotiable," which means the essential terms of the order, including the size, could not be changed. NASD rules prohibit non-negotiable orders from being sent to ECNs and permit ECNs to reject them. In most cases, ECNs exercised their right to reject them, due to difficulties in programming their systems to accept this type of order.

Interactive Brokers also failed to submit OATS reports in the manner required by NASD OATS rules. Interactive Brokers' record keeping violations occurred as a result of its system programming, which retained certain required details concerning its routing of orders through SelectNet for no more than one week. NASD rules require that this data be retained for three years. Interactive Brokers' OATS and record keeping violations spanned a 20-month period from August 1999 through April 2001.

Interactive Brokers also was ordered to revise its supervisory procedures to ensure that future computer programming changes will result in the firm's automated routing and execution system, OATS reports, and maintenance of required books and records being in compliance with NASD and SEC rules.

## **NASD Regulation Settles Stock Manipulation Case With M. H. Meyerson & Co., Inc. And Four Execs**

### **NASD Regulation Files Complaint Against Two Employees of a Second Firm in Related Activity**

NASD Regulation found that M.H. Meyerson, & Co., Inc. and its Head Trader, Salvatore Dacunto, manipulated the stock of Concap, Inc., (CNCG), a thinly traded OTCBB security, in a scheme to artificially inflate its price in return for 100,000 restricted shares under a veiled investment banking arrangement. The firm and three of its officers—CEO Martin H. Meyerson, former President and COO Michael Silvestri, and Compliance Officer Joseph G. Messina—were found to have failed to adequately supervise Dacunto's trading activities, and failed to establish and maintain adequate supervisory procedures. All parties consented to NASD Regulation's findings without admitting or denying the allegations and were fined a total of \$240,000.

NASD Regulation found that as part of the manipulative scheme, Dacunto acting on behalf of M. H. Meyerson & Co. of Jersey City, NJ, up-ticked Meyerson's bid for the security on a daily basis over a two-week period in 1998, causing the inside bid for CNCG to increase 400 percent. Dacunto fraudulently up-ticked the bid despite the lack of any favorable news reports, very little retail interest in the security, and no competing bids. In fact, Concap had no reported operating revenues for the previous three years and had recently received a going concern opinion from its auditors.

In settling with NASD Regulation:

- The firm was censured, fined \$75,000 and consented to the hiring of an independent consultant to review and revise the firm's "Chinese Wall" procedures between the firm's trading and investment banking departments.
  - Dacunto was fined \$75,000, suspended from associating with any NASD member firm for three months and suspended for an additional two months from acting in a supervisory or trading capacity. He is also required to re-qualify as a trader through examination, before again serving in that capacity.
  - The firm, along with Martin H. Meyerson, Silvestri and Messina were sanctioned for failing to adequately supervise Dacunto's trading activities and for failing to have adequate supervisory procedures in place to detect his conduct.
    - ❖ Specifically, Mr. Meyerson failed to make an effective delegation of supervision of Dacunto's trading activities since he was aware that the firm had no system to monitor traders' quotations, and that Messina had not established adequate procedures to review Dacunto's market-making activities. Mr. Meyerson was fined \$50,000, suspended from associating with an NASD member firm for 20 business days and suspended from serving as a supervisor for an additional 10 business days.
- ❖ Silvestri also was aware that Messina had failed to establish adequate procedures to monitor the trading department's market-making activities. He was fined \$25,000 and suspended from associating with an NASD member firm for 20 business days.
  - ❖ Messina, for failing to adequately supervise Dacunto, and failing to develop an adequate system to monitor the trading room's activities, was censured, fined \$15,000 and required to re-qualify by examination as a General Securities Principal before again serving in that capacity.

In a related matter, NASD Regulation filed a complaint against Michael Marcus, previously a trader with Morgan Grant Capital Corp., a former NASD member firm, and Louis Montaino, a former broker with Morgan Grant, for engaging in related fraudulent trading in CNCG while at Morgan Grant. As part of the scheme, Morgan Grant obtained 1 million shares of Concap for little or no consideration. This represented more than 40 percent of the float. The two are alleged to have "pumped and dumped" the CNCG stock on their unsuspecting customers allowing the firm to garner \$1.9 million in illicit profits. These charges are pending.

The complaint filed against Marcus and Montaino alleges that between July 30, 1998 and August 12, 1998, Marcus directed purchase limit orders for CNCG to Meyerson almost on a daily basis, at increasingly higher prices. At that time, Meyerson was the only active

market maker in the security. According to the complaint, the orders provided a pretense for Dacunto to increase Meyerson's bid for CNCG and to make it appear as if there were interest and activity in the security. Marcus placed those orders for his firm's proprietary account despite the fact that Morgan Grant already held a substantial long position of CNCG and that Marcus had no retail orders at that time.

## For Your Information

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### **Bank Notification Used In Conjunction With A Special Reserve Bank Account For The Exclusive Benefit Of Customers**

In order to protect customer cash held at a clearing firm, SEC Rule 15c3-3 requires that customer cash and other customer credits be deposited into a Special Reserve Bank Account for the Exclusive Benefit of Customers (Reserve Account). This requirement serves as a safeguard for investors so that the clearing firm does not utilize these funds for its own use.

In conjunction with this requirement, SEC Rule 15c3-3 (f) requires firms utilizing a Reserve Account to obtain a written notification from the bank, which in effect acknowledges that the bank understands the assets held in the account belong to the clearing firm's customers and as such "shall at no time be used directly or indirectly as security for a loan to the broker or dealer by the bank, and, shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank."

It has recently come to light that some banks are adding language to the notification that pertains to court orders, etc. As such, the following was recently issued to NASD staff from the Securities and Exchange Commission, Division of Market Regulation. Any notification letter for a Reserve Account that a broker or dealer is required to obtain from a bank pursuant to SEC Rule 15c3-3(f) that contains language similar to the following:

[bank] may and is hereby authorized to obey the order, judgment, decree, or levy of any court which order, judgment, decree, or levy relates in whole or in part to the [Reserve] Account.

must also include the following provisions:

1. [bank] shall not assert any claim against the [Reserve] Account.
2. [bank] shall immediately notify the United States Securities and Exchange Commission (SEC), the Securities Investor Protection Corporation (SIPC), and the designated examining authority of the broker or dealer that maintains the [Reserve] Account at [bank] if a legal action is initiated asserting any claim against the [Reserve] Account or if a court order is entered relating to the [Reserve] Account.
3. In the event that any legal action in any court is initiated asserting any claim against the [Reserve] Account, [bank] shall inform the court that the [Reserve] Account is an account maintained at [bank] by a broker or dealer, that the [Reserve] Account was established pursuant to Securities Exchange Act of 1934 Rule 15c3-3, that all cash and/or qualified securities deposited in the [Reserve] Account are being held by [bank] for the exclusive benefit of customers [introduced proprietary accounts] of the broker or dealer in accordance with the regulations of the SEC, and that [bank] has agreed in writing with the broker or dealer that the [Reserve] Account shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of [bank] or any person claiming through [bank].

For more information on this topic, contact Susan DeMando, Member Regulation, NASD Regulation, at (202) 728-8411.